

NEUSTAR CORPORATION  
Incorporated Under the Laws of  
the State of Delaware

AMENDED BY-LAWS

ARTICLE I  
OFFICES.

The registered office of the Corporation in Delaware shall be at 1209 Orange Street in the City of Wilmington, County of New Castle, in the State of Delaware, and The Corporation Trust Company shall be the resident agent of this Corporation in charge thereof. The Corporation may also have such other offices at such other places, within or without the State of Delaware, as the Board of Directors may from time to time designate or the business of the Corporation may require.

ARTICLE II  
STOCKHOLDERS.

Section 1. Annual Meeting. The annual meeting of stockholders for the election of directors to succeed those whose terms expire and the transaction of any other business shall be held on the 1st day of November each year, or as soon after such date as may be practicable, in such city and state and at such time and place as may be designated by the Board of Directors, and set forth in the notice of such meeting. If said day be a legal holiday, said meeting shall be held on the next succeeding business day. At the annual meeting any business may be transacted and any corporate action may be taken, whether stated in the notice of meeting or not, except as otherwise expressly provided by statute or the Restated Certificate of Incorporation.

Section 2. Special Meetings. Special meetings of the stockholders for any purpose may be called at any time by the Board of Directors, or by the Chief Executive Officer, and shall be called by the Chief Executive Officer at the request of the holders of a majority of the outstanding shares of capital stock entitled to vote. Special meetings shall be held at such place or places within or without the State of Delaware as shall from time to time be designated by the Board of Directors and stated in the notice of such meeting. At a special meeting no business shall be transacted and no corporate action shall be taken other than that stated in the notice of the meeting.

Section 3. Notice of Meetings. Written notice of the time and place of any stockholder's meeting, whether annual or

special, shall be given to each stockholder entitled to vote thereat, by personal delivery or by mailing the same to him at his address as the same appears upon the records of the Corporation at least ten (10) days but not more than sixty (60) days before the day of the meeting. Notice of any adjourned meeting need not be given except by announcement at the meeting so adjourned, unless otherwise ordered in connection with such adjournment. Such further notice, if any, shall be given as may be required by law.

Section 4. Quorum. Any number of stockholders, together holding at least a majority of the capital stock of the Corporation issued and outstanding and entitled to vote, who shall be present in person or represented by proxy at any meeting duly called, shall constitute a quorum for the transaction of all business, except as otherwise provided by law, by the Restated Certificate of Incorporation or by these By-laws.

Section 5. Adjournment of Meetings. If less than a quorum shall attend at the time for which a meeting shall have been called, the meeting may adjourn from time to time by a majority vote of the stockholders present or represented by proxy and entitled to vote without notice other than by announcement at the meeting until a quorum shall attend. Any meeting at which a quorum is present may also be adjourned in like manner and for such time or upon such call as may be determined by a majority vote of the stockholders present or represented by proxy and entitled to vote. At any adjourned meeting at which a quorum shall be present, any business may be transacted and any corporate action may be taken which might have been transacted at the meeting as originally called.

Section 6. Voting List. The Secretary shall prepare and make, at least ten days before every election of directors, a complete list of the stockholders entitled to vote, arranged in alphabetical order and showing the address of each stockholder and the number of shares of each stockholder. Such list shall be open at the place where the election is to be held for said ten days, to the examination of any stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present.

Section 7. Voting. Each stockholder entitled to vote at any meeting may vote either in person or by proxy, but no proxy shall be voted on or after three years from its date, unless said proxy provides for a longer period. Except as otherwise provided in the Restated Certificate of Incorporation, each stockholder entitled to vote shall at every meeting of the stockholders be entitled to one vote for each share of stock registered in his name on the record of stockholders. At all meetings of stockholders all matters, except as otherwise provided by statute or in the Restated Certificate of Incorporation, shall be

determined by the affirmative vote of the majority of shares present in person or by proxy and entitled to vote on the subject matter. Voting at meetings of stockholders need not be by written ballot.

Section 8. Record Date of Stockholders. The Board of Directors is authorized to fix in advance a date not exceeding sixty days nor less than ten days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining the consent of stockholders for any purposes, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and, in such case, such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation, after such record date fixed as aforesaid.

Section 9. Action Without Meeting. Any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 10. Conduct of Meetings. The Chairman of the Board of Directors or, in his absence the Chief Executive Officer or any Vice President designated by the Chairman of the Board, shall preside at all regular or special meetings of stockholders. To the maximum extent permitted by law, such presiding person shall have the power to set procedural rules, including but not

limited to rules respecting the time allotted to stockholders to speak, governing all aspects of the conduct of such meetings.

ARTICLE III  
DIRECTORS.

Section 1. Number and Qualifications. The board of directors shall consist initially of five directors, and thereafter shall consist of such number as may be fixed from time to time by resolution of the Board. The directors need not be stockholders.

Section 2. Board Nominees. Only persons who are nominated in accordance with the procedures set forth in these By-laws shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders at which directors are to be elected only: (i) by or at the direction of the Board of Directors; or (ii) by any stockholder of the Corporation entitled to vote for the election of Directors at the meeting who complies with the notice procedures set forth in this Section 2. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made by timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered or mailed to and received at the principal executive offices of the Corporation not less than sixty (60) days prior to the date of the meeting; provided, however, that in the event that less than sixty (60) days' notice of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed. No person shall be eligible for election as a Director of the Corporation unless nominated in accordance with the provisions of this Section 2.

Section 3. Election of Directors; Duration of Office. The directors shall be divided, with respect to the time for which they severally hold office, into three classes, with the term of office of the first class to expire at the first annual meeting of stockholders, the term of office of the second class to expire at the annual meeting of stockholders one year thereafter and the term of office of the third class to expire at the annual meeting of stockholders two years thereafter, with each director to hold office until his or her successor shall have been duly elected and qualified. At each annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified.



Section 4. Removal and Resignation of Directors. Any director may be removed from the Board of Directors, with or without cause, by the holders of a majority of the shares of capital stock entitled to vote, either by written consent or consents or at any special meeting of the stockholders called for that purpose, and the office of such director shall forthwith become vacant.

Any director may resign at any time. Such resignation shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chief Executive Officer or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless so specified therein.

Section 5. Filling of Vacancies. Any vacancy among the directors, occurring from any cause whatsoever, may be filled by a majority of the remaining directors, though less than a quorum, provided however, that the stockholders removing any director may at the same meeting fill the vacancy caused by such removal, and provided further, that if the directors fail to fill any such vacancy, the stockholders may at any special meeting called for that purpose fill such vacancy. In case of any increase in the number of directors, the additional directors may be elected by the directors in office before such increase.

Any person elected to fill a vacancy shall hold office, subject to the right of removal as hereinbefore provided, for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been elected expires and until such director's successor shall have been duly elected and qualified.

Section 6. Regular Meetings. The Board of Directors shall hold an annual meeting for the purpose of organization and the transaction of any business immediately after the annual meeting of the stockholders, provided a quorum of directors is present. Other regular meetings may be held at such times as may be determined from time to time by resolution of the Board of Directors.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors or by the Chief Executive Officer.

Section 8. Notice and Place of Meetings. Meetings of the Board of Directors may be held at the principal office of the Corporation, or at such other place as shall be stated in the notice of such meeting. Notice of any special meeting, and, except as the Board of Directors may otherwise determine by resolution, notice of any regular meeting also, shall be mailed to each director addressed to him at his residence or usual place of business at least two days before the day on which the meeting is to be held, or if sent to him at such place by telegraph or

cable, or delivered personally or by telephone, not later than the day before the day on which the meeting is to be held. No notice of the annual meeting of the Board of Directors shall be required if it is held immediately after the annual meeting of the stockholders and if a quorum is present.

Section 9. Business Transacted at Meetings, etc. Any business may be transacted and any corporate action may be taken at any regular or special meeting of the Board of Directors at which a quorum shall be present, whether such business or proposed action be stated in the notice of such meeting or not, unless special notice of such business or proposed action shall be required by statute.

Section 10. Quorum. A majority of the Board of Directors at any time in office shall constitute a quorum. At any meeting at which a quorum is present, the vote of a majority of the members in office shall be the act of the Board of Directors unless the act of a greater number is specifically required by law or by the Restated Certificate of Incorporation or these By-laws. The members of the Board shall act only as the Board and the individual members thereof shall not have any powers as such.

Section 11. Compensation. The directors shall not receive any stated salary for their services as directors, but by resolution of the Board of Directors a fixed fee and expenses of attendance may be allowed for attendance at each meeting. Nothing herein contained shall preclude any director from serving the Corporation in any other capacity, as an officer, agent or otherwise, and receiving compensation therefor.

Section 12. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Board or committee.

Section 13. Meetings Through Use of Communications Equipment. Members of the Board of Directors, or any committee designated by the Board of Directors, shall, except as otherwise provided by law, the Certificate of Incorporation or these By-laws, have the power to participate in a meeting of the Board of Directors, or any committee, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.

ARTICLE IV  
COMMITTEES.

Section 1. Executive Committee. The Board of Directors may, by resolution passed by a majority of the whole Board, designate two or more of their number to constitute an Executive Committee to hold office at the pleasure of the Board, which Committee shall, during the intervals between meetings of the Board of Directors, have and exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, subject only to such restrictions or limitations as the Board of Directors may from time to time specify, or as limited by the Delaware Corporation Law, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Any member of the Executive Committee may be removed at any time, with or without cause, by a resolution of a majority of the whole Board of Directors.

Any person ceasing to be a director shall ipso facto cease to be a member of the Executive Committee.

Any vacancy in the Executive Committee occurring from any cause whatsoever may be filled from among the directors by a resolution of a majority of the whole Board of Directors.

Section 2. Other Committees. Other committees, whose members need not be directors, may be appointed by the Board of Directors or the Executive Committee, which committees shall hold office for such time and have such powers and perform such duties as may from time to time be assigned to them by the Board of Directors or the Executive Committee.

Any member of such a committee may be removed at any time, with or without cause, by the Board of Directors or the Executive Committee. Any vacancy in a committee occurring from any cause whatsoever may be filled by the Board of Directors or the Executive Committee.

Section 3. Resignation. Any member of a committee may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the Chief Executive Officer or Secretary. The acceptance of a resignation shall not be necessary to make it effective unless so specified therein.

Section 4. Quorum. A majority of the members of a committee shall constitute a quorum. The act of a majority of the members of a committee present at any meeting at which a quorum is present shall be the act of such committee. The

members of a committee shall act only as a committee, and the individual members thereof shall not have any powers as such.

Section 5. Record of Proceedings, etc. Each committee shall keep a record of its acts and proceedings, and shall report the same to the Board of Directors when and as required by the Board of Directors.

Section 6. Organization, Meetings, Notices, etc. A committee may hold its meetings at the principal office of the Corporation, or at any other place which a majority of the committee may at any time agree upon. Each committee may make such rules as it may deem expedient for the regulation and carrying on of its meetings and proceedings. Unless otherwise ordered by the Executive Committee, any notice of a meeting of such committee may be given by the Secretary of the Corporation or by the chairman of the committee and shall be sufficiently given if mailed to each member at his residence or usual place of business at least two days before the day on which the meeting is to be held, or if sent to him at such place by telegraph or cable, or delivered personally or by telephone not later than 24 hours before the time at which the meeting is to be held.

Section 7. Compensation. The members of any committee shall be entitled to such compensation as may be allowed them by resolution of the Board of Directors.

#### ARTICLE V OFFICERS.

Section 1. Number. The officers of the Corporation shall be a Chief Executive Officer, one or more Vice-Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, and one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article V. The Board of Directors shall also elect a Chairman of the Board of Directors who shall be the Chief Executive Officer.

Section 2. Election, Term of Office and Qualifications. The officers, except as provided in Section 3 of this Article V, shall be chosen annually by the Board of Directors. Each such officer shall, except as herein otherwise provided, hold office until his successor shall have been chosen and shall qualify. The Chief Executive Officer shall be a director of the Corporation, and should he cease to be a director, he shall ipso facto cease to be an officer. Except as otherwise provided by law, any number of offices may be held by the same person.

Section 3. Other Officers. Other officers, including one or more additional vice-presidents, assistant secretaries or assistant treasurers, may from time to time be appointed by the Board of Directors, which other officers shall have such powers

and perform such duties as may be assigned to them by the Board of Directors or the officer or committee appointing them.

Section 4. Removal of Officers. Any officer of the Corporation may be removed from office, with or without cause, by a vote of a majority of the Board of Directors.

Section 5. Resignation. Any officer of the Corporation may resign at any time. Such resignation shall be in writing and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chief Executive Officer or Secretary. The acceptance of a resignation shall not be necessary in order to make it effective, unless so specified therein.

Section 6. Filling of Vacancies. A vacancy in any office shall be filled by the Board of Directors or by the authority appointing the predecessor in such office.

Section 7. Compensation. The compensation of the officers shall be fixed by the Board of Directors, or by any committee upon whom power in that regard may be conferred by the Board of Directors.

Section 8. Chief Executive Officer. The Chief Executive Officer shall, when present, preside at all meetings of the stockholders. He shall have power to call special meetings of the stockholders or of the Board of Directors or of the Executive Committee at any time. He shall be the chief executive officer of the Corporation, and shall have the general direction of the business, affairs and property of the Corporation, and of its several officers, and shall have and exercise all such powers and discharge such duties as usually pertain to the office of Chief Executive Officer.

Section 9. Vice-Presidents. The Vice-Presidents, or any of them, shall, subject to the direction of the Board of Directors, at the request of the Chief Executive Officer or in his absence, or in case of his inability to perform his duties from any cause, perform the duties of the Chief Executive Officer, and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the Chief Executive Officer. The Vice-Presidents shall also perform such other duties as may be assigned to them by the Board of Directors, and the Board of Directors may determine the order of priority among them.

Section 10. Secretary. The Secretary shall perform such duties as are incident to the office of Secretary, or as may from time to time be assigned to him by the Board of Directors, or as are prescribed by these By-laws.

Section 11. Treasurer. The Treasurer shall perform such duties and have powers as are usually incident to the office of

Treasurer or which may be assigned to him by the Board of Directors.

ARTICLE VI  
CAPITAL STOCK.

Section 1. Issue of Certificates of Stock. Certificates of capital stock shall be in such form as shall be approved by the Board of Directors. They shall be numbered in the order of their issue and shall be signed by the Chairman of the Board of Directors or one of the Vice-Presidents, and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and the seal of the Corporation or a facsimile thereof shall be impressed or affixed or reproduced thereon, provided, however, that where such certificates are signed by a transfer agent or an assistant transfer agent or by a transfer clerk acting on behalf of the Corporation and a registrar, the signature of any such Chairman of the Board of Directors, Vice-President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer may be facsimile. In case any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used on any such certificate or certificates shall cease to be such officer or officers of the Corporation, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed such certificate or certificates, or whose facsimile signature or signatures shall have been used thereon have not ceased to be such officer or officers of the Corporation.

Section 2. Registration and Transfer of Shares. The name of each person owning a share of the capital stock of the Corporation shall be entered on the books of the Corporation together with the number of shares held by him, the numbers of the certificates covering such shares and the dates of issue of such certificates. The shares of stock of the Corporation shall be transferable on the books of the Corporation by the holders thereof in person, or by their duly authorized attorneys or legal representatives, on surrender and cancellation of certificates for a like number of shares, accompanied by an assignment or power of transfer endorsed thereon or attached thereto, duly executed, and with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require. A record shall be made of each transfer.

The Board of Directors may make other and further rules and regulations concerning the transfer and registration of certificates for stock and may appoint a transfer agent or registrar or both and may require all certificates of stock to bear the signature of either or both.

Section 3. Lost, Destroyed and Mutilated Certificates. The holder of any stock of the Corporation shall immediately notify the Corporation of any loss, theft, destruction or mutilation of the certificates therefor. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it alleged to have been lost, stolen or destroyed, and the Board of Directors may, in its discretion, require the owner of the lost, stolen or destroyed certificate, or his legal representatives, to give the Corporation a bond, in such sum not exceeding double the value of the stock and with such surety or sureties as they may require, to indemnify it against any claim that may be made against it by reason of the issue of such new certificate and against all other liability in the premises, or may remit such owner to such remedy or remedies as he may have under the laws of the State of Delaware.

ARTICLE VII  
DIVIDENDS, SURPLUS, ETC.

Section 1. General Discretion of Directors. The Board of Directors shall have power to fix and vary the amount to be set aside or reserved as working capital of the Corporation, or as reserves, or for other proper purposes of the Corporation, and, subject to the requirements of the Certificate of Incorporation, to determine whether any, if any, part of the surplus or net profits of the Corporation shall be declared as dividends and paid to the stockholders, and to fix the date or dates for the payment of dividends.

ARTICLE VIII  
MISCELLANEOUS PROVISIONS.

Section 1. Fiscal Year. The fiscal year of the Corporation shall commence on the first day of January and end on the last day of December.

Section 2. Corporate Seal. The corporate seal shall be in such form as approved by the Board of Directors and may be altered at their pleasure. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 3. Notices. Except as otherwise expressly provided, any notice required by these By-laws to be given shall be sufficient if given by depositing the same in a post office or letter box in a sealed postpaid wrapper addressed to the person entitled thereto at his address, as the same appears upon the books of the Corporation, or by telegraphing or cabling the same to such person at such addresses; and such notice shall be deemed to be given at the time it is mailed, telegraphed or cabled.

Section 4. Waiver of Notice. Any stockholder or director may at any time, by writing or by telegraph or by cable,

waive any notice required to be given under these By-laws, and if any stockholder or director shall be present at any meeting his presence shall constitute a waiver of such notice.

Section 5. Checks, Drafts, etc.. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner, as shall from time to time be designated by resolution of the Board of Directors.

Section 6. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such bank or banks, trust companies or other depositories as the Board of Directors may select, and, for the purpose of such deposit, checks, drafts, warrants and other orders for the payment of money which are payable to the order of the Corporation, may be endorsed for deposit, assigned and delivered by any officer of the Corporation, or by such agents of the Corporation as the Board of Directors or the Chief Executive Officer may authorize for that purpose.

Section 7. Voting Stock of Other Corporations. Except as otherwise ordered by the Board of Directors or the Executive Committee, the Chief Executive Officer or the Treasurer shall have full power and authority on behalf of the Corporation to attend and to act and to vote at any meeting of the stockholders of any corporation of which the Corporation is a stockholder and to execute a proxy to any other person to represent the Corporation at any such meeting, and at any such meeting the Chief Executive Officer or the Treasurer or the holder of any such proxy, as the case may be, shall possess and may exercise any and all rights and powers incident to ownership of such stock and which, as owner thereof, the Corporation might have possessed and exercised if present. The Board of Directors or the Executive Committee may from time to time confer like powers upon any other person or persons.

Section 8. Indemnification of Officers and Directors. The Corporation shall indemnify any and all of its directors or officers, including former directors or officers, and any employee, who shall serve as an officer or director of any corporation at the request of this Corporation, to the fullest extent permitted under and in accordance with the laws of the State of Delaware.

#### ARTICLE IX AMENDMENTS.

The Board of Directors shall have the power to make, rescind, alter, amend and repeal these By-laws by the affirmative vote of at least a majority of the entire Board of Directors then in office, provided, however, that the stockholders by the



affirmative vote of a majority of the shares of capital stock outstanding and entitled to vote generally shall have the power to rescind, alter, amend or repeal any by-laws made by the Board of Directors, and to enact by-laws which if so expressed shall not be rescinded, altered, amended or repealed by the Board of Directors. No change of the time or place for the annual meeting of the stockholders for the election of directors shall be made except in accordance with the laws of the State of Delaware.

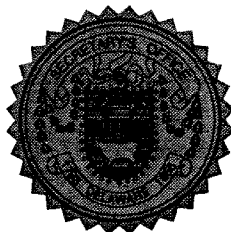
Dated: November 29, 1999

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "NEUSTAR, INC.", FILED IN THIS OFFICE ON THE FIFTH DAY OF JUNE, A.D. 2001, AT 1:30 O'CLOCK P.M.



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

2975674 8100

AUTHENTICATION: 1722467

020239148

DATE: 04-15-02

**RESTATED CERTIFICATE OF INCORPORATION  
OF  
NEUSTAR, INC.**

**(Pursuant to Sections 242 and 245 of the  
General Corporation Law of the State of Delaware)**

NEUSTAR, INC., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

**FIRST:** That the name of the corporation is NEUSTAR, INC. and that this corporation was originally incorporated pursuant to the General Corporation Law on December 8, 1998 under the name "CIS Acquisition Corporation".

**SECOND:** That the Board of Directors of this corporation duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to submit said amendment and restatement to the stockholders of the corporation for their approval. The resolution setting forth the proposed amendment and restatement is as follows:

**RESOLVED,** that the Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

**ARTICLE I**

The name of this corporation is NeuStar, Inc. (referred to herein as the "Corporation").

**ARTICLE II**

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

**ARTICLE III**

The nature of the business or purposes to be conducted or promoted by 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.

**ARTICLE IV**

*Definitions*

As used in this Article IV, the following terms have the following respective meanings:

- (a) "Convertible Securities" shall have the meaning ascribed to it in Section 2(g)(ii)(A).
- (b) "Exchange Agreement" shall mean the agreement pursuant to which, among other matters, (i) 33,000 shares of Series A Preferred Stock (together with accrued but unpaid dividends thereon) held by the Warburg Entities, (ii) 3,071,910 shares of Series B Preferred Stock (together with accrued but unpaid dividends thereon) held by the Warburg Entities, (iii) indebtedness of the Corporation in the aggregate principal amount of \$40,000,000 (together with accrued but unpaid interest thereon) owing to the Warburg Entities, and (iv) accrued and unpaid interest on indebtedness of the Corporation in the aggregate principal amount of \$4,000,000 owing to the Warburg Entities, shall be exchanged for shares of Series C Preferred Stock.
- (c) The "Fair Market Value" of any security, as of any determination date, shall be computed as follows:
- (A) If listed on a national securities exchange, or quoted on the Nasdaq National Market or the Nasdaq SmallCap 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-trading day period ending three (3) trading days prior to such determination date; and
- (B) If actively traded over-the-counter, the value shall be deemed to be the average of the daily average of the closing bid and asked prices over the 30-trading day period ending three (3) trading days prior to the occurrence of such determination date; and
- (C) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors; provided, however, that in the event any such securities are subject to an investment letter or similar restrictions on free marketability, such securities shall reflect an appropriate discount from the market value determined pursuant to (A), (B) or (C), above, to reflect the fair market value thereof, as determined in good faith by the Board of Directors.
- (d) "Minority Holder" means each of ABS CAPITAL PARTNERS IV, L.P., ABS CAPITAL PARTNERS IV-A, L.P., ABS CAPITAL PARTNERS IV OFFSHORE, L.P. and ABS CAPITAL PARTNERS IV SPECIAL OFFSHORE, L.P. (collectively, "ABS"), only for so long as ABS has not transferred any record or beneficial interest in any Series D and Series E Preferred Stock purchased by it pursuant to the Securities Purchase Agreement (other than to a Subsidiary of ABS or an entity under common control with ABS), and shall also include such Subsidiary of ABS or entity under common control with ABS.

- (e) "Options" shall have the meaning ascribed to it in Section 2(g)(ii)(A).
- (f) "Permitted Dilutive Issuance" shall mean (1) the issuance by the Corporation of up to \$20,000,000 in aggregate liquidation preference of shares of Series E Preferred Stock (each such share of Series E Preferred Stock with an initial conversion price of at least \$4.316384 per share of Common Stock) or, in the event that any Purchaser (as defined in the Securities Purchase Agreement) defaults in its obligation pursuant to Section 2.1 of the Securities Purchase Agreement to purchase Series E Preferred Stock (it being understood that no such default shall exist if the conditions to such Purchaser's obligation set forth in the Securities Purchase Agreement have not been satisfied or waived), any equity securities issued by the Corporation in lieu of such issuance of Series E Preferred Stock to the extent necessary for the Corporation to obtain proceeds equal to the net proceeds that would have been received from such defaulting Purchaser but for such default ("Default Securities"); provided that such equity securities rank either junior to or on a parity with the Series D Preferred Stock and the Series E Preferred Stock in dividend right and in right of distribution upon liquidation, dissolution or winding up of the Corporation and (2) the issuance of the Minority Holder Exchange Securities (as defined in Section 4(j));
- (g) "Ratchet Adjustment Period" shall mean the period of time beginning on the Recapitalization Date and ending upon the earlier of (x) 11:59 P.M., New York City time, on the 365<sup>th</sup> day following the Recapitalization Date and (y) such time as when the Conversion Price with respect to a share of Series D Preferred Stock shall have first been reduced to \$4.316384 or below;
- (h) "Recapitalization Date" shall mean the date upon which the Corporation first issues and sells shares of Series D Preferred Stock pursuant to the Securities Purchase Agreement;
- (i) "Securities Act" shall mean the Securities Act of 1933, as amended;
- (j) "Securities Purchase Agreement" shall mean the Securities Purchase Agreement, dated as of June 5, 2001, by and between the Corporation and each of the purchasers named therein, as such agreement may be amended, modified or supplemented from time to time;
- (k) "Stockholders Agreement" shall mean the Amended and Restated Stockholders Agreement, dated as of June 5, 2001, by and among the Corporation and the Investors and Trustees named therein, as such agreement may be amended, modified or supplemented from time to time;
- (l) "Subsidiary" means, with respect to any entity, (i) a corporation a majority of whose capital stock with voting power, under ordinary circumstances,

to elect directors is at the time, directly or indirectly, owned by such entity, by a subsidiary of such entity, or by such entity and one or more subsidiaries of such entity, (ii) a partnership in which such entity or a subsidiary of such entity is, at the date of determination, a general partner of such partnership and has the power to direct the policies and management of such partnership or (iii) any other entity (other than a corporation or partnership) in which such entity, a subsidiary of such entity or such entity and one or more subsidiaries of such entity, directly or indirectly, at the date of determination thereof, has (A) at least a majority ownership interest or (B) the power (whether by contract or otherwise) to elect or direct the election of a majority of the directors or other governing body of such entity; and

- (m) "Warburg Entities" shall mean, collectively, Warburg, Pincus Equity Partners, L.P., a Delaware limited partnership, Warburg, Pincus Netherlands Equity Partners I, C.V., a Netherlands limited partnership, Warburg, Pincus Netherlands Equity Partners II, C.V., a Netherlands limited partnership, and Warburg, Pincus Netherlands Equity Partners III, C.V., a Netherlands limited partnership.

### *Capital Stock*

The total authorized capital stock of the Corporation shall be: 152,700,000 shares, consisting of:

- (i) 100,000,000 shares of Common Stock, \$.002 par value per share (the "Common Stock");
- (ii) 100,000 shares of Series A Non-Voting Preferred Stock, \$.01 par value per share (the "Series A Preferred Stock");
- (iii) 4,000,000 shares of Series B Voting Convertible Preferred Stock, \$.01 par value per share (the "Series B Preferred Stock");
- (iv) 28,600,000 shares of Series C Voting Convertible Preferred Stock, \$.01 par value per share (the "Series C Preferred Stock");
- (v) 10,000,000 shares of Series D Voting Convertible Preferred Stock, \$.01 par value per share (the "Series D Preferred Stock");
- (vi) 5,000,000 shares of Series E Voting Convertible Preferred Stock, \$.01 par value per share (the "Series E Preferred Stock"); and
- (vii) 5,000,000 shares of preferred stock, \$.01 par value per share, as may be issued from time to time, in one or more series, to be determined by the Board of Directors, each of said series to be distinctly designated (such shares, the "Undesignated Preferred Stock") (the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D

Preferred Stock, the Series E Preferred Stock and the Undesignated Preferred Stock are hereinafter collectively referred to in this Certificate of Incorporation as the "Preferred Stock"). All shares of any one series of such Undesignated Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers, designations and preferences and the relative, participating, optional or other special rights of each such series of Undesignated Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to any other provision of this Certificate of Incorporation which may require the consent of the holders of any class of the Corporation's Preferred Stock with respect to the issuance of the Corporation's Preferred Stock, the Board of Directors of the Corporation hereby is expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of preferred stock, the voting powers, designations and preferences, the relative, participating, optional or other special rights and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

- (A) the distinctive designation of, and the number of shares of preferred stock which shall constitute, such series, which number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;
- (B) the rate and times at which, and the terms and conditions on which, dividends, if any, on preferred stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes or series of the same or any other class or classes of stock of the Corporation and whether such dividends shall be cumulative or non-cumulative;
- (C) the right, if any, of the holders of preferred stock of such series to convert the same into, or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;
- (D) whether or not preferred stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, preferred stock of such series may be redeemed;

- (E) the terms of the sinking fund or redemption or purchase account, if any, to be provided for the preferred stock of such series;
- (F) the restrictions, if any, on the issuance of shares of the same or any other class or classes or of any series of the same or any other class or classes of stock of the Corporation;
- (G) the rights, if any, of the holders of preferred stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up of the Corporation; and
- (H) the voting powers, if any, of the holders of such series of preferred stock which, without limiting the generality of the foregoing, may be equal to, more than or less than one vote per share and may include the right, voting as a series by itself or together with other series of preferred stock or all series of preferred stock as a class, or, together with any other class or classes or series of any other class or classes of stock of the Corporation, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of preferred stock or under such other circumstances and on such conditions as the Board of Directors may determine.

Unless expressly provided otherwise, shares of any series of Preferred Stock, when received by the Corporation upon any conversion, redemption, exercise or otherwise cancelled or acquired by the Corporation will be restored to the status of authorized but unissued shares of Preferred Stock, without designation as to class, and may thereafter be issued, but not as shares of such series of Preferred Stock. The issuance of the shares of Undesignated Preferred Stock shall be subject to any other provision of this Certificate of Incorporation which may require the consent of the holders of any class of the Corporation's Preferred Stock with respect to such issuance.

### *Preferred Stock*

The relative powers, preferences and rights of, and the qualifications, limitations and restrictions granted to and imposed upon, certain of the Preferred Stock and the Common Stock are as follows:

#### SECTION 1: SERIES A PREFERRED STOCK

(a) Dividends. The holders of the Series A Preferred Stock shall be entitled to receive, if, when and as declared by the Board of Directors of the Corporation (the "Board of Directors"), out of any funds legally available therefor, preferential cumulative dividends in cash at the rate of eight and one-half percent (8 1/2%) per share per annum of the Stated Value thereof (as hereinafter defined) and not more. After the seventh anniversary of the date of filing of this Certificate with the Delaware Secretary of State's office, the dividend rate on the Series A Preferred Stock shall automatically increase by 1% per annum. As used in this Section 1, the



term "Stated Value" with respect to each share of Series A Preferred stock shall mean the amount of One Thousand Dollars (\$1,000).

(b) Preference. Except for any cash payments that the Corporation may be required to make on shares of convertible or exchangeable Preferred Stock entitled to receive cash in lieu of fractional shares pursuant to any conversion or exchange, so long as any shares of Series A Preferred Stock remain outstanding, in no event shall any dividend whatsoever, whether in cash or other property (other than shares of Series B Preferred Stock or Common Stock), be paid or declared or any distribution be made on the Series B Preferred Stock, Common Stock or any other stock ranking on liquidation junior to the Series A Preferred Stock (such stock referred to hereinafter in this Section I collectively as "Junior Stock") during any fiscal year, nor shall any shares of the Junior Stock be purchased, redeemed, retired or otherwise acquired (other than the repurchase of stock from employees of the Corporation or its Subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment or such employees at purchase prices initially paid by such employees for such shares) for consideration by the Corporation (i) unless the full dividends of the Series A Preferred Stock for all past dividend periods shall have been paid or declared and a sum set apart sufficient for the payment thereof; and (ii) unless, if at any time the Corporation is obligated to retire shares of the Series A Preferred Stock pursuant to any mandatory redemption requirement, sinking fund or a fund of a similar nature, all arrears, if any, in respect of the retirement of the Series A Preferred Stock shall have been made good. The Corporation shall not effect any optional redemption of the Series B Preferred Stock unless all shares of Series A Preferred Stock have been redeemed or a sum sufficient for the redemption of such shares has been set apart. Subject to the foregoing provisions and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors may be declared and paid on the Junior Stock from time to time out of the remaining funds of the Corporation legally available therefor, and the Series A Preferred Stock shall not be entitled to participate in any such dividend, whether payable in cash, stock or otherwise.

(c) Cumulative. Dividends on the Series A Preferred Stock shall be cumulative and shall accrue from the date of issuance, whether or not declared by the Board of Directors and whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year. In addition, all accrued but unpaid dividends on the Series A Preferred Stock shall compound on a quarterly basis on each March 31, June 30, September 30 and December 31.

(d) Liquidation, Dissolution or Winding Up.

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, then, before any distribution or payment shall be made to the holders of the Junior Stock, the holders of shares of Series A Preferred Stock then-outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any other Preferred Stock of the Corporation ranking on liquidation prior and in preference to the Series A Preferred Stock (such Preferred Stock being referred to in this Section 1 as "Senior Preferred Stock"), upon such liquidation, dissolution or winding up, an amount equal to One Thousand Dollars

(\$1,000) per share (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares), plus an amount equal to any and all dividends accrued and unpaid thereon as of the date of such distribution or payment (the "Series A Preference"). If upon any such liquidation, dissolution or winding up of the Corporation, the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of amounts required to be paid or distributed to holders of Senior Preferred Stock shall be insufficient to pay the holders of shares of Series A Preferred Stock the full Series A Preference, the holders of shares of Series A Preferred Stock, and any class of stock ranking on liquidation on a parity with the Series A Preferred Stock, shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or in respect of said shares were paid in full.

(ii) After the payment of all preferential amounts required to be paid to the holders of Senior Preferred Stock and the Series A Preference upon the dissolution, liquidation or winding up of the Corporation, the holders of shares of Junior Stock then-outstanding shall be entitled to receive the remaining assets and funds of the Corporation available for distribution to its stockholders in accordance with the terms hereof.

(iii) The merger or consolidation of the Corporation into or with another corporation, the merger or consolidation of any other corporation into or with the Corporation, or the sale, conveyance, mortgage, pledge or lease of all or substantially all the assets of the Corporation shall not be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Section 1(d).

(iv) If the consideration to be received by the holders of Series A Preferred Stock is other than cash, indebtedness or securities, the value of such consideration shall be its fair market value as determined in good faith by the Board of Directors, and agreed to by the holders of a majority of the shares of Series A Preferred Stock. Any securities to be delivered pursuant to Section 1(d)(i) above shall be valued as follows:

(A) If traded on a national securities exchange or the Nasdaq National 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 ending three (3) days prior to the closing; and

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the daily averages of the closing bid and asked prices over the 30-day period ending three (3) days prior to the closing; and

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

provided, however, that in the event any such securities any subject to investment letter or similar restrictions on free marketability, such securities shall reflect an appropriate discount

from the market value determined pursuant to Clauses (A), (B) or (C) of this Section 1(d)(iv) to reflect the fair market value thereof, as determined in good faith by the Board of Directors.

(e) Voting.

(i) Except as expressly provided in Section 1(e)(ii) below or as required by law, holders of Series A Preferred Stock shall not be entitled to vote on any matters presented to the stockholders of the Corporation.

(ii) The Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series A Preferred Stock so as to adversely affect the Series A Preferred Stock, without the approval of the holders of a majority of the then-outstanding aggregate number of shares of such adversely affected Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, the authorization or issuance of any series of Preferred Stock with preference or priority over, or being on a parity with the Series A Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall be deemed so to adversely affect the Series A Preferred Stock.

(f) Redemption.

(i) Optional Redemption. The Corporation shall have the right to redeem, in whole or in part, the Series A Preferred Stock outstanding at any time at the Series A Redemption Price (as hereinafter defined) with the consent of the holders of a majority of the shares of Series A Preferred Stock then outstanding.

(ii) Mandatory Redemption. The Series A Preferred Stock shall be subject to mandatory redemption (to the extent that such redemption shall not violate any applicable provisions of the laws of the State of Delaware) at a price per share equal to One Thousand Dollars (\$1,000), plus an amount equal to any and all dividends accrued and unpaid thereon as of the date of such redemption (the "Series A Redemption Price") (x) at any time upon the closing of a public offering pursuant to an effective registration statement under the Securities Act covering the offer and sale of capital stock for the account of the Corporation and (y) at any time upon the sale of all or substantially all of the assets of the Corporation or the merger or consolidation of the Corporation with or into any other corporation or other entity in which the holders of the Corporation's outstanding shares before the merger or consolidation do not retain a majority of the voting power of the surviving corporation or other entity. If the Corporation is unable to redeem any shares of Series A Preferred Stock because such redemption would violate the applicable laws of the State of Delaware, then the Corporation shall not be obligated to redeem such shares at such time but shall redeem such shares as soon thereafter as the restrictions precluding such redemption or imposing such liability shall no longer be applicable.

(iii) Partial Redemption Procedure. In the event of any redemption of only a part of the then-outstanding shares of Series A Preferred Stock, the Corporation

shall effect such redemption pro rata among the holders thereof (based on the number of shares of Series A Preferred Stock held on the date of notice of redemption).

(iv) Notice. At least thirty (30) days, but not more than ninety (90) days, prior to the date or estimated date fixed as the date of the redemption thereof, written notice shall be mailed, postage prepaid, to each holder of record of Series A Preferred Stock to be redeemed, at his or its post office address last shown on the records of the Corporation, notifying such holder of the number of shares so to be redeemed, specifying the date or estimated date for such redemption and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his or its certificate or certificates representing the shares to be redeemed (such notice is hereinafter referred to as the "Series A Redemption Notice"). On or prior to the date or estimated date fixed as the date of the redemption thereof, each holder of Series A Preferred Stock to be redeemed shall surrender his or its certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series A Redemption Notice, and on the date actually fixed for the redemption of such shares the Series A Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the date fixed as the date of the redemption thereof, unless there shall have been a default in payment of the Series A Redemption Price, all rights of the holders of the Series A Preferred Stock designated for redemption in the Series A Redemption Notice as holders of Series A Preferred Stock of the Corporation (except the right to receive the Series A Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(v) Cancellation of Redeemed Shares. Except as provided in Section 1(f)(i) and (ii) above, the Corporation shall have no right to redeem the shares of Series A Preferred Stock. Any shares of Series A Preferred Stock so redeemed shall be permanently retired, shall no longer be deemed outstanding and shall not under any circumstances be reissued, and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce the authorized Series A Preferred Stock accordingly. Nothing herein contained shall prevent or restrict the purchase by the Corporation, from time to time either at public or private sale, of the whole or any part of the Series A Preferred Stock at such price or prices as the corporation may determine, subject to the provisions of applicable law.

## SECTION 2: SERIES B PREFERRED STOCK

(a) Definitions. As used in this Section 2:

(i) "Conversion Price" shall mean the conversion price per share of Common Stock, as the same may be adjusted from time to time as provided for herein. The Conversion Price as of the Recapitalization Date shall be \$.1302.

(ii) "Election Notice" shall have the meaning ascribed to it in Section 2(d)(ii).

(iii) "Junior Stock" shall mean the Common Stock and any other shares of capital stock of any series or class of the Corporation, whether presently outstanding or hereafter issued, which are designated in the instrument creating such series or class as ranking junior to the shares of Series B Preferred Stock in dividend right or in right of distribution upon liquidation, dissolution or winding up of the Corporation. Notwithstanding any other provision in this Certificate of Incorporation to the contrary, the Series B Preferred Stock shall rank *pari passu* with the Series C Preferred Stock in dividend right and in right of distribution upon liquidation, dissolution or winding up of the Corporation.

(iv) "Liquidation Amount" shall have the meaning ascribed to it in Section 2(d)(i).

(v) "Stated Value," when used with respect to each share of Series B Preferred Stock, shall mean the amount of \$.651.

(b) Preference and Parity. Unless the Corporation shall have obtained the requisite approval under Section 2(e), so long as any shares of Series B Preferred Stock remain outstanding, in no event shall any dividend or distribution of any kind whatsoever, whether in cash, securities or other property, be paid or declared or made on Junior Stock (other than dividends or distributions paid or payable in Junior Stock or rights to acquire Junior Stock or any cash payments required to be made in lieu of the issuance of fractional shares). Unless the Corporation shall have obtained the requisite approval under Section 2(e), so long as any shares of Series B Preferred Stock remain outstanding, no shares of Junior Stock shall be purchased, redeemed, retired or otherwise acquired by the Corporation for consideration (other than Junior Stock or rights to acquire Junior Stock) (except (i) for the repurchase of stock from employees of the Corporation or its Subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment of such employees at purchase prices initially paid by such employees for such shares or pursuant to other employee repurchase agreements or arrangements, or similar arrangements with employees, in each case approved by the Board of Directors of the Corporation (or the compensation committee thereof), (ii) pursuant to the Corporation's obligation to purchase certain shares pursuant to the Stockholders Agreement and (iii) for cash payments required to be made in lieu of the issuance of fractional shares) unless the Corporation shall have, concurrently with any such purchase, redemption, retirement or other acquisition for consideration by the Corporation, offered to redeem the Series B Preferred Stock at the Liquidation Amount. Subject to the foregoing provisions and not otherwise, such dividends and distributions (payable in cash, securities or other property) as may be determined by the Board of Directors may be declared and paid on Junior Stock from time to time out of the remaining funds of the Corporation legally available therefor, and such purchases, redemptions, retirements or other acquisitions by the Corporation for consideration may be made.

So long as any shares of Series B Preferred Stock remain outstanding, no dividends, except as described in the next succeeding sentence, shall be declared or paid or set apart for payment on any series or class of stock of the Corporation ranking, as to dividends, on a parity

with the Series B Preferred Stock, for any period (other than cash payments required to be made in lieu of the issuance of fractional shares, cash dividends as provided in Section 3(h) and shares of Common Stock issued in connection with the conversion of Preferred Stock authorized under this Certificate of Incorporation) unless all accrued but unpaid dividends (calculated in accordance with Section 2(c)) on the Series B Preferred Stock have been or contemporaneously therewith are declared and paid in full in cash or declared in full and a sum of cash irrevocably set apart sufficient for the payment thereof. When dividends are not paid in full or a sum sufficient for such payment is not irrevocably set apart, as aforesaid, upon the shares of Series B Preferred Stock and any other series or class of stock of the Corporation ranking on a parity as to dividends with the Series B Preferred Stock, all dividends declared upon such other stock shall be declared pro rata so that the amounts of dividends per share declared on the Series B Preferred Stock and such other stock shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of Series B Preferred Stock and on such other stock bear to each other.

So long as any shares of Series B Preferred Stock remain outstanding, no other shares of any series or class of stock of the Corporation ranking on a parity with the Series B Preferred Stock in dividend right or in right of distribution upon liquidation, dissolution or winding up shall be purchased, redeemed, retired or otherwise acquired for consideration by the Corporation (other than Junior Stock or rights to acquire Junior Stock) unless (i) all accrued but unpaid dividends (calculated in accordance with Section 2(c)) on the Series B Preferred Stock shall have been declared and paid in full in cash or declared in full and a sum of cash irrevocably set apart sufficient for the payment thereof and (ii) the Corporation shall have, concurrently with any such purchase, redemption, retirement or other acquisition for consideration, offered to purchase, redeem, retire or otherwise acquire for consideration, as the case may be, all shares of Series B Preferred Stock for the Stated Value thereof, if all shares of such other series or class of stock are being purchased, redeemed, retired or otherwise acquired for consideration by the Corporation, and if less than all such shares of such other series or class of stock are being purchased, redeemed, retired or otherwise acquired for consideration by the Corporation, then all such offers to repurchase, redeem, retire or otherwise acquire for consideration shall be made on a pro rata basis so that the amount of aggregate outstanding Stated Value of Series B Preferred Stock subject to the respective offer to repurchase, retirement or other acquisition for consideration and of such other stock shall in all cases bear to each other the same ratio that the aggregate outstanding stated value of such Series B Preferred Stock and of such other stock bear to each other.

(c) Dividend Rights. The holders of each share of Series B Preferred Stock shall be entitled to receive, if, when and as declared by the Board of Directors, out of funds legally available therefor, cumulative dividends in cash at 6% per annum of the Stated Value thereof. Dividends on outstanding shares of Series B Preferred Stock shall be cumulative and shall accrue from the date of issuance and compound quarterly (on the last business day of each March, June, September and December) at 6% per annum of the Stated Value thereof from the date of issuance, whether or not declared by the Board of Directors and whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year.

(d) Liquidation, Dissolution, Winding Up, Merger, Etc.

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B Preferred Stock then-outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up prior and in preference to the Series B Preferred Stock upon such liquidation, dissolution or winding up (such stock, if any, being referred to in this Section 2 as "Senior Stock"), on a parity with the Series C Preferred Stock and each other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up on a parity with the Series B Preferred Stock (the Series C Preferred Stock and each other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up on a parity with the Series B Preferred Stock being referred to in this Section 2 as "Parity Stock"), but before any payment shall be made to the holders of Junior Stock, an amount per share of Series B Preferred Stock equal to the greater of (x) the Stated Value (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares) plus an amount in cash equal to accrued but unpaid dividends (calculated in accordance with Section 2(c)) thereon through the date on which payment of such dividends is received (the "Liquidation Amount") and (y) an amount equal to the amount which would be payable in respect of that number of shares of Common Stock into which one share of Series B Preferred Stock could be converted immediately prior to such liquidation, dissolution or winding up (calculated in accordance with Section 2(f)(i)) (assuming the conversion of all shares of Series B Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such liquidation, dissolution or winding up to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). If, upon any such liquidation, dissolution or winding up, the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of all amounts required to be paid or distributed to holders of Senior Stock shall be insufficient to pay the holders of shares of Series B Preferred Stock and the holders of Parity Stock the full amount to which they shall be entitled, the holders of shares of Series B Preferred Stock and the holders of shares of Parity Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or in respect of said shares were paid in full.

(ii) Upon the occurrence of a merger or consolidation of the Corporation into or with another corporation (other than a Subsidiary of the Corporation, but only if the same shall not adversely affect the rights of the holders of Series B Preferred Stock, as determined in good faith by the Board of Directors), a merger or consolidation of any other corporation into or with the Corporation (other than a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series B Preferred Stock, as determined in good faith by the Board of Directors), or the sale or other disposition (other than a mortgage or pledge as security) of

all or substantially all of the assets of the Corporation to an entity which is not a Subsidiary of the Corporation (whether in a single transaction or a series of related transactions) (each, as used in this Section 2, a "Proposed Transaction"), after and subject to the payment in full of all amounts required to be distributed to the holders of Senior Stock and pro rata with all Parity Stock having similar rights to the holders of Series B Preferred Stock, the holders of Series B Preferred Stock will be entitled to elect (by compliance with the procedure set forth below in this Section 2(d)(ii)) to receive in respect of their shares of Series B Preferred Stock, in their sole discretion, either (i) the Liquidation Amount or (ii) the type and amount of consideration as would be payable to the holder of that number of shares of Common Stock into which one share of Series B Preferred Stock could have been converted immediately prior to the consummation of such Proposed Transaction (calculated in accordance with Section 2(f)(i)) (assuming the conversion of all shares of Series B Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such event to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). Notwithstanding the foregoing, if the assets and funds of the Corporation available for distribution to the holders of Series B Preferred Stock and the holders of Parity Stock shall be insufficient (after payment in full of all amounts required to be paid in respect of Senior Stock) to pay to the holders of Series B Preferred Stock and the holders of Parity Stock the full amount to which they shall be entitled, then the holders of Series B Preferred Stock and the holders of Parity Stock shall share ratably in any distribution of such assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares of Series B Preferred Stock or shares of Parity Stock, as the case may be, held by them upon such distribution if all amounts payable on or in respect of said shares were paid in full. At least five days prior to the date of the Merger Approval (as defined below) with respect to any Proposed Transaction, the Corporation shall deliver notice to the holders of Series B Preferred Stock setting forth (1) the Liquidation Amount as of the expected date of the consummation of such Proposed Transaction and (2) the type and amount of consideration as would be payable in such Proposed Transaction to the holder of that number of shares of Common Stock into which one share of Series B Preferred Stock could have been converted immediately prior to the consummation of such Proposed Transaction (calculated in accordance with Section 2(f)(i)) (assuming the conversion of all shares of Series B Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to the consummation of such Proposed Transaction to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). No later than five days after any approval by the holders of Series B Preferred Stock of any Proposed Transaction pursuant to Section 2(e) (as used in this Section 2, "Merger Approval"), any holder of Series B Preferred Stock may make the election referred to above as to all such holder's shares of Series B Preferred Stock by delivering to the Corporation at its principal office (Attention: General Counsel) a written notice, duly executed by such holder, which shall state that such holder wishes to receive in full redemption of all shares of Series B Preferred Stock held by such holder either (A) the Liquidation Amount



or (B) the consideration referred to in clause (ii) of the first sentence of this Section 2(d)(ii) (but shall not elect both), and that such notice is irrevocable (an "Election Notice"). Contemporaneously with the delivery of such Election Notice, such holder shall surrender his, her or its certificate or certificates representing all such holder's shares of Series B Preferred Stock to the Corporation at its principal office (Attention: General Counsel). In the event that any such holder shall not have delivered an Election Notice or shall have delivered an Election Notice that does not comply with the above requirements in all material respects, then such holder shall be deemed to have elected to receive the consideration referred to in clause (i) of the first sentence of this Section 2(d)(ii).

(iii) If the consideration to be received by the holders of Series B Preferred Stock pursuant to any voluntary or involuntary liquidation, dissolution or winding up of the Corporation is other than cash, indebtedness or securities, the value of such consideration shall be its fair market value as determined in good faith by the Board of Directors. Any securities to be delivered pursuant to Section 2(d)(i) above shall be valued at the "Fair Market Value."

(e) Voting.

(i) Each issued and outstanding share of Series B Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series B Preferred Stock is then convertible (calculated in accordance with Section 2(f)(i)) (as adjusted from time to time pursuant to Section 2(g)), at each meeting of stockholders of the Corporation with respect to any and all matters presented to the holders of Common Stock of the Corporation for their action and in connection with any written consent in lieu of a meeting of stockholders, such number to be determined as of the date for determination of stockholders entitled to vote at the meeting or on the date for determining those stockholders entitled to consent to action by written consent in lieu of a meeting, as the case may be. Except as provided by law, by the provisions of this Section 2 or by the provisions of this Certificate of Incorporation establishing any other series of Preferred Stock, the holders of Series B Preferred Stock shall vote together with the holders of Common Stock, and any other classes of the Corporation's capital stock entitled to vote together with the Common Stock, as a single class.

(ii) In addition to any other rights provided by law, after the Recapitalization Date, the Corporation shall not, without first obtaining the approval of the holders of a majority of the then-outstanding Series B Preferred Stock and the Series C Preferred Stock, voting together as a single class (based on aggregate stated value):

(A) amend, repeal, delete, supersede or otherwise modify any provision of the Corporation's Certificate of Incorporation or By-Laws, to the extent that the same would adversely affect the rights of the holders of Series B Preferred Stock (as determined in good faith by the holders of the Series B Preferred Stock and the Series C Preferred Stock, voting together as a single class

(based on aggregate stated value) (other than an amendment to permit any Permitted Dilutive Issuance);

(B) declare, make or pay, or take steps (including without limitation, the setting aside of funds) to authorize or effect the declaration, making or payment of, any dividends or other distributions on any Junior Stock (other than dividends or other distributions paid or payable in Junior Stock or rights to acquire Junior Stock) or purchase, redeem, retire or otherwise acquire, or take steps (including, without limitation, the setting aside of funds) to effect the purchase, redemption, retirement or other acquisition for consideration of, any Junior Stock for consideration (other than Junior Stock or rights to acquire Junior Stock) (except for the repurchase of stock from employees of the Corporation or its Subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment of such employees at purchase prices initially paid by such employees for such shares, pursuant to other employee repurchase agreements or arrangements, or similar arrangements with employees, in each case approved by the Board of Directors of the Corporation (or the compensation committee thereof), pursuant to the Corporation's obligation to repurchase certain shares pursuant to the Stockholders Agreement or the payment of cash in lieu of the issuance of fractional shares);

(C) excepting any issuances that are (i) a Permitted Dilutive Issuance, (ii) pursuant to the Securities Purchase Agreement or (iii) pursuant to the Exchange Agreement, authorize or effect the issuance by the Corporation of any securities or rights to acquire securities other than (x) pursuant to options, warrants, conversion or subscription rights in existence on the Recapitalization Date or (y) pursuant to stock option, stock bonus or other employee stock plans for the benefit of the employees or Directors of the Corporation or its Subsidiaries in existence as of such date or thereafter approved with the consent of the holders of a majority of the then-outstanding Series B Preferred Stock and Series C Preferred Stock, acting together as a single class (based on aggregate stated value);

(D) authorize or effect the incurrence, or guaranty by the Corporation, of indebtedness for borrowed money to parties unaffiliated with the Corporation in an amount in excess of \$10,000,000; or

(E) authorize or effect (i) any sale, lease, transfer, conveyance, mortgage, pledge or other disposition (other than a mortgage or pledge as security) of all or substantially all the assets of the Corporation (by merger, sale of stock or otherwise, in a single transaction or a series of related transactions) (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series B Preferred Stock, as determined in good faith by the Board of Directors), (ii) any merger or consolidation or other reorganization of the Corporation with or into another corporation, (iii) the acquisition by the Corporation of another corporation or other entity by means of a purchase of shares or similar equity interests or all or substantially all the assets

of such corporation or other entity or (iv) the establishment of any joint ventures by the Corporation;

(F) effect a subdivision, consolidation, conversion, reclassification or other modification of any capital stock of the Corporation if the effect of such subdivision, consolidation, conversion, reclassification or other modification is to impair or reduce or otherwise adversely affect the relative rights of the holders of the Series B Preferred Stock; or

(G) authorize or effect any liquidation, dissolution or winding up of the Corporation or adopt or authorize the adoption of any plan for the same.

(iii) The Corporation shall not amend, alter or repeal the preferences, special rights or other powers or privileges of the Series B Preferred Stock after the Recapitalization Date so as to adversely affect the Series B Preferred Stock, without the approval of the holders of at least a majority of the aggregate number of then-outstanding shares of Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class; provided, however, that if the Corporation shall amend, alter or repeal the preferences, special rights or other powers or privileges of the Series B Preferred Stock and the Series C Preferred Stock in substantially the same manner (as determined in the discretion of the Board of Directors), the only approval required by this Section 2(e)(iii) shall be that of the holders of at least a majority of the then-outstanding Series B Preferred Stock and Series C Preferred Stock, voting together as a single class (based on aggregate stated value). For this purpose, and without limiting the foregoing, the authorization or issuance of any series of Preferred Stock with preference or priority over, or being on a parity with, the Series B Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation (other than (x) pursuant to the Exchange Agreement, (y) the issuance of up to \$54,000,000 in Stated Value of Series D Preferred Stock and (z) any Permitted Dilutive Issuance) shall be deemed to adversely affect the Series B Preferred Stock; provided, however, that, except as provided in the immediately preceding parenthetical, if any series of Preferred Stock shall have preference or priority over, or be on a parity with, the Series B Preferred Stock and the Series C Preferred Stock as to the right to receive dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation, then the only approval required by this Section 2(e)(iii) shall be that of the holders of at least a majority of the then-outstanding Series B Preferred Stock and the Series C Preferred Stock, voting together as single class (based on aggregate stated value).

(f) Optional Conversion.

(i) Each share of Series B Preferred Stock may be converted at any time, at the option of the holder thereof, into (y) the number of fully-paid and nonassessable shares of Common Stock obtained by dividing (i) the Stated Value thereof together with any accrued but unpaid dividends thereon through the conversion date (calculated in accordance with Section 2(c)) by (ii) the Conversion Price then in effect

(the rate at which Series B Preferred Stock converts into Common Stock, as used in this Section 2, the "Conversion Rate") and (z) cash, if any, payable in lieu of the issuance of fractional shares (as provided in Section 2(f)(iii); provided, however, that on any redemption of any Series B Preferred Stock as and to the extent provided in this Section 2 or any liquidation, dissolution or winding up of the Corporation, the right of conversion shall terminate at the close of business on the full business day next preceding the date fixed for such redemption or for the payment of any amounts distributable on liquidation, dissolution or winding up of the Corporation to the holders of Series B Preferred Stock.

(ii) The Conversion Rate for the Series B Preferred Stock as of the Recapitalization Date shall be five shares of Common Stock for each share of Series B Preferred Stock surrendered for conversion, reflecting a Conversion Price as of the Recapitalization Date of \$.1302 per share of Common Stock. The applicable Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(iii) No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon conversion of Series B Preferred Stock. If more than one certificate evidencing shares of Series B Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series B Preferred Stock so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of such aggregate number of shares of Series B Preferred Stock, the Corporation shall pay to any such surrendering holder cash, in lieu of any such fractional share, in an amount equal to the same fraction of the Fair Market Value of one share of Common Stock as of the close of business on the day of conversion.

(iv) Whenever the Conversion Price shall be adjusted as provided in Section 2(g), the Corporation shall forthwith file, at each office designated for the conversion of Series B Preferred Stock, a statement, signed by the Chairman of the Board, the Chief Executive Officer, any Vice President or the Treasurer of the Corporation, showing in reasonable detail the facts requiring such adjustment and the Conversion Price and Conversion Rate that will be effective after such adjustment. The Corporation shall also mail to each holder of Series B Preferred Stock a notice setting forth in reasonable detail any such adjustments and the information required to be filed pursuant to the immediately preceding sentence to be sent by mail, first class, postage prepaid, to each record holder of Series B Preferred Stock at his, her or its address appearing on the Corporation's stock register. If such notice relates to an adjustment resulting from an event referred to in Section 2(g)(vi), such notice shall be included as part of the notice required to be mailed and published under the provisions of Section 2(g)(vi) hereof.

(v) In order to exercise the conversion privilege set forth in Section 2(f)(i), the holder of any Series B Preferred Stock to be converted shall surrender his, her or its certificate or certificates therefor to the principal office of the transfer agent for the Series B Preferred Stock (or if no transfer agent be at the time appointed, then the Corporation at its principal office), and shall give written notice to the Corporation at

such office that the holder elects to convert the Series B Preferred Stock represented by such certificates, or any number thereof. Such notice shall also state the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, subject to any restrictions on transfer relating to shares of the Series B Preferred Stock or shares of Common Stock issuable upon conversion thereof. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly authorized in writing. The date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of the certificates and notice shall be the conversion date. As soon as practicable after receipt of such notice and the surrender of the certificate or certificates for Series B Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered at such office to such holder, or on his, her or its written order, (i) a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof (calculated in accordance with Section 2(f)(i)) and (ii) cash, if any, payable in lieu of fractional shares (as provided in Section 2(f)(iii)); provided, however, that if there is not then in effect a registration statement under the Securities Act covering the issuance of such Common Stock and if such holder shall request that a certificate for Common Stock issuable on such conversion be made to the order of any person other than that of such holder as set forth in the Corporation's stock register, the Corporation may require the holder to deliver an opinion of counsel reasonably satisfactory to the Corporation to the effect that such issuance is in compliance with the Securities Act and any applicable state's blue sky laws.

(vi) The Corporation shall at all times when shares of Series B Preferred Stock remain outstanding reserve and keep available out of its authorized but unissued stock, for the purposes of effecting the conversion of the Series B Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series B Preferred Stock. Before taking any action which would cause an adjustment reducing the conversion price below the then par value of the shares of Common Stock issuable upon conversion of the Series B Preferred Stock, the Corporation shall take all corporate action which may be necessary in order that the Corporation may validly and legally issue fully-paid and nonassessable shares of such Common Stock at such adjusted conversion price.

(vii) All shares of Series B Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate excepting only the right of the holder thereof to receive shares of Common Stock in exchange therefor (calculated in accordance with Section 2(f)(i)) and cash, if any, as provided in Section (iii) of this Section 2(f) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. Any shares of Series B Preferred Stock so converted shall be retired and cancelled and shall not be reissued as shares of Series B Preferred Stock, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series B Preferred Stock accordingly.

(g) Anti-Dilution Provisions.

(i) In order to prevent dilution of the rights granted hereunder, the Conversion Price shall be subject to adjustment from time to time in accordance with this Section 2(g). For purposes of this Section 2(g), the term "Number of Common Shares Deemed Outstanding" at any given time shall mean the sum of (A) the number of shares of Common Stock outstanding at such time, (B) the number of shares of Common Stock issuable assuming conversion, exercise or exchange at such time of all outstanding Preferred Stock, Options and Convertible Securities and (C) (without duplication) the number of shares of Common Stock issuable with respect to any securities of the types described in Section 2(g)(v) outstanding at such time.

(ii) Except as provided in Section 2(g)(v), if the Corporation shall issue or sell, or shall in accordance with Sections 2(g)(ii)(A) to (I), inclusive, be deemed to have issued or sold, any shares of its Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, in each case, forthwith upon such issue or sale (each, a "Triggering Transaction"), the Conversion Price shall, subject to Clauses (A) to (I) of this Section 2(g)(ii), be reduced to the Conversion Price (calculated to the nearest ten thousandth of a cent) determined by dividing:

(1) an amount equal to the sum of (x) the product derived by multiplying the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction by the Conversion Price then in effect, plus (y) the consideration, if any, received by the Corporation upon consummation of such Triggering Transaction, by

(2) an amount equal to the sum of (x) the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction plus (y) the number of shares of Common Stock issued (or deemed to be issued in accordance with Sections 2(g)(ii)(A) to (I) in connection with the Triggering Transaction.

For purposes of determining the adjusted Conversion Price under this Section 2(g)(ii), the following Clauses (A) to (I), inclusive, shall be applicable:

(A) In case the Corporation at any time shall in any manner grant (whether directly or by assumption in a merger or otherwise) any rights to subscribe for or to purchase, or any options for the purchase of, shares of Common Stock or any stock or other securities convertible into or exchangeable for shares of Common Stock (such rights or options being called in this Article IV, "Options" and such convertible or exchangeable stock or securities being called in this Article IV, "Convertible Securities"), whether or not such Options or the right to convert or exchange such Convertible Securities are immediately exercisable, and the price per share for which the shares of Common Stock are issuable upon exercise (determined by dividing (x) the total amount, if any,

received or receivable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities on the date of the issue or sale of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Option, then the total maximum amount of Common Stock issuable upon the exercise of such Options or in the case of Options for Convertible Securities, upon the conversion or exchange of such Convertible Securities shall (as of the date of granting of such Options) be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such shares of Common Stock or such Convertible Securities upon the exercise of such Options or such shares of Common Stock upon conversion or exchange of such Convertible Securities, except as otherwise provided in Section 2(g)(ii)(C).

(B) In case the Corporation at any time shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to convert or exchange thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (x) the total amount received or receivable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, to the Corporation upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall (as of the date of the issue or sale of such Convertible Securities) be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock

upon exercise of the rights to convert or exchange under such Convertible Securities, except as otherwise provided in Section 2(g)(ii)(C).

(C) If the purchase price provided for in any Options referred to in Section 2(g)(ii)(A), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section 2(g)(ii)(A) or (B), or the rate at which any Convertible Securities referred to in Section 2(g)(ii)(A) or (B) are convertible into or exchangeable for Common Stock shall change at any time other than under or by reason of provisions thereof designed to protect against dilution (any such change, an "Adjustment"), then the Conversion Price in effect at the time of such change shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold.

(D) On the expiration of any Option or the termination of any right to convert or exchange any Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(E) In case any Options shall be issued in connection with the issue or sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, the aggregate consideration received by the Corporation in such transaction shall be allocated among such Options and such other securities of the Corporation as shall be determined in good faith by the Board of Directors.

(F) In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold or deemed to have been issued or sold exclusively for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than or in addition to cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration as determined in good faith by the Board of Directors; provided, however, that if the Corporation issues or sells shares of Common Stock, Options or Convertible Securities for services other than bona fide services rendered to the Corporation in connection with the Corporation's bona fide financing activities, such services will not be deemed to be consideration. In case any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be determined in good faith by the Board of Directors. In each case the amount of consideration received by the Corporation shall be determined without deduction of any expenses incurred or



any underwriting or other commissions, fees, discounts or concessions allowed by the Corporation in connection therewith.

(G) The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock for the purpose of this Section 2(g)(ii).

(H) In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock, Options, or Convertible Securities (other than a dividend in Common Stock payable to the holders of Common Stock as contemplated by Section 2(g)(iii)), then in such case any Common Stock, Options or Convertible Securities issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

(I) For purposes of this Section 2(g), in case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (x) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities (other than a dividend in Common Stock payable to the holders of Common Stock as contemplated by Section 2(g)(iii)) or (y) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right or subscription or purchase, as the case may be.

(iii) In case the Corporation shall at any time subdivide (other than by means of a dividend payable in Common Stock as contemplated by Sections 2(g)(ii)(H) and (I)) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be reduced to equal the number that is obtained by multiplying the Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision and denominator of which shall be the number of shares of Common Stock outstanding immediately after such subdivision, and, conversely, in case the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be increased to equal the number that is obtained by multiplying the Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such combination and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such combination.

(iv) In the event that any capital reorganization or reclassification of the capital stock of the Corporation or consolidation or merger of the Corporation with or into any other entity or share exchange involving the outstanding shares of the

Corporation's capital stock or the sale or other disposition of all or substantially all of the Corporation's assets to another entity (each, a "Capital Reorganization") shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities, cash or other property with respect to or in exchange for Common Stock, then, as a condition of such Capital Reorganization, unless each holder of Series B Preferred Stock has made a valid election as contemplated by Section 2(d)(ii), lawful and adequate provision shall be made whereby holders of Series B Preferred Stock shall have the right to acquire and receive upon conversion of each share of Series B Preferred Stock such stock, securities, cash or other property issuable or payable (as part of such Capital Reorganization) with respect to or in exchange for such number of outstanding shares of Common Stock as would have been received upon conversion of one share of Series B Preferred Stock at the Conversion Price then in effect (calculated in accordance with Section 2(f)(i)); and, in any such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions of this Section 2(g) with respect to the rights and interest after such Capital Reorganization of holders of Series B Preferred Stock, to the end that the provisions set forth in this Section 2(g) shall thereafter be applicable, as nearly as reasonably may be practicable, in relation to any stock, securities, cash or other property deliverable upon the conversion of the Series B Preferred Stock. The Corporation will not effect any Capital Reorganization, unless prior to the consummation thereof the successor entity (if other than the Corporation) resulting from such Capital Reorganization (including the entity which shall have purchased or otherwise acquired all or substantially all of the Corporation's assets) shall have assumed by written instrument mailed or delivered to the holders of the Series B Preferred Stock at the last address of each such holder appearing on the books of the Corporation, the obligation to deliver to each such holder stock, securities, cash or other property as, in accordance with the foregoing provisions, such holder may be entitled to receive. The foregoing provisions shall similarly apply to successive Capital Reorganizations.

(v) The provisions of this Section 2(g) shall not apply: (x) prior to the Recapitalization Date; (y) to the issuance of any Preferred Stock sold or issued pursuant to (i) the Securities Purchase Agreement, (ii) the Exchange Agreement or (iii) a Permitted Dilutive Issuance; or (z) to any Common Stock (i) issued or issuable pursuant to any stock option, stock purchase or similar plan or arrangement for the benefit of employees or directors of the Corporation or its Subsidiaries in effect on the Recapitalization Date or thereafter adopted by the Board of Directors, (ii) issued or issuable pursuant to options, warrants and conversion rights in existence on the Recapitalization Date or (iii) issued or issuable upon conversion of the Preferred Stock.

(vi) In the event that:

(A) the Corporation shall declare any cash dividend upon its Common Stock,

(B) the Corporation shall declare any dividend upon its Common Stock payable in stock or make any special dividend or other distribution to the holders of its Common Stock (other than a dividend or

distribution made in order to effect a stock split or similar subdivision as contemplated by Section 2(g)(iii)),

(C) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights,

(D) there shall occur any capital reorganization or reclassification of the capital stock of the Corporation, including, without limitation, any subdivision or combination of the outstanding shares of Common Stock (other than a subdivision made in order to effect a stock split or similar subdivision as contemplated by Section 2(g)(iii)), or any consolidation or merger of the Corporation with or into any other entity (other than a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series B Preferred Stock, as determined in good faith by the Board of Directors) or any sale or other disposition (other than a mortgage or pledge as security) of all or substantially all of the assets of the Corporation in one or a series of related transactions (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of the Series B Preferred Stock, as determined in good faith by the Board of Directors), or

(E) there shall be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

then, in connection with such event, the Corporation shall give to the holders of the Series B Preferred Stock:

(1) at least ten (10) business days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, liquidation, dissolution or winding-up; and

(2) in the case of such dissolution, reorganization, reclassification, consolidation, merger, sale, liquidation or winding up, at least ten (10) business days' prior written notice of the date when the same shall take place.

Such notice in accordance with the foregoing Clause (1) of this Section 2(g)(vi) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing Clause (2) of this Section 2(g)(vi) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, liquidation, dissolution or winding up. Each such written notice shall be given by first class mail, postage prepaid,

addressed to the holders of the Series B Preferred Stock at the address of each such holder as shown on the books of the Corporation.

(vii) If at any time or from time to time on or after the Recapitalization Date, the Corporation shall grant, issue or sell any Options, Convertible Securities or rights to purchase property (such Options, Convertible Securities or rights are herein referred to in this Section 2 as the "Purchase Rights") pro rata to the record holders of any class of Common Stock of the Corporation and such grants, issuances or sales do not result in an adjustment of the Conversion Price under Section 2(g)(ii), then each holder of Series B Preferred Stock (other than a holder who has validly made an election as contemplated by Section 2(d)(ii)) shall be entitled to acquire (within thirty (30) days after the later to occur of the initial exercise date of such Purchase Rights or receipt by such holder of the notice concerning Purchase Rights to which such holder shall be entitled under Section 2(g)(v)) and upon the terms applicable to such Purchase Rights either:

(A) the aggregate Purchase Rights which such holder could have acquired if it had held the number of shares of Common Stock acquirable upon conversion of the Series B Preferred Stock immediately before the grant, issuance or sale of such Purchase Rights; provided that if any Purchase Rights were distributed to holders of shares of Common Stock without the payment of additional consideration by such holders, corresponding Purchase Rights shall be distributed to the exercising holders of Series B Preferred Stock as soon as possible after such exercise and it shall not be necessary for the exercising holders of Series B Preferred Stock to specifically request delivery of such rights; or

(B) in the event that any such Purchase Rights shall have expired or shall expire prior to the end of said thirty (30) day period, the number of shares of Common Stock or the amount of property which such holder could have acquired upon such exercise at the time or times at which the Corporation granted, issued or sold such expired Purchase Rights.

(viii) If any event occurs as to which, in the good faith determination of the Board of Directors, the provisions of this Section 2(g) are not strictly applicable or if strictly applicable would not fairly protect the rights of the holders of Series B Preferred Stock in accordance with the essential intent and principles of such provisions, then the Board of Directors shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to protect such rights as aforesaid, but in no event shall any such adjustment have the effect of increasing the Conversion Price as otherwise determined to any of the provisions of this Section 2(g) except in the case of a combination of shares of a type contemplated in Section 2(g)(iii) and then in no event to an amount larger than the Conversion Price as adjusted pursuant to Section 2(g)(iii). Such essential intent and principles shall be discerned only by reference to this Certificate of Incorporation.

(ix) The holders of not less than two thirds of the outstanding shares of Series B Preferred Stock may waive in writing, with respect to a specific issuance of securities identified in such waiver, any adjustment to the Conversion Price pursuant to

Section 2(g)(ii) other than any adjustment pursuant to Section 2(g)(ii)(H); provided, however, that such waiver shall apply only as to a specific issuance of securities identified in such waiver.

(h) Coordinated Conversion.

(i) Immediately upon the closing of a Qualified Public Offering (as hereinafter defined), each share of Series B Preferred Stock shall automatically be converted (as used in this Section 2, a "Mandatory Conversion") into (y) that number of fully paid and nonassessable shares of Common Stock obtained by dividing the Stated Value thereof by the Conversion Price then in effect and (z) the right to receive an amount in cash equal to all accrued but unpaid dividends. For the purposes of this Section 2, a "Qualified Public Offering" shall mean an underwritten public offering (or a combination of offerings) pursuant to effective registration under the Securities Act covering the offer and sale of Common Stock for the account of the Corporation in which the gross proceeds to the Corporation (determined without deduction of any expenses incurred or any underwriting or other commissions, fees, discounts or concessions) are not less than \$50,000,000 and which places upon the Corporation a value (prior to the receipt of proceeds of such offering) of at least \$200 million.

In addition, each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate (calculated in accordance with Section 2(f)(i)) and Conversion Price for such shares upon the approval to so convert of the Corporation and the holders of a majority of the then-outstanding shares of Series B Preferred Stock and the then-outstanding Series C Preferred Stock, if any, acting together as a single class (based on aggregate stated value), given in writing or by vote at a meeting (such automatic conversion, as used in this Section 2, a "Voluntary Conversion" and, together with a Mandatory Conversion, a "Coordinated Conversion").

(ii) Prior to any Coordinated Conversion, all holders of record of shares of Series B Preferred Stock will be given at least ten (10) days' written notice of the date fixed for such Coordinated Conversion. Such notice will be sent by mail, first class, postage prepaid, to each record holder of shares of Series B Preferred Stock at such holder's address appearing on the Corporation's stock register. On or before the date or estimated date fixed for conversion each holder of shares of Series B Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 2(h), together with any cash payable in lieu of any fractional shares (as provided in Section 2(f)(iii)) and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends. On the date fixed for conversion, all rights with respect to the Series B Preferred Stock so converted will terminate, excepting only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such shares of Series B Preferred Stock have been converted (calculated in accordance with Section 2(h)(i)), cash as provided in Section 2(f)(iii) in respect of any fraction of a

share of Common Stock otherwise issuable upon such conversion and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered holders or by their respective attorneys duly authorized in writing. All certificates evidencing shares of Series B Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date fixed for conversion, be deemed to have been retired and cancelled and the shares of Series B Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date or the failure of the Corporation to give notice under this Section 2(h)(ii). As soon as practicable after the date of such Coordinated Conversion and the surrender of the certificate or certificates for Series B Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion (calculated in accordance with Section 2(h)(i)) in accordance with the provisions hereof, cash as provided in Section 2(f)(iii) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion (calculated in accordance with Section 2(h)(i)) and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends; provided, however, that if there is not then in effect a registration statement covering the issuance of such Common Stock and if the holder shall request that a certificate for Common Stock issuable on such conversion be made to the order of any person other than that of the holder as set forth in the Corporation's stock register, the Corporation may require the holder to deliver an opinion of counsel reasonably satisfactory to the Corporation to the effect that such issuance is in compliance with the Securities Act and any applicable state's blue sky laws.

(i) Redemption.

(i) Optional Redemption. The Corporation shall have the right to redeem, in whole or in part, the Series B Preferred Stock outstanding at any time at a price per share equal to \$.651, plus an amount equal to any and all dividends declared but unpaid thereon as of the date of such redemption (the "Series B Redemption Price"), with the consent of the holders of a majority of the shares of Series B Preferred Stock then-outstanding. In addition, if, pursuant to Section 3(i), the holders of a majority of the Series C Preferred Stock consent to the redemption of the Series C Preferred Stock, each holder of Series B Preferred Stock shall be deemed to have irrevocably consented to the redemption of the Series B Preferred Stock pursuant to this Section 2(i)(i) (if the Series C Preferred Stock is redeemed in part, the same percentage of the Stated Value of the Series B Preferred Stock shall be so redeemed).

(ii) Partial Redemption Procedure. In the event of any redemption of only a part of the then-outstanding Series B Preferred Stock, the Corporation shall effect such redemption pro rata among the holders thereof (based on the number of shares of Series B Preferred Stock held on the date of notice of redemption).

(iii) Notice With Respect to an Optional Redemption. At least thirty (30) days prior to the date or estimated date fixed as the date of redemption pursuant to Section 2(i)(i), written notice shall be mailed, postage prepaid, to each holder of record of Series B Preferred Stock to be redeemed, at his or its post office address last shown on the records of the Corporation, notifying such holder of the number of shares so to be redeemed, specifying the date or estimated date for such redemption and the date or estimated date on which such holder's conversion rights (pursuant to Section 2(f) hereof) as to such shares terminate, and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his or its certificate or certificates representing the shares to be redeemed (such notice is hereinafter referred to in this Section 2 as the "Series B Redemption Notice"). On or prior to the date or estimated date fixed as the date of the redemption thereof, each holder of Series B Preferred Stock to be redeemed shall surrender its certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series B Redemption Notice, and on the date actually fixed for the redemption of such shares the Series B Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and all shares of Series B Preferred Stock being redeemed shall be cancelled. In the event that fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the date fixed as the date of the redemption thereof all rights of the holders of the Series B Preferred Stock designated for redemption in the Series B Redemption Notice as holders of Series B Preferred Stock of the Corporation (except the right to receive the Series B Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever regardless of any surrender of certificates by a holder of Series B Preferred or the giving of notice by the Corporation under this Section 2(h)(iii).

(iv) Cancellation of Redeemed Shares. Except as provided in Sections 2(i)(i) and (ii) above, the Corporation shall have no right to redeem the shares of Series B Preferred Stock. Any shares of Series B Preferred Stock so redeemed shall be permanently retired, shall no longer be deemed outstanding and shall not under any circumstances be reissued as shares of Series B Preferred Stock, and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce the authorized Series B Preferred Stock accordingly. Nothing herein contained shall prevent or restrict the purchase by the Corporation, from time to time either at public or private sale, of the whole or any part of the Series B Preferred Stock at such price or prices as the Corporation may determine, subject to the provisions of applicable law.

### SECTION 3: SERIES C PREFERRED STOCK

(a) Definitions. As used in this Section 3:

(i) "Conversion Price" shall mean the conversion price per share of Common Stock, as the same may be adjusted from time to time as provided for herein. The initial Conversion Price shall be \$2.955559.

(ii) "Election Notice" shall have the meaning ascribed to it in Section 3(d)(ii).

(iii) "Junior Stock" shall mean the Common Stock and any other shares of capital stock of any series or class of the Corporation, whether presently outstanding or hereafter issued, which are designated in the instrument creating such series or class as ranking junior to the shares of Series C Preferred Stock in dividend right or in right of distribution upon liquidation, dissolution or winding up of the Corporation. Notwithstanding any other provision in this Certificate of Incorporation to the contrary, the Series C Preferred Stock shall rank *pari passu* with the Series B Preferred Stock in dividend right and in right of distribution upon liquidation, dissolution or winding up of the Corporation.

(iv) "Liquidation Amount" shall have the meaning ascribed to it in Section 3(d)(i).

(v) "Stated Value," when used with respect to each share of Series C Preferred Stock, shall mean the amount of \$2.955559.

(b) Preference and Parity. Unless the Corporation shall have obtained the requisite approval under Section 3(e), so long as any shares of Series C Preferred Stock remain outstanding, in no event shall any dividend or distribution of any kind whatsoever, whether in cash, securities or other property, be paid or declared or made on Junior Stock (other than dividends or distributions paid or payable in Junior Stock or rights to acquire Junior Stock or any cash payments required to be made in lieu of the issuance of fractional shares). Unless the Corporation shall have obtained the requisite approval under Section 3(e), so long as any shares of Series C Preferred Stock remain outstanding, no shares of Junior Stock shall be purchased, redeemed, retired or otherwise acquired by the Corporation for consideration (other than Junior Stock or rights to acquire Junior Stock) (except (i) for the repurchase of stock from employees of the Corporation or its Subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment of such employees at purchase prices initially paid by such employees for such shares or pursuant to other employee repurchase agreements or arrangements, or similar arrangements with employees, in each case approved by the Board of Directors of the Corporation (or the compensation committee thereof), (ii) pursuant to the Corporation's obligation to purchase certain shares pursuant to the Stockholders Agreement and (iii) for cash payments required to be made in lieu of the issuance of fractional shares) unless the Corporation shall have, concurrently with any such purchase, redemption, retirement or other acquisition for consideration by the Corporation, offered to redeem the Series C Preferred Stock at the Liquidation Amount. Subject to the foregoing provisions and not otherwise, such dividends and distributions (payable in cash, securities or other property) as may be determined by the Board of Directors may be declared and paid on Junior Stock from time to time out of the remaining funds of the Corporation legally available therefor, and such purchases, redemptions, retirements or other acquisitions by the Corporation for consideration may be made.



So long as any shares of Series C Preferred Stock remain outstanding, no dividends, except as described in the next succeeding sentence, shall be declared or paid or set apart for payment on any series or class of stock of the Corporation ranking, as to dividends, on a parity with the Series C Preferred Stock, for any period (other than cash payments required to be made in lieu of the issuance of fractional shares, cash dividends as provided in Section 2(h) and shares of Common Stock issued in connection with the conversion of Preferred Stock authorized under this Certificate of Incorporation) unless all accrued but unpaid dividends (calculated in accordance with Section 3(c)) on the Series C Preferred Stock have been or contemporaneously therewith are declared and paid in full in cash or declared in full and a sum of cash irrevocably set apart sufficient for the payment thereof. When dividends are not paid in full or a sum sufficient for such payment is not irrevocably set apart, as aforesaid, upon the shares of Series C Preferred Stock and any other series or class of stock of the Corporation ranking on a parity as to dividends with the Series C Preferred Stock, all dividends declared upon such other stock shall be declared pro rata so that the amounts of dividends per share declared on the Series C Preferred Stock and such other stock shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of Series C Preferred Stock and on such other stock bear to each other.

So long as any shares of Series C Preferred Stock remain outstanding, no other shares of any series or class of stock of the Corporation ranking on a parity with the Series C Preferred Stock in dividend right or in right of distribution upon liquidation, dissolution or winding up shall be purchased, redeemed, retired or otherwise acquired for consideration by the Corporation (other than Junior Stock or rights to acquire Junior Stock) unless (i) all accrued but unpaid dividends (calculated in accordance with Section 3(c)) on the Series C Preferred Stock shall have been declared and paid in full in cash or declared in full and a sum of cash irrevocably set apart sufficient for the payment thereof and (ii) the Corporation shall have, concurrently with any such purchase, redemption, retirement or other acquisition for consideration, offered to purchase, redeem, retire or otherwise acquire for consideration, as the case may be, all shares of Series C Preferred Stock for the Stated Value thereof, if all shares of such other series or class of stock are being purchased, redeemed, retired or otherwise acquired for consideration by the Corporation, and if less than all such shares of such other series or class of stock are being purchased, redeemed, retired or otherwise acquired for consideration by the Corporation, then all such offers to repurchase, redeem, retire or otherwise acquire for consideration shall be made on a pro rata basis so that the amount of aggregate outstanding Stated Value of Series C Preferred Stock subject to the respective offer to repurchase, retirement or other acquisition for consideration and of such other stock shall in all cases bear to each other the same ratio that the aggregate outstanding stated value of such Series C Preferred Stock and of such other stock bear to each other.

(c) Dividend Rights. The holders of each share of Series C Preferred Stock shall be entitled to receive, if, when and as declared by the Board of Directors, out of funds legally available therefor, cumulative dividends in cash at 6% per annum of the Stated Value thereof. Dividends on outstanding shares of Series C Preferred Stock shall be cumulative and shall accrue from the date of issuance and compound quarterly (on the last business day of each March, June, September and December) at 6% per annum of the Stated Value thereof from the date of issuance, whether or not declared by the Board of Directors and whether or not in any

fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year.

(d) Liquidation, Dissolution, Winding Up, Merger, Etc.

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series C Preferred Stock then-outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up prior and in preference to the Series C Preferred Stock upon such liquidation, dissolution or winding up (such stock, if any, being referred to in this Section 3 as "Senior Stock"), on a parity with the Series B Preferred Stock and each other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up on a parity with the Series B Preferred Stock (the Series B Preferred Stock and each other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up on a parity with the Series C Preferred Stock being referred to in this Section 3 as "Parity Stock"), but before any payment shall be made to the holders of Junior Stock, an amount per share of Series C Preferred Stock equal to the greater of (x) the Stated Value (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares) plus an amount in cash equal to accrued but unpaid dividends (calculated in accordance with Section 3(c) thereon through the date on which payment of such dividends is received (the "Liquidation Amount") and (y) an amount equal to the amount which would be payable in respect of that number of shares of Common Stock into which one share of Series C Preferred Stock could be converted immediately prior to such liquidation, dissolution or winding up (calculated in accordance with Section 3(f)(i)) (assuming the conversion of all shares of Series C Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such liquidation, dissolution or winding up to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). If, upon any such liquidation, dissolution or winding up, the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of all amounts required to be paid or distributed to holders of Senior Stock shall be insufficient to pay the holders of shares of Series C Preferred Stock and the holders of Parity Stock the full amount to which they shall be entitled, the holders of shares of Series C Preferred Stock and the holders of shares of Parity Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or in respect of said shares were paid in full.

(ii) Upon the occurrence of a merger or consolidation of the Corporation into or with another corporation (other than a Subsidiary of the Corporation, but only if the same shall not adversely affect the rights of the holders of Series C Preferred Stock, as determined in good faith by the Board of Directors), a merger or consolidation of any other corporation into or with the Corporation (other than a

Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series C Preferred Stock, as determined in good faith by the Board of Directors), or the sale or other disposition (other than a mortgage or pledge as security) of all or substantially all of the assets of the Corporation to an entity which is not a Subsidiary of the Corporation (whether in a single transaction or a series of related transactions) (each, as used in this Section 3, a "Proposed Transaction"), after and subject to the payment in full of all amounts required to be distributed to the holders of Senior Stock and pro rata with all Parity Stock having similar rights to the holders of Series C Preferred Stock, the holders of Series C Preferred Stock will be entitled to elect (by compliance with the procedure set forth below in this Section 3(d)(ii)) to receive in respect of their shares of Series C Preferred Stock, in their sole discretion, either (i) the Liquidation Amount or (ii) the type and amount of consideration as would be payable to the holder of that number of shares of Common Stock into which one share of Series C Preferred Stock could have been converted immediately prior to the consummation of such Proposed Transaction (calculated in accordance with Section 3(f)(i)) (assuming the conversion of all shares of Series C Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such event to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). Notwithstanding the foregoing, if the assets and funds of the Corporation available for distribution to the holders of Series C Preferred Stock and the holders of Parity Stock shall be insufficient (after payment in full of all amounts required to be paid in respect of Senior Stock) to pay to the holders of Series C Preferred Stock and the holders of Parity Stock the full amount to which they shall be entitled, then the holders of Series C Preferred Stock and the holders of Parity Stock shall share ratably in any distribution of such assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares of Series C Preferred Stock or shares of Parity Stock, as the case may be, held by them upon such distribution if all amounts payable on or in respect of said shares were paid in full. At least five days prior to the date of the Merger Approval (as defined below) with respect to any Proposed Transaction, the Corporation shall deliver notice to the holders of Series C Preferred Stock setting forth (1) the Liquidation Amount as of the expected date of the consummation of such Proposed Transaction and (2) the type and amount of consideration as would be payable in such Proposed Transaction to the holder of that number of shares of Common Stock into which one share of Series C Preferred Stock could have been converted immediately prior to the consummation of such Proposed Transaction (calculated in accordance with Section 3(f)(i)) (assuming the conversion of all shares of Series C Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to the consummation of such Proposed Transaction to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). No later than five days after any approval by the holders of Series C Preferred Stock of any Proposed Transaction pursuant to Section 3(e) (as used in this Section 3, "Merger Approval"), any holder of Series C Preferred Stock may make the election referred to above as to all such holder's shares of Series C Preferred Stock by delivering to the Corporation at its

principal office (Attention: General Counsel) a written notice, duly executed by such holder, which shall state that such holder wishes to receive in full redemption of all shares of Series C Preferred Stock held by such holder either (A) the Liquidation Amount or (B) the consideration referred to in clause (ii) of the first sentence of this Section 3(d)(ii) (but shall not elect both), and that such notice is irrevocable (an "Election Notice"). Contemporaneously with the delivery of such Election Notice, such holder shall surrender his, her or its certificate or certificates representing all such holder's shares of Series C Preferred Stock to the Corporation at its principal office (Attention: General Counsel). In the event that any such holder shall not have delivered an Election Notice or shall have delivered an Election Notice that does not comply with the above requirements in all material respects, then such holder shall be deemed to have elected to receive the consideration referred to in clause (i) of the first sentence of this Section 3(d)(ii).

(iii) If the consideration to be received by the holders of Series C Preferred Stock pursuant to any voluntary or involuntary liquidation, dissolution or winding up of the Corporation is other than cash, indebtedness or securities, the value of such consideration shall be its fair market value as determined in good faith by the Board of Directors. Any securities to be delivered pursuant to Section 3(d)(i) above shall be valued at the "Fair Market Value."

(e) Voting.

(i) Each issued and outstanding share of Series C Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series C Preferred Stock is then convertible (calculated in accordance with Section 3(f)(i)) (as adjusted from time to time pursuant to Section 3(g)), at each meeting of stockholders of the Corporation with respect to any and all matters presented to the holders of Common Stock of the Corporation for their action and in connection with any written consent in lieu of a meeting of stockholders, such number to be determined as of the date for determination of stockholders entitled to vote at the meeting or on the date for determining those stockholders entitled to consent to action by written consent in lieu of a meeting, as the case may be. Except as provided by law, by the provisions of this Section 3 or by the provisions of this Certificate of Incorporation establishing any other series of Preferred Stock, the holders of Series C Preferred Stock shall vote together with the holders of Common Stock, and any other classes of the Corporation's capital stock entitled to vote together with the Common Stock, as a single class.

(ii) In addition to any other rights provided by law, the Corporation shall not, without first obtaining the approval of the holders of a majority of the then-outstanding Series C Preferred Stock and the Series B Preferred Stock, voting together as a single class (based on aggregate stated value):

(A) amend, repeal, delete, supersede or otherwise modify any provision of the Corporation's Certificate of Incorporation or By-Laws, to the extent that the same would adversely affect the rights of the holders of Series C Preferred Stock (as determined in good faith by the holders of the Series C

Preferred Stock) (other than an amendment to permit any Permitted Dilutive Issuance);

(B) declare, make or pay, or take steps (including without limitation, the setting aside of funds) to authorize or effect the declaration, making or payment of, any dividends or other distributions on any Junior Stock (other than dividends or other distributions paid or payable in Junior Stock or rights to acquire Junior Stock) or purchase, redeem, retire or otherwise acquire, or take steps (including, without limitation, the setting aside of funds) to effect the purchase, redemption, retirement or other acquisition for consideration of, any Junior Stock for consideration (other than Junior Stock or rights to acquire Junior Stock) (except for the repurchase of stock from employees of the Corporation or its Subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment of such employees at purchase prices initially paid by such employees for such shares, pursuant to other employee repurchase agreements or arrangements, or similar arrangements with employees, in each case approved by the Board of Directors of the Corporation (or the compensation committee thereof), pursuant to the Corporation's obligation to repurchase certain shares pursuant to the Stockholders Agreement or the payment of cash in lieu of the issuance of fractional shares);

(C) excepting any issuances that are (i) a Permitted Dilutive Issuance, (ii) pursuant to the Securities Purchase Agreement or (iii) pursuant to the Exchange Agreement, authorize or effect the issuance by the Corporation of any securities or rights to acquire securities other than (x) pursuant to options, warrants, conversion or subscription rights in existence on the Recapitalization Date or (y) pursuant to stock option, stock bonus or other employee stock plans for the benefit of the employees or Directors of the Corporation or its Subsidiaries in existence as of such date or thereafter approved with the consent of the holders of a majority of the then-outstanding Series C Preferred Stock and Series B Preferred Stock, acting together as a single class (based on aggregate stated value);

(D) authorize or effect the incurrence, or guaranty by the Corporation, of indebtedness for borrowed money to parties unaffiliated with the Corporation in an amount in excess of \$10,000,000; or

(E) authorize or effect (i) any sale, lease, transfer, conveyance, mortgage, pledge or other disposition (other than a mortgage or pledge as security) of all or substantially all the assets of the Corporation (by merger, sale of stock or otherwise, in a single transaction or a series of related transactions) (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series C Preferred Stock, as determined in good faith by the Board of Directors), (ii) any merger or consolidation or other reorganization of the Corporation with or into another corporation, (iii) the acquisition by the Corporation of another corporation or other entity by means of a purchase of shares or similar equity interests or all or substantially all the assets

of such corporation or other entity or (iv) the establishment of any joint ventures by the Corporation;

(F) effect a subdivision, consolidation, conversion, reclassification or other modification of any capital stock of the Corporation if the effect of such subdivision, consolidation, conversion, reclassification or other modification is to impair or reduce or otherwise adversely affect the relative rights of the holders of the Series C Preferred Stock; or

(G) authorize or effect any liquidation, dissolution or winding up of the Corporation or adopt or authorize the adoption of any plan for the same.

(iii) The Corporation shall not amend, alter or repeal the preferences, special rights or other powers or privileges of the Series C Preferred Stock so as to adversely affect the Series C Preferred Stock, without the approval of the holders of at least a majority of the aggregate number of then-outstanding shares of Series C Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, and without limiting the foregoing, the authorization or issuance of any series of Preferred Stock with preference or priority over, or being on a parity with, the Series C Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation (other than (x) pursuant to the Exchange Agreement, (y) the issuance of up to \$54,000,000 in Stated Value of Series D Preferred Stock and (z) any Permitted Dilutive Issuance) shall be deemed to adversely affect the Series C Preferred Stock.

(f) Optional Conversion.

(i) Each share of Series C Preferred Stock may be converted at any time, at the option of the holder thereof, into (y) the number of fully-paid and nonassessable shares of Common Stock obtained by dividing (i) the Stated Value thereof together with any accrued but unpaid dividends thereon through the conversion date (calculated in accordance with Section 3(c)) by (ii) the Conversion Price then in effect (the rate at which Series C Preferred Stock converts into Common Stock, as used in this Section 3, the "Conversion Rate") and (z) cash, if any, payable in lieu of the issuance of fractional shares (as provided in Section 3(f)(iii); provided, however, that on any redemption of any Series C Preferred Stock as and to the extent provided in this Section 3 or any liquidation, dissolution or winding up of the Corporation, the right of conversion shall terminate at the close of business on the full business day next preceding the date fixed for such redemption or for the payment of any amounts distributable on liquidation, dissolution or winding up of the Corporation to the holders of Series C Preferred Stock.

(ii) The initial Conversion Rate for the Series C Preferred Stock shall be one share of Common Stock for each share of Series C Preferred Stock surrendered for conversion, reflecting an initial Conversion Price of \$2.955559 per share of Common Stock. The applicable Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(iii) No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon conversion of Series C Preferred Stock. If more than one certificate evidencing shares of Series C Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series C Preferred Stock so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of such aggregate number of shares of Series C Preferred Stock, the Corporation shall pay to any such surrendering holder cash, in lieu of any such fractional share, in an amount equal to the same fraction of the Fair Market Value of one share of Common Stock as of the close of business on the day of conversion.

(iv) Whenever the Conversion Price shall be adjusted as provided in Section 3(g), the Corporation shall forthwith file, at each office designated for the conversion of Series C Preferred Stock, a statement, signed by the Chairman of the Board, the Chief Executive Officer, any Vice President or the Treasurer of the Corporation, showing in reasonable detail the facts requiring such adjustment and the Conversion Price and Conversion Rate that will be effective after such adjustment. The Corporation shall also mail to each holder of Series C Preferred Stock a notice setting forth in reasonable detail any such adjustments and the information required to be filed pursuant to the immediately preceding sentence to be sent by mail, first class, postage prepaid, to each record holder of Series C Preferred Stock at his, her or its address appearing on the Corporation's stock register. If such notice relates to an adjustment resulting from an event referred to in Section 3(g)(vi), such notice shall be included as part of the notice required to be mailed and published under the provisions of Section 3(g)(vi) hereof.

(v) In order to exercise the conversion privilege set forth in Section 3(f)(i), the holder of any Series C Preferred Stock to be converted shall surrender his, her or its certificate or certificates therefor to the principal office of the transfer agent for the Series C Preferred Stock (or if no transfer agent be at the time appointed, then the Corporation at its principal office), and shall give written notice to the Corporation at such office that the holder elects to convert the Series C Preferred Stock represented by such certificates, or any number thereof. Such notice shall also state the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, subject to any restrictions on transfer relating to shares of the Series C Preferred Stock or shares of Common Stock issuable upon conversion thereof. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly authorized in writing. The date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of the certificates and notice shall be the conversion date. As soon as practicable after receipt of such notice and the surrender of the certificate or certificates for Series C Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered at such office to such holder, or on his, her or its written order, (i) a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof (calculated in accordance with

Section 3(f)(i) and (ii) cash, if any, payable in lieu of fractional shares (as provided in Section 3(f)(iii)); provided, however, that if there is not then in effect a registration statement under the Securities Act covering the issuance of such Common Stock and if such holder shall request that a certificate for Common Stock issuable on such conversion be made to the order of any person other than that of such holder as set forth in the Corporation's stock register, the Corporation may require the holder to deliver an opinion of counsel reasonably satisfactory to the Corporation to the effect that such issuance is in compliance with the Securities Act and any applicable state's blue sky laws.

(vi) The Corporation shall at all times when shares of Series C Preferred Stock remain outstanding reserve and keep available out of its authorized but unissued stock, for the purposes of effecting the conversion of the Series C Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series C Preferred Stock. Before taking any action which would cause an adjustment reducing the conversion price below the then par value of the shares of Common Stock issuable upon conversion of the Series C Preferred Stock, the Corporation shall take all corporate action which may be necessary in order that the Corporation may validly and legally issue fully-paid and nonassessable shares of such Common Stock at such adjusted conversion price.

(vii) All shares of Series C Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate excepting only the right of the holder thereof to receive shares of Common Stock in exchange therefor (calculated in accordance with Section 3(f)(i) and cash, if any, as provided in Section (iii) of this Section 3(f) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. Any shares of Series C Preferred Stock so converted shall be retired and cancelled and shall not be reissued as shares of Series C Preferred Stock, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series C Preferred Stock accordingly.

(g) Anti-Dilution Provisions.

(i) In order to prevent dilution of the rights granted hereunder, the Conversion Price shall be subject to adjustment from time to time in accordance with this Section 3(g). For purposes of this Section 3(g), the term "Number of Common Shares Deemed Outstanding" at any given time shall mean the sum of (A) the number of shares of Common Stock outstanding at such time, (B) the number of shares of Common Stock issuable assuming conversion, exercise or exchange at such time of all outstanding Preferred Stock, Options and Convertible Securities and (C) (without duplication) the number of shares of Common Stock issuable with respect to any securities of the types described in Section 3(g)(v) outstanding at such time.

(ii) Except as provided in Section 3(g)(v), if the Corporation shall issue or sell, or shall in accordance with Sections 3(g)(ii)(A) to (I), inclusive, be deemed to have issued or sold, any shares of its Common Stock for a consideration per share less



than the Conversion Price in effect immediately prior to the time of such issue or sale, then, in each case, forthwith upon such issue or sale (each, a "Triggering Transaction"), the Conversion Price shall, subject to Clauses (A) to (I) of this Section 3(g)(ii), be reduced to the Conversion Price (calculated to the nearest ten thousandth of a cent) determined by dividing:

(1) an amount equal to the sum of (x) the product derived by multiplying the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction by the Conversion Price then in effect, plus (y) the consideration, if any, received by the Corporation upon consummation of such Triggering Transaction, by

(2) an amount equal to the sum of (x) the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction plus (y) the number of shares of Common Stock issued (or deemed to be issued in accordance with Sections 3(g)(ii)(A) to (I)) in connection with the Triggering Transaction.

For purposes of determining the adjusted Conversion Price under this Section 3(g)(ii), the following Clauses (A) to (I), inclusive, shall be applicable:

(A) In case the Corporation at any time shall in any manner grant (whether directly or by assumption in a merger or otherwise) any Options to purchase shares of Common Stock or Convertible Securities, whether or not such Options or the right to convert or exchange such Convertible Securities are immediately exercisable, and the price per share for which the shares of Common Stock are issuable upon exercise (determined by dividing (x) the total amount, if any, received or receivable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities on the date of the issue or sale of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Option, then the total maximum amount of Common Stock issuable upon the exercise of such Options or in the case of Options for Convertible Securities, upon the conversion or exchange of such Convertible Securities shall (as of the date of granting of such Options) be deemed to be

outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such shares of Common Stock or such Convertible Securities upon the exercise of such Options or such shares of Common Stock upon conversion or exchange of such Convertible Securities, except as otherwise provided in Section 3(g)(ii)(C).

(B) In case the Corporation at any time shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to convert or exchange thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (x) the total amount received or receivable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, to the Corporation upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall (as of the date of the issue or sale of such Convertible Securities) be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon exercise of the rights to convert or exchange under such Convertible Securities, except as otherwise provided in Section 3(g)(ii)(C).

(C) If the purchase price provided for in any Options referred to in Section 3(g)(ii)(A), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section 3(g)(ii)(A) or (B), or the rate at which any Convertible Securities referred to in Section 3(g)(ii)(A) or (B) are convertible into or exchangeable for Common Stock shall change at any time other than under or by reason of provisions thereof designed to protect against dilution (any such change, an "Adjustment"), then the Conversion Price in effect at the time of such change shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold.

(D) On the expiration of any Option or the termination of any right to convert or exchange any Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such expiration or termination had such

Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(E) In case any Options shall be issued in connection with the issue or sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, the aggregate consideration received by the Corporation in such transaction shall be allocated among such Options and such other securities of the Corporation as shall be determined in good faith by the Board of Directors.

(F) In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold or deemed to have been issued or sold exclusively for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than or in addition to cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration as determined in good faith by the Board of Directors; provided, however, that if the Corporation issues or sells shares of Common Stock, Options or Convertible Securities for services other than bona fide services rendered to the Corporation in connection with the Corporation's bona fide financing activities, such services will not be deemed to be consideration. In case any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be determined in good faith by the Board of Directors. In each case the amount of consideration received by the Corporation shall be determined without deduction of any expenses incurred or any underwriting or other commissions, fees, discounts or concessions allowed by the Corporation in connection therewith.

(G) The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock for the purpose of this Section 3(g)(ii).

(H) In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock, Options, or Convertible Securities (other than a dividend in Common Stock payable to the holders of Common Stock as contemplated by Section 3(g)(iii)), then in such case any Common Stock, Options or Convertible Securities issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

(I) For purposes of this Section 3(g), in case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (x) to receive a dividend or other distribution payable in Common Stock,

Options or in Convertible Securities (other than a dividend in Common Stock payable to the holders of Common Stock as contemplated by Section 3(g)(iii)) or (y) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right or subscription or purchase, as the case may be.

(iii) In case the Corporation shall at any time subdivide (other than by means of a dividend payable in Common Stock as contemplated by Sections 3(g)(ii)(H) and (I)) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be reduced to equal the number that is obtained by multiplying the Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision and denominator of which shall be the number of shares of Common Stock outstanding immediately after such subdivision, and, conversely, in case the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be increased to equal the number that is obtained by multiplying the Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such combination and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such combination.

(iv) In the event that any capital reorganization or reclassification of the capital stock of the Corporation or consolidation or merger of the Corporation with or into any other entity or share exchange involving the outstanding shares of the Corporation's capital stock or the sale or other disposition of all or substantially all of the Corporation's assets to another entity (each, a "Capital Reorganization") shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities, cash or other property with respect to or in exchange for Common Stock, then, as a condition of such Capital Reorganization, unless each holder of Series C Preferred Stock has made a valid election as contemplated by Section 3(d)(ii), lawful and adequate provision shall be made whereby holders of Series C Preferred Stock shall have the right to acquire and receive upon conversion of each share of Series C Preferred Stock such stock, securities, cash or other property issuable or payable (as part of such Capital Reorganization) with respect to or in exchange for such number of outstanding shares of Common Stock as would have been received upon conversion of one share of Series C Preferred Stock at the Conversion Price then in effect (calculated in accordance with Section 3(f)(i)); and, in any such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions of this Section 3(g) with respect to the rights and interest after such Capital Reorganization of holders of Series C Preferred Stock, to the end that the provisions set forth in this Section 3(g) shall thereafter be applicable, as nearly as reasonably may be practicable, in relation to any stock, securities, cash or other property deliverable upon the conversion of the Series C Preferred Stock. The Corporation will not effect any Capital Reorganization, unless prior to the consummation thereof the successor entity (if other than the

Corporation) resulting from such Capital Reorganization (including the entity which shall have purchased or otherwise acquired all or substantially all of the Corporation's assets) shall have assumed by written instrument mailed or delivered to the holders of the Series C Preferred Stock at the last address of each such holder appearing on the books of the Corporation, the obligation to deliver to each such holder stock, securities, cash or other property as, in accordance with the foregoing provisions, such holder may be entitled to receive. The foregoing provisions shall similarly apply to successive Capital Reorganizations.

(v) The provisions of this Section 3(g) shall not apply: (x) prior to the Recapitalization Date; (y) to the issuance of any Preferred Stock sold or issued pursuant to (i) the Securities Purchase Agreement, (ii) the Exchange Agreement or (iii) a Permitted Dilutive Issuance; or (z) to any Common Stock (i) issued or issuable pursuant to any stock option, stock purchase or similar plan or arrangement for the benefit of employees or directors of the Corporation or its Subsidiaries in effect on the Recapitalization Date or thereafter adopted by the Board of Directors, (ii) issued or issuable pursuant to options, warrants and conversion rights in existence on the Recapitalization Date or (iii) issued or issuable upon conversion of the Preferred Stock.

(vi) In the event that:

(A) the Corporation shall declare any cash dividend upon its Common Stock,

(B) the Corporation shall declare any dividend upon its Common Stock payable in stock or make any special dividend or other distribution to the holders of its Common Stock (other than a dividend or distribution made in order to effect a stock split or similar subdivision as contemplated by Section 3(g)(iii)),

(C) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights,

(D) there shall occur any capital reorganization or reclassification of the capital stock of the Corporation, including, without limitation, any subdivision or combination of the outstanding shares of Common Stock (other than a subdivision made in order to effect a stock split or similar subdivision as contemplated by Section 3(g)(iii)), or any consolidation or merger of the Corporation with or into any other entity (other than a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series C Preferred Stock, as determined in good faith by the Board of Directors) or any sale or other disposition (other than a mortgage or pledge as security) of all or substantially all of the assets of the Corporation in one or a series of related transactions (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of the Series C Preferred Stock, as determined in good faith by the Board of Directors), or

(E) there shall be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

then, in connection with such event, the Corporation shall give to the holders of the Series C Preferred Stock:

(1) at least ten (10) business days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, liquidation, dissolution or winding-up; and

(2) in the case of such dissolution, reorganization, reclassification, consolidation, merger, sale, liquidation or winding up, at least ten (10) business days' prior written notice of the date when the same shall take place.

Such notice in accordance with the foregoing Clause (1) of this Section 3(g)(vi) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing Clause (2) of this Section 3(g)(vi) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, liquidation, dissolution or winding up. Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of the Series C Preferred Stock at the address of each such holder as shown on the books of the Corporation.

(vii) If at any time or from time to time on or after the Recapitalization Date, the Corporation shall grant, issue or sell any Options, Convertible Securities or rights to purchase property (such Options, Convertible Securities or rights are herein referred to in this Section 3 as the "Purchase Rights") pro rata to the record holders of any class of Common Stock of the Corporation and such grants, issuances or sales do not result in an adjustment of the Conversion Price under Section 3(g)(ii), then each holder of Series C Preferred Stock (other than a holder who has validly made an election as contemplated by Section 3(d)(ii)) shall be entitled to acquire (within thirty (30) days after the later to occur of the initial exercise date of such Purchase Rights or receipt by such holder of the notice concerning Purchase Rights to which such holder shall be entitled under Section 3(g)(v)) and upon the terms applicable to such Purchase Rights either:

(A) the aggregate Purchase Rights which such holder could have acquired if it had held the number of shares of Common Stock acquirable upon conversion of the Series C Preferred Stock immediately before the grant, issuance or sale of such Purchase Rights; provided that if any Purchase Rights were distributed to holders of shares of Common Stock without the payment of additional consideration by such holders, corresponding Purchase Rights shall be

distributed to the exercising holders of Series C Preferred Stock as soon as possible after such exercise and it shall not be necessary for the exercising holders of Series C Preferred Stock to specifically request delivery of such rights; or

(B) in the event that any such Purchase Rights shall have expired or shall expire prior to the end of said thirty (30) day period, the number of shares of Common Stock or the amount of property which such holder could have acquired upon such exercise at the time or times at which the Corporation granted, issued or sold such expired Purchase Rights.

(viii) If any event occurs as to which, in the good faith determination of the Board of Directors, the provisions of this Section 3(g) are not strictly applicable or if strictly applicable would not fairly protect the rights of the holders of Series C Preferred Stock in accordance with the essential intent and principles of such provisions, then the Board of Directors shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to protect such rights as aforesaid, but in no event shall any such adjustment have the effect of increasing the Conversion Price as otherwise determined to any of the provisions of this Section 3(g) except in the case of a combination of shares of a type contemplated in Section 3(g)(iii) and then in no event to an amount larger than the Conversion Price as adjusted pursuant to Section 3(g)(iii). Such essential intent and principles shall be discerned only by reference to this Certificate of Incorporation.

(ix) The holders of not less than two thirds of the outstanding shares of Series C Preferred Stock may waive in writing, with respect to a specific issuance of securities identified in such waiver, any adjustment to the Conversion Price pursuant to Section 3(g)(ii) other than any adjustment pursuant to Section 3(g)(ii)(H); provided, however, that such waiver shall apply only as to a specific issuance of securities identified in such waiver.

(h) Coordinated Conversion.

(i) Immediately upon the closing of a Qualified Public Offering (as hereinafter defined), each share of Series C Preferred Stock shall automatically be converted (as used in this Section 3, a "Mandatory Conversion") into (y) that number of fully paid and nonassessable shares of Common Stock obtained by dividing the Stated Value thereof by the Conversion Price then in effect and (z) the right to receive an amount in cash equal to all accrued but unpaid dividends. For the purposes of this Section 3, a "Qualified Public Offering" shall mean an underwritten public offering (or a combination of offerings) pursuant to effective registration under the Securities Act covering the offer and sale of Common Stock for the account of the Corporation in which the gross proceeds to the Corporation (determined without deduction of any expenses incurred or any underwriting or other commissions, fees, discounts or concessions) are not less than \$50,000,000 and which places upon the Corporation a value (prior to the receipt of proceeds of such offering) of at least \$200 million.

In addition, each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate (calculated in accordance with Section 3(f)(i)) and Conversion Price for such shares upon the approval to so convert of the Corporation and the holders of a majority of the then-outstanding shares of Series C Preferred Stock and the then-outstanding Series B Preferred Stock, if any, acting together as a single class (based on aggregate stated value), given in writing or by vote at a meeting (such automatic conversion, as used in this Section 3, a "Voluntary Conversion" and, together with a Mandatory Conversion, a "Coordinated Conversion").

(ii) Prior to any Coordinated Conversion, all holders of record of shares of Series C Preferred Stock will be given at least ten (10) days' written notice of the date fixed for such Coordinated Conversion. Such notice will be sent by mail, first class, postage prepaid, to each record holder of shares of Series C Preferred Stock at such holder's address appearing on the Corporation's stock register. On or before the date or estimated date fixed for conversion each holder of shares of Series C Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 3(h), together with any cash payable in lieu of any fractional shares (as provided in Section 3(f)(iii)) and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends. On the date fixed for conversion, all rights with respect to the Series C Preferred Stock so converted will terminate, excepting only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such shares of Series C Preferred Stock have been converted (calculated in accordance with Section 3(h)(i)), cash as provided in Section 3(f)(iii) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion (calculated in accordance with Section 3(h)(i)) and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered holders or by their respective attorneys duly authorized in writing. All certificates evidencing shares of Series C Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date fixed for conversion, be deemed to have been retired and cancelled and the shares of Series C Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date or the failure of the Corporation to give notice under this Section 3(h)(ii). As soon as practicable after the date of such Coordinated Conversion and the surrender of the certificate or certificates for Series C Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion (calculated in accordance with Section 3(h)(i)) in accordance with the provisions hereof, cash as provided in Section 3(f)(iii) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion and, in the case of a Mandatory Conversion, an amount in cash equal to all



accrued but unpaid dividends; provided, however, that if there is not then in effect a registration statement covering the issuance of such Common Stock and if the holder shall request that a certificate for Common Stock issuable on such conversion be made to the order of any person other than that of the holder as set forth in the Corporation's stock register, the Corporation may require the holder to deliver an opinion of counsel reasonably satisfactory to the Corporation to the effect that such issuance is in compliance with the Securities Act and any applicable state's blue sky laws.

(i) Redemption.

(i) Optional Redemption. The Corporation shall have the right to redeem, in whole or in part, the Series C Preferred Stock outstanding at any time at a price per share equal to \$2.955559, plus an amount equal to any and all dividends declared but unpaid thereon as of the date of such redemption (the "Series C Redemption Price"), with the consent of the holders of a majority of the shares of Series C Preferred Stock then-outstanding.

(ii) Partial Redemption Procedure. In the event of any redemption of only a part of the then-outstanding Series C Preferred Stock, the Corporation shall effect such redemption pro rata among the holders thereof (based on the number of shares of Series C Preferred Stock held on the date of notice of redemption).

(iii) Notice With Respect to an Optional Redemption. At least thirty (30) days prior to the date or estimated date fixed as the date of redemption pursuant to Section 3(i)(i), written notice shall be mailed, postage prepaid, to each holder of record of Series C Preferred Stock to be redeemed, at his or its post office address last shown on the records of the Corporation, notifying such holder of the number of shares so to be redeemed, specifying the date or estimated date for such redemption and the date or estimated date on which such holder's conversion rights (pursuant to Section 3(f) hereof) as to such shares terminate, and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his or its certificate or certificates representing the shares to be redeemed (such notice is hereinafter referred to in this Section 3 as the "Series C Redemption Notice"). On or prior to the date or estimated date fixed as the date of the redemption thereof, each holder of Series C Preferred Stock to be redeemed shall surrender its certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series C Redemption Notice, and on the date actually fixed for the redemption of such shares the Series C Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and all shares of Series C Preferred Stock being redeemed shall be cancelled. In the event that fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the date fixed as the date of the redemption thereof all rights of the holders of the Series C Preferred Stock designated for redemption in the Series C Redemption Notice as holders of Series C Preferred Stock of the Corporation (except the right to receive the Series C Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be

deemed to be outstanding for any purpose whatsoever regardless of any surrender of certificates by a holder of Series C Preferred or the giving of notice by the Corporation under this Section 3(h)(iii).

(iv) Cancellation of Redeemed Shares. Except as provided in Sections 3(i)(i) and (ii) above, the Corporation shall have no right to redeem the shares of Series C Preferred Stock. Any shares of Series C Preferred Stock so redeemed shall be permanently retired, shall no longer be deemed outstanding and shall not under any circumstances be reissued as shares of Series C Preferred Stock, and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce the authorized Series C Preferred Stock accordingly. Nothing herein contained shall prevent or restrict the purchase by the Corporation, from time to time either at public or private sale, of the whole or any part of the Series C Preferred Stock at such price or prices as the Corporation may determine, subject to the provisions of applicable law.

#### SECTION 4: SERIES D PREFERRED STOCK

(a) Definitions. As used in this Section 4:

(i) "Conversion Price" shall mean the conversion price per share of Common Stock, as the same may be adjusted from time to time as provided for herein. The initial Conversion Price shall be \$5.935028.

(ii) "Election Notice" shall have the meaning ascribed to it in Section 4(d)(ii).

(iii) "Junior Stock" shall mean the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and any other shares of capital stock of any series or class of the Corporation, whether presently outstanding or hereafter issued, which are designated in the instrument creating such series or class as ranking junior to the shares of Series D Preferred Stock in dividend right or in right of distribution upon liquidation, dissolution or winding up of the Corporation. Notwithstanding any other provision in this Certificate of Incorporation to the contrary, the Series D Preferred Stock shall rank pari passu with the Series E Preferred Stock in dividend right and in right of distribution upon liquidation, dissolution or winding up of the Corporation.

(iv) "Liquidation Amount" shall have the meaning ascribed to it in Section 4(d)(i).

(v) "Stated Value," when used with respect to each share of Series D Preferred Stock, shall mean the amount of \$5.935028.

(b) Preference and Parity. Unless the Corporation shall have obtained the requisite approval under Section 4(e), so long as any shares of Series D Preferred Stock remain outstanding, in no event shall any dividend or distribution of any kind whatsoever, whether in cash, securities or other property, be paid or declared or made on Junior Stock (other than dividends or distributions paid or payable in Junior Stock or rights to acquire Junior Stock or any

cash payments required to be made in lieu of the issuance of fractional shares or cash dividends as provided in Section 2(h) or 3(h)). Unless the Corporation shall have obtained the requisite approval under Section 4(e), so long as any shares of Series D Preferred Stock remain outstanding, no shares of Junior Stock shall be purchased, redeemed, retired or otherwise acquired by the Corporation for consideration (other than Junior Stock or rights to acquire Junior Stock) (except (i) for the repurchase of stock from employees of the Corporation or its Subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment of such employees at purchase prices initially paid by such employees for such shares or pursuant to other employee repurchase agreements or arrangements, or similar arrangements with employees, in each case approved by the Board of Directors of the Corporation (or the compensation committee thereof), (ii) pursuant to the Corporation's obligation to purchase certain shares pursuant to the Stockholders Agreement and (iii) for cash payments required to be made in lieu of the issuance of fractional shares) unless the Corporation shall have, concurrently with any such purchase, redemption, retirement or other acquisition for consideration by the Corporation, offered to redeem the Series D Preferred Stock at the Liquidation Amount. Subject to the foregoing provisions and not otherwise, such dividends and distributions (payable in cash, securities or other property) as may be determined by the Board of Directors may be declared and paid on Junior Stock from time to time out of the remaining funds of the Corporation legally available therefor, and such purchases, redemptions, retirements or other acquisitions by the Corporation for consideration may be made.

So long as any shares of Series D Preferred Stock remain outstanding, except as contemplated in connection with redemptions in accordance with Section 4(i), 4(j), 5(i) or 5(j) and except as described in the next succeeding sentence, no dividends shall be declared or paid or set apart for payment on any series or class of stock of the Corporation ranking, as to dividends, on a parity with the Series D Preferred Stock, for any period (other than cash payments required to be made in lieu of the issuance of fractional shares, cash dividends as provided in Section 5(h) and shares of Common Stock issued in connection with the conversion of Preferred Stock authorized under this Certificate of Incorporation) unless all accrued but unpaid dividends (calculated in accordance with Section 4(c) and, to the extent applicable, Section 4(j)) on the Series D Preferred Stock have been or contemporaneously therewith are declared and paid in full in cash or declared in full and a sum of cash irrevocably set apart sufficient for the payment thereof. When dividends are not paid in full or a sum sufficient for such payment is not irrevocably set apart, as aforesaid, upon the shares of Series D Preferred Stock and any other series or class of stock of the Corporation ranking on a parity as to dividends with the Series D Preferred Stock, all dividends declared upon such other stock shall be declared pro rata so that the amounts of dividends per share declared on the Series D Preferred Stock and such other stock shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of Series D Preferred Stock and on such other stock bear to each other.

So long as any shares of Series D Preferred Stock remain outstanding, except as contemplated by Section 4(j), 4(i), 5(j) or 5(i), no other shares of any series or class of stock of the Corporation ranking on a parity with the Series D Preferred Stock in dividend right or in right of distribution upon liquidation, dissolution or winding up shall be purchased, redeemed, retired or otherwise acquired for consideration by the Corporation (other than Junior Stock or rights to acquire Junior Stock) unless (i) all accrued but unpaid dividends (calculated in accordance with

Section 4(c)) on the Series D Preferred Stock shall have been declared and paid in full in cash or declared in full and a sum of cash irrevocably set apart sufficient for the payment thereof and (ii) the Corporation shall have, concurrently with any such purchase, redemption, retirement or other acquisition for consideration, offered to purchase, redeem, retire or otherwise acquire for consideration, as the case may be, all shares of Series D Preferred Stock for the Stated Value thereof, if all shares of such other series or class of stock are being purchased, redeemed, retired or otherwise acquired for consideration by the Corporation, and if less than all such shares of such other series or class of stock are being purchased, redeemed, retired or otherwise acquired for consideration by the Corporation, then all such offers to repurchase, redeem, retire or otherwise acquire for consideration shall be made on a pro rata basis so that the amount of aggregate outstanding Stated Value of Series D Preferred Stock subject to the respective offer to repurchase, retirement or other acquisition for consideration and of such other stock shall in all cases bear to each other the same ratio that the aggregate outstanding stated value of such Series D Preferred Stock and of such other stock bear to each other.

(c) Dividend Rights. The holders of each share of Series D Preferred Stock shall be entitled to receive, if, when and as declared by the Board of Directors, out of funds legally available therefor, cumulative dividends in cash at 6% per annum of the Stated Value thereof (as may be adjusted with respect to Subject Shares pursuant to Section 4(j), the "Dividend Rate"). Dividends on outstanding shares of Series D Preferred Stock shall be cumulative and shall accrue from the date of issuance and compound quarterly (on the last business day of each March, June, September and December) at the Dividend Rate from the date of issuance, whether or not declared by the Board of Directors and whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year.

(d) Liquidation, Dissolution, Winding Up, Merger, Etc.

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series D Preferred Stock then-outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up prior and in preference to the Series D Preferred Stock upon such liquidation, dissolution or winding up (such stock, if any, being referred to in this Section 4 as "Senior Stock"), on a parity with the Series E Preferred Stock, if any, and each other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up on a parity with the Series D Preferred Stock (the Series E Preferred Stock, if any, and each other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up on a parity with the Series D Preferred Stock being referred to in this Section 4 as "Parity Stock"), but before any payment shall be made to the holders of Junior Stock, an amount per share of Series D Preferred Stock equal to the greater of (x) the Stated Value (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares) plus an amount in cash equal to accrued but unpaid dividends (calculated in accordance with Section 4(c)) thereon through the date on which payment of such dividends is received (the "Liquidation Amount") and (y) an amount equal to the amount

which would be payable in respect of that number of shares of Common Stock into which one share of Series D Preferred Stock could be converted immediately prior to such liquidation, dissolution or winding up (calculated in accordance with Section 4(f)(i)) (assuming the conversion of all shares of Series D Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such liquidation, dissolution or winding up to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). If, upon any such liquidation, dissolution or winding up, the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of all amounts required to be paid or distributed to holders of Senior Stock shall be insufficient to pay the holders of shares of Series D Preferred Stock and the holders of Parity Stock the full amount to which they shall be entitled, the holders of shares of Series D Preferred Stock and the holders of shares of Parity Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or in respect of said shares were paid in full.

(ii) Upon the occurrence of a merger or consolidation of the Corporation into or with another corporation (other than a Subsidiary of the Corporation, but only if the same shall not adversely affect the rights of the holders of Series D Preferred Stock, as determined in good faith by the Board of Directors), a merger or consolidation of any other corporation into or with the Corporation (other than a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series D Preferred Stock, as determined in good faith by the Board of Directors), or the sale or other disposition (other than a mortgage or pledge as security) of all or substantially all of the assets of the Corporation to an entity which is not a Subsidiary of the Corporation (whether in a single transaction or a series of related transactions) (each, as used in this Section 4, a "Proposed Transaction"), after and subject to the payment in full of all amounts required to be distributed to the holders of Senior Stock and *pro rata* with all Parity Stock having similar rights to the holders of Series D Preferred Stock, the holders of Series D Preferred Stock will be entitled to elect (by compliance with the procedure set forth below in this Section 4(d)(ii)) to receive in respect of their shares of Series D Preferred Stock, in their sole discretion, either (i) the Liquidation Amount or (ii) the type and amount of consideration as would be payable to the holder of that number of shares of Common Stock into which one share of Series D Preferred Stock could have been converted immediately prior to the consummation of such Proposed Transaction (calculated in accordance with Section 4(f)(i)) (assuming the conversion of all shares of Series D Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such event to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). Notwithstanding the foregoing, if the assets and funds of the Corporation available for distribution to the holders of Series D Preferred Stock and the holders of Parity Stock shall be insufficient (after payment in full of all amounts required to be paid in respect of Senior Stock) to pay to the holders of Series D Preferred Stock and the holders of Parity Stock the full amount to which they shall be entitled, then the

holders of Series D Preferred Stock and the holders of Parity Stock shall share ratably in any distribution of such assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares of Series D Preferred Stock or shares of Parity Stock, as the case may be, held by them upon such distribution if all amounts payable on or in respect of said shares were paid in full. At least five days prior to the date of the Merger Approval (as defined below) with respect to any Proposed Transaction, the Corporation shall deliver notice to the holders of Series D Preferred Stock setting forth (1) the Liquidation Amount as of the expected date of the consummation of such Proposed Transaction and (2) the type and amount of consideration as would be payable in such Proposed Transaction to the holder of that number of shares of Common Stock into which one share of Series D Preferred Stock could have been converted immediately prior to the consummation of such Proposed Transaction (calculated in accordance with Section 4(f)(i)) (assuming the conversion of all shares of Series D Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to the consummation of such Proposed Transaction to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). No later than five days after any approval by the holders of Series D Preferred Stock of any Proposed Transaction pursuant to Section 4(e) (as used in this Section 4, "Merger Approval"), any holder of Series D Preferred Stock may make the election referred to above as to all such holder's shares of Series D Preferred Stock by delivering to the Corporation at its principal office (Attention: General Counsel) a written notice, duly executed by such holder, which shall state that such holder wishes to receive in full redemption of all shares of Series D Preferred Stock held by such holder either (A) the Liquidation Amount or (B) the consideration referred to in clause (ii) of the first sentence of this Section 4(d)(ii) (but shall not elect both), and that such notice is irrevocable (an "Election Notice"). Contemporaneously with the delivery of such Election Notice, such holder shall surrender his, her or its certificate or certificates representing all such holder's shares of Series D Preferred Stock to the Corporation at its principal office (Attention: General Counsel). In the event that any such holder shall not have delivered an Election Notice or shall have delivered an Election Notice that does not comply with the above requirements in all material respects, then such holder shall be deemed to have elected to receive the consideration referred to in clause (i) of the first sentence of this Section 4(d)(ii).

(iii) If the consideration to be received by the holders of Series D Preferred Stock pursuant to any voluntary or involuntary liquidation, dissolution or winding up of the Corporation is other than cash, indebtedness or securities, the value of such consideration shall be its fair market value as determined in good faith by the Board of Directors. Any securities to be delivered pursuant to Section 4(d)(i) above shall be valued at the "Fair Market Value."

(e) Voting.

(i) Each issued and outstanding share of Series D Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series D Preferred Stock is then convertible (calculated in

accordance with Section 4(f)(i) (as adjusted from time to time pursuant to Section 4(g)), at each meeting of stockholders of the Corporation with respect to any and all matters presented to the holders of Common Stock of the Corporation for their action and in connection with any written consent in lieu of a meeting of stockholders, such number to be determined as of the date for determination of stockholders entitled to vote at the meeting or on the date for determining those stockholders entitled to consent to action by written consent in lieu of a meeting, as the case may be. Except as provided by law, by the provisions of this Section 4 or by the provisions of this Certificate of Incorporation establishing any other series of Preferred Stock, the holders of Series D Preferred Stock shall vote together with the holders of Common Stock, and any other classes of the Corporation's capital stock entitled to vote together with the Common Stock, as a single class.

(ii) In addition to any other rights provided by law, the Corporation shall not, without first obtaining the approval of the holders of at least 85% of the then-outstanding Series D Preferred Stock and the Series E Preferred Stock, voting together as a single class (based on aggregate stated value) (except with respect to matters specified in Section 4(e)(ii)(A), with respect to which the holders of Series E Preferred Stock shall not be entitled to vote):

(A) amend, repeal, delete, supersede or otherwise modify any provision of the Corporation's Certificate of Incorporation or By-Laws, to the extent that the same would adversely affect the rights of the holders of Series D Preferred Stock (as determined in good faith by the holders of the Series D Preferred Stock) (other than an amendment to permit any Permitted Dilutive Issuance);

(B) declare, make or pay, or take steps (including without limitation, the setting aside of funds) to authorize or effect the declaration, making or payment of, any dividends or other distributions on any Junior Stock (other than dividends or other distributions paid or payable in Junior Stock or rights to acquire Junior Stock) or purchase, redeem, retire or otherwise acquire, or take steps (including, without limitation, the setting aside of funds) to effect the purchase, redemption, retirement or other acquisition for consideration of, any Junior Stock for consideration (other than Junior Stock or rights to acquire Junior Stock) (except for the repurchase of stock from employees of the Corporation or its Subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment of such employees at purchase prices initially paid by such employees for such shares, pursuant to other employee repurchase agreements or arrangements, or similar arrangements with employees, in each case approved by the Board of Directors of the Corporation (or the compensation committee thereof), pursuant to the Corporation's obligation to repurchase certain shares pursuant to the Stockholders Agreement or the payment of cash in lieu of the issuance of fractional shares);

(C) excepting any issuances that are (i) a Permitted Dilutive Issuance, (ii) pursuant to the Securities Purchase Agreement or (iii) pursuant to

the Exchange Agreement, issue or sell, or authorize or effect the issuance or sale by the Corporation of, any equity securities which are senior to, or pari passu with, the Series D Preferred Stock or issue or sell, or authorize or effect the issuance or sale by the Corporation of, any series or class of equity securities (or rights to acquire equity securities) which are convertible or exchangeable into or exercisable for any equity securities of the Corporation which rank senior to, or pari passu with, the Series D Preferred Stock; provided, however, that the rights granted under this Section 4(e)(ii)(C) shall not apply, after the giving of any Required Sale Notice in accordance with Section 4(i), to any transaction or group of transactions which are part of one strategic plan and that, in the aggregate, as determined in good faith by the Board of Directors, will enable the Corporation to timely fulfill its obligations under Section 4(i)(vi);

(D) authorize or effect any sale, lease, transfer, conveyance, mortgage, pledge or other disposition (other than a mortgage or pledge as security) of all or substantially all the assets of the Corporation (by merger, sale of stock or otherwise, in a single transaction or a series of related transactions) (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series D Preferred Stock, as determined in good faith by the Board of Directors); provided, however, that the rights granted under this Section 4(e)(ii)(D) shall not apply, after the giving of any Required Sale Notice in accordance with Section 4(i), to any transaction or group of transactions which are part of one strategic plan and that, in the aggregate, as determined in good faith by the Board of Directors, will enable the Corporation to timely fulfill its obligations under Section 4(i)(vi);

(E) effect a subdivision, consolidation, conversion, reclassification or other modification of any capital stock of the Corporation if the effect of such subdivision, consolidation, conversion, reclassification or other modification is to impair or reduce or otherwise adversely affect the relative rights of the holders of the Series D Preferred Stock;

(F) authorize or effect any liquidation, dissolution or winding up of the Corporation or adopt or authorize the adoption of any plan for the same; or

(G) sell or otherwise transfer (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series D Preferred Stock, as determined in good faith by the Board of Directors), whether by sale of assets, sale of the capital stock of any subsidiary corporation or other subsidiary entity of the Corporation or otherwise, in a single transaction or a series of related transactions, any line of business of the Corporation having an aggregate fair market value, as determined in good faith by the Board of Directors, of at least \$50,000,000; provided, however, that the rights granted under this Section 4(e)(ii)(G) shall not apply, after the giving of any Required Sale Notice in accordance with Section 4(i), to any transaction or group of transactions which are part of one strategic plan and that, in the aggregate, as



determined in good faith by the Board of Directors, will enable the Corporation to timely fulfill its obligations under Section 4(i)(vi).

(iii) The Corporation shall not amend, alter or repeal the preferences, special rights or other powers or privileges of the Series D Preferred Stock so as to adversely affect the Series D Preferred Stock, without the approval of the holders of at least 85% of the aggregate number of then-outstanding shares of Series D Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, and without limiting the foregoing, the authorization or issuance of any series of Preferred Stock with preference or priority over, or being on a parity with, the Series D Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation (other than any Permitted Dilutive Issuance) shall be deemed to adversely affect the Series D Preferred Stock.

(f) Optional Conversion.

(i) Each share of Series D Preferred Stock may be converted at any time, at the option of the holder thereof, into (y) the number of fully-paid and nonassessable shares of Common Stock obtained by dividing (i) the Stated Value thereof together with any accrued but unpaid dividends thereon through the conversion date (calculated in accordance with Section 4(c)) by (ii) the Conversion Price then in effect (the rate at which Series D Preferred Stock converts into Common Stock, as used in this Section 4, the "Conversion Rate") and (z) cash, if any, payable in lieu of the issuance of fractional shares (as provided in Section 4(f)(iii)); provided, however, that on any redemption of any Series D Preferred Stock as and to the extent provided in this Section 4 or any liquidation, dissolution or winding up of the Corporation, the right of conversion shall terminate at the close of business on the full business day next preceding the date fixed for such redemption or for the payment of any amounts distributable on liquidation, dissolution or winding up of the Corporation to the holders of Series D Preferred Stock.

(ii) The initial Conversion Rate for the Series D Preferred Stock shall be one share of Common Stock for each share of Series D Preferred Stock surrendered for conversion, reflecting an initial Conversion Price of \$5.935028 per share of Common Stock. The applicable Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(iii) No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon conversion of Series D Preferred Stock. If more than one certificate evidencing shares of Series D Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series D Preferred Stock so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of such aggregate number of shares of Series D Preferred Stock, the Corporation shall pay to any such surrendering holder cash, in lieu of any such fractional share, in an amount equal to the same fraction

of the Fair Market Value of one share of Common Stock as of the close of business on the day of conversion.

(iv) Whenever the Conversion Price shall be adjusted as provided in Section 4(g), the Corporation shall forthwith file, at each office designated for the conversion of Series D Preferred Stock, a statement, signed by the Chairman of the Board, the Chief Executive Officer, any Vice President or the Treasurer of the Corporation, showing in reasonable detail the facts requiring such adjustment and the Conversion Price and Conversion Rate that will be effective after such adjustment. The Corporation shall also mail to each holder of Series D Preferred Stock a notice setting forth in reasonable detail any such adjustments and the information required to be filed pursuant to the immediately preceding sentence to be sent by mail, first class, postage prepaid, to each record holder of Series D Preferred Stock at his, her or its address appearing on the Corporation's stock register. If such notice relates to an adjustment resulting from an event referred to in Section 4(g)(vi), such notice shall be included as part of the notice required to be mailed and published under the provisions of Section 4(g)(vi) hereof.

(v) In order to exercise the conversion privilege set forth in Section 4(f)(i), the holder of any Series D Preferred Stock to be converted shall surrender his, her or its certificate or certificates therefor to the principal office of the transfer agent for the Series D Preferred Stock (or if no transfer agent be at the time appointed, then the Corporation at its principal office), and shall give written notice to the Corporation at such office that the holder elects to convert the Series D Preferred Stock represented by such certificates, or any number thereof. Such notice shall also state the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, subject to any restrictions on transfer relating to shares of the Series D Preferred Stock or shares of Common Stock issuable upon conversion thereof. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly authorized in writing. The date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of the certificates and notice shall be the conversion date. As soon as practicable after receipt of such notice and the surrender of the certificate or certificates for Series D Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered at such office to such holder, or on his, her or its written order, (i) a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof (calculated in accordance with Section 4(f)(i)) and (ii) cash, if any, payable in lieu of fractional shares (as provided in Section 4(f)(iii)); provided, however, that if there is not then in effect a registration statement under the Securities Act covering the issuance of such Common Stock and if such holder shall request that a certificate for Common Stock issuable on such conversion be made to the order of any person other than that of such holder as set forth in the Corporation's stock register, the Corporation may require the holder to deliver an opinion of counsel reasonably satisfactory to the Corporation to the effect that such issuance is in compliance with the Securities Act and any applicable state's blue sky laws.

(vi) The Corporation shall at all times when shares of Series D Preferred Stock remain outstanding reserve and keep available out of its authorized but unissued stock, for the purposes of effecting the conversion of the Series D Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series D Preferred Stock. Before taking any action which would cause an adjustment reducing the conversion price below the then par value of the shares of Common Stock issuable upon conversion of the Series D Preferred Stock, the Corporation shall take all corporate action which may be necessary in order that the Corporation may validly and legally issue fully-paid and nonassessable shares of such Common Stock at such adjusted conversion price.

(vii) All shares of Series D Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate excepting only the right of the holder thereof to receive shares of Common Stock in exchange therefor (calculated in accordance with Section 4(f)(i)) and cash, if any, as provided in Section (iii) of this Section 4(f) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. Any shares of Series D Preferred Stock so converted shall be retired and cancelled and shall not be reissued as shares of Series D Preferred Stock, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series D Preferred Stock accordingly.

(g) Anti-Dilution Provisions.

(i) In order to prevent dilution of the rights granted hereunder, the Conversion Price shall be subject to adjustment from time to time in accordance with this Section 4(g). For purposes of this Section 4(g), the term "Number of Common Shares Deemed Outstanding" at any given time shall mean the sum of (A) the number of shares of Common Stock outstanding at such time, (B) the number of shares of Common Stock issuable assuming conversion, exercise or exchange at such time of all outstanding Preferred Stock, Options and Convertible Securities and (C) (without duplication) the number of shares of Common Stock issuable with respect to any securities of the types described in Section 4(g)(v) outstanding at such time.

During the Ratchet Adjustment Period, except (x) with respect to a Permitted Dilutive Issuance, (y) as provided in Section 4(g)(v) or (z) with respect to the issuance of additional securities to holders of the same class of securities without consideration in order to effect a stock split or similar subdivision (for which adjustments shall be made if required pursuant to clauses (ii), (iii) and (iv) of this Section 4(g), whether or not such stock split or subdivision occurs during the Ratchet Adjustment Period), so long as any shares of Series D Preferred Stock remain outstanding, if the Corporation issues and sells (A) Common Stock at a purchase price that is lower than the Conversion Price in effect immediately prior to the issuance of such Common Stock, (B) Convertible Securities or Options with an exercise price to purchase Common Stock on the date of issuance thereof that is lower than the then effective Conversion Price on such date, or (C) Convertible Securities or Options with a right to convert or exchange into Common Stock at an

effective conversion price which is lower than the Conversion Price on the date of issuance or conversion, as applicable, then, in each case, forthwith upon such issue and sale (each, a "Ratchet Triggering Transaction"), the Conversion Price shall be reduced to equal such purchase price, exercise price or exchange price, as the case may be, and the Conversion Rate shall be correspondingly adjusted; provided, however, that, during the Ratchet Adjustment Period, in no event shall the Conversion Price be reduced to less than \$4.316384 (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares of Common Stock); provided, further, that if, during the Ratchet Adjustment Period, a Ratchet Triggering Transaction would, but for the operation of the immediately preceding proviso, cause the reduction of the Conversion Price to an amount less than \$4.316384 (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares of Common Stock), then the Conversion Price (i) shall be reduced to equal \$4.316384 (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares of Common Stock) and (ii) after giving effect to the reduction described in the immediately preceding clause (i), shall be further adjusted on a weighted average basis (using the same methodology provided for in Section 4(g)(ii)) for the marginal dilution resulting from the difference between \$4.316384 (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares of Common Stock) and the actual purchase price, exercise price, conversion price or exchange price as the case may be, of the securities issued in such Ratchet Triggering Transaction (such adjustment to be determined in good faith by the Board of Directors), and the Conversion Rate shall be correspondingly adjusted. For purposes of determining the adjusted Conversion Price under this Section 4(g)(i), Sections 4(g)(ii)(C) through (G), inclusive, shall be applicable.

(ii) After the conclusion of the Ratchet Adjustment Period, except as provided in Section 4(g)(v), if the Corporation shall issue or sell, or shall in accordance with Sections 4(g)(ii)(A) to (I), inclusive, be deemed to have issued or sold, any shares of its Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, in each case, forthwith upon such issue or sale (each, a "Triggering Transaction"), the Conversion Price shall, subject to Clauses (A) to (I) of this Section 4(g)(ii), be reduced to the Conversion Price (calculated to the nearest ten thousandth of a cent) determined by dividing:

(1) an amount equal to the sum of (x) the product derived by multiplying the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction by the Conversion Price then in effect, plus (y) the consideration, if any, received by the Corporation upon consummation of such Triggering Transaction, by

(2) an amount equal to the sum of (x) the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction plus (y) the number of shares of Common Stock issued (or deemed to be issued in accordance with Sections 4(g)(ii)(A) to (I)) in connection with the Triggering Transaction.

For purposes of determining the adjusted Conversion Price under this Section 4(g)(ii), the following Clauses (A) to (I), inclusive, shall be applicable:

(A) In case the Corporation at any time shall in any manner grant (whether directly or by assumption in a merger or otherwise) any Options to purchase shares of Common Stock or Convertible Securities, whether or not such Options or the right to convert or exchange such Convertible Securities are immediately exercisable, and the price per share for which the shares of Common Stock are issuable upon exercise (determined by dividing (x) the total amount, if any, received or receivable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities on the date of the issue or sale of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Option, then the total maximum amount of Common Stock issuable upon the exercise of such Options or in the case of Options for Convertible Securities, upon the conversion or exchange of such Convertible Securities shall (as of the date of granting of such Options) be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such shares of Common Stock or such Convertible Securities upon the exercise of such Options or such shares of Common Stock upon conversion or exchange of such Convertible Securities, except as otherwise provided in Section 4(g)(ii)(C).

(B) In case the Corporation at any time shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to convert or exchange thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (x) the total amount received or receivable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, to the Corporation upon the conversion or exchange thereof,

by (y) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall (as of the date of the issue or sale of such Convertible Securities) be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon exercise of the rights to convert or exchange under such Convertible Securities, except as otherwise provided in Section 4(g)(ii)(C).

(C) If the purchase price provided for in any Options referred to in Section 4(g)(ii)(A), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section 4(g)(ii)(A) or (B), or the rate at which any Convertible Securities referred to in Section 4(g)(ii)(A) or (B) are convertible into or exchangeable for Common Stock shall change at any time other than under or by reason of provisions thereof designed to protect against dilution (any such change, an "Adjustment"), then:

(I) Unless the issuance of such Options or Convertible Securities occurred during the Ratchet Adjustment Period and the Adjustment of such Options or Convertible Securities occurred after the conclusion of the Ratchet Adjustment Period, then the Conversion Price in effect at the time of such change shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities, to the extent outstanding immediately prior to such Adjustment, provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and

(II) If the issuance of such Options or Convertible Securities occurred during the Ratchet Adjustment Period and the Adjustment of such Options or Convertible Securities occurred after the conclusion of the Ratchet Adjustment Period, then the Conversion Price shall be readjusted on a weighted average basis for the marginal dilution resulting from the difference in the purchase price, exercise price, conversion price or exchange price, as the case may be, of such Options or Convertible Securities immediately before and after such Adjustment, as determined in good faith by the Board of Directors.

(D) On the expiration of any Option or the termination of any right to convert or exchange any Convertible Securities (any such expiration or termination, a "Termination"), then:

(I) Unless the issuance of such Options or Convertible Securities occurred during the Ratchet Adjustment Period and the Termination of such Options or Convertible Securities occurred after the

conclusion of the Ratchet Adjustment Period, then the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such Termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such Termination, never been issued.

(II) If the issuance of such Options or Convertible Securities occurred during the Ratchet Adjustment Period and the Termination of such Options or Convertible Securities occurred after the conclusion of the Ratchet Adjustment Period, then the Conversion Price shall be readjusted on a weighted average basis for the marginal dilution avoided by such Termination, as determined in good faith by the Board of Directors.

(E) In case any Options shall be issued in connection with the issue or sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, the aggregate consideration received by the Corporation in such transaction shall be allocated among such Options and such other securities of the Corporation as shall be determined in good faith by the Board of Directors.

(F) In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold or deemed to have been issued or sold exclusively for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than or in addition to cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration as determined in good faith by the Board of Directors; provided, however, that if the Corporation issues or sells shares of Common Stock, Options or Convertible Securities for services other than bona fide services rendered to the Corporation in connection with the Corporation's bona fide financing activities, such services will not be deemed to be consideration. In case any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be determined in good faith by the Board of Directors. In each case the amount of consideration received by the Corporation shall be determined without deduction of any expenses incurred or any underwriting or other commissions, fees, discounts or concessions allowed by the Corporation in connection therewith.

(G) The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock for the purpose of this Section 4(g)(ii).

(H) In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock, Options, or Convertible Securities (other than a dividend in Common Stock payable to the holders of Common Stock as contemplated by Section 4(g)(iii)), then in such case any Common Stock, Options or Convertible Securities issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

(I) For purposes of this Section 4(g), in case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (x) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities (other than a dividend in Common Stock payable to the holders of Common Stock as contemplated by Section 4(g)(iii)) or (y) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right or subscription or purchase, as the case may be.

(iii) In case the Corporation shall at any time subdivide (other than by means of a dividend payable in Common Stock as contemplated by Sections 4(g)(ii)(H) and (I)) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be reduced to equal the number that is obtained by multiplying the Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision and denominator of which shall be the number of shares of Common Stock outstanding immediately after such subdivision, and, conversely, in case the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be increased to equal the number that is obtained by multiplying the Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such combination and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such combination.

(iv) In the event that any capital reorganization or reclassification of the capital stock of the Corporation or consolidation or merger of the Corporation with or into any other entity or share exchange involving the outstanding shares of the Corporation's capital stock or the sale or other disposition of all or substantially all of the Corporation's assets to another entity (each, a "Capital Reorganization") shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities, cash or other property with respect to or in exchange for Common Stock, then, as a condition of such Capital Reorganization, unless each holder of Series D Preferred Stock has made a valid election as contemplated by Section 4(d)(ii), lawful and adequate provision shall be made whereby holders of Series D Preferred Stock shall have the right to acquire and receive upon conversion of each share of Series D Preferred Stock such stock, securities, cash or other property issuable or payable (as part of such Capital



Reorganization) with respect to or in exchange for such number of outstanding shares of Common Stock as would have been received upon conversion of one share of Series D Preferred Stock at the Conversion Price then in effect (calculated in accordance with Section 4(f)(i)); and, in any such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions of this Section 4(g) with respect to the rights and interest after such Capital Reorganization of holders of Series D Preferred Stock, to the end that the provisions set forth in this Section 4(g) shall thereafter be applicable, as nearly as reasonably may be practicable, in relation to any stock, securities, cash or other property deliverable upon the conversion of the Series D Preferred Stock. The Corporation will not effect any Capital Reorganization, unless prior to the consummation thereof the successor entity (if other than the Corporation) resulting from such Capital Reorganization (including the entity which shall have purchased or otherwise acquired all or substantially all of the Corporation's assets) shall have assumed by written instrument mailed or delivered to the holders of the Series D Preferred Stock at the last address of each such holder appearing on the books of the Corporation, the obligation to deliver to each such holder stock, securities, cash or other property as, in accordance with the foregoing provisions, such holder may be entitled to receive. The foregoing provisions shall similarly apply to successive Capital Reorganizations.

(v) The provisions of this Section 4(g) shall not apply to: (x) the issuance of any Preferred Stock sold or issued pursuant to (i) the Securities Purchase Agreement, (ii) the Exchange Agreement or (iii) a Permitted Dilutive Issuance or (y) any Common Stock (i) issued or issuable pursuant to any stock option, stock purchase or similar plan or arrangement for the benefit of employees or directors of the Corporation or its Subsidiaries in effect on the Recapitalization Date or thereafter adopted by the Board of Directors, (ii) issued or issuable pursuant to options, warrants and conversion rights in existence on the Recapitalization Date or (iii) issued or issuable upon conversion of the Preferred Stock.

(vi) In the event that:

(A) the Corporation shall declare any cash dividend upon its Common Stock,

(B) the Corporation shall declare any dividend upon its Common Stock payable in stock or make any special dividend or other distribution to the holders of its Common Stock (other than a dividend or distribution made in order to effect a stock split or similar subdivision as contemplated by Section 4(g)(iii)),

(C) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights,

(D) there shall occur any capital reorganization or reclassification of the capital stock of the Corporation, including, without

limitation, any subdivision or combination of the outstanding shares of Common Stock (other than a subdivision made in order to effect a stock split or similar subdivision as contemplated by Section 4(g)(iii)), or, prior to the giving of a Required Sale Notice in accordance with Section 4(i), any consolidation or merger of the Corporation with or into any other entity (other than a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series D Preferred Stock, as determined in good faith by the Board of Directors) or any sale or other disposition (other than a mortgage or pledge as security) of all or substantially all of the assets of the Corporation in one or a series of related transactions (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of the Series D Preferred Stock, as determined in good faith by the Board of Directors), or

(E) there shall be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

then, in connection with such event, the Corporation shall give to the holders of the Series D Preferred Stock:

(1) at least ten (10) business days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, liquidation, dissolution or winding-up; and

(2) in the case of such dissolution, reorganization, reclassification, consolidation, merger, sale, liquidation or winding up, at least ten (10) business days' prior written notice of the date when the same shall take place.

Such notice in accordance with the foregoing Clause (1) of this Section 4(g)(vi) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing Clause (2) of this Section 4(g)(vi) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, liquidation, dissolution or winding up. Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of the Series D Preferred Stock at the address of each such holder as shown on the books of the Corporation.

(vii) If at any time or from time to time on or after the Recapitalization Date, the Corporation shall grant, issue or sell any Options, Convertible Securities or rights to purchase property (such Options, Convertible Securities or rights are herein referred to in this Section 4 as the "Purchase Rights") pro rata to the record holders of any class of Common Stock of the Corporation and such grants, issuances or sales do not

result in an adjustment of the Conversion Price under Section 4(g)(i) or (ii), then each holder of Series D Preferred Stock (other than a holder who has validly made an election as contemplated by Section 4(d)(ii)) shall be entitled to acquire (within thirty (30) days after the later to occur of the initial exercise date of such Purchase Rights or receipt by such holder of the notice concerning Purchase Rights to which such holder shall be entitled under Section 4(g)(v)) and upon the terms applicable to such Purchase Rights either:

(A) the aggregate Purchase Rights which such holder could have acquired if it had held the number of shares of Common Stock acquirable upon conversion of the Series D Preferred Stock immediately before the grant, issuance or sale of such Purchase Rights; provided that if any Purchase Rights were distributed to holders of shares of Common Stock without the payment of additional consideration by such holders, corresponding Purchase Rights shall be distributed to the exercising holders of Series D Preferred Stock as soon as possible after such exercise and it shall not be necessary for the exercising holders of Series D Preferred Stock to specifically request delivery of such rights; or

(B) in the event that any such Purchase Rights shall have expired or shall expire prior to the end of said thirty (30) day period, the number of shares of Common Stock or the amount of property which such holder could have acquired upon such exercise at the time or times at which the Corporation granted, issued or sold such expired Purchase Rights.

(viii) If any event occurs as to which, in the good faith determination of the Board of Directors, the provisions of this Section 4(g) are not strictly applicable or if strictly applicable would not fairly protect the rights of the holders of Series D Preferred Stock in accordance with the essential intent and principles of such provisions, then the Board of Directors shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to protect such rights as aforesaid, but in no event shall any such adjustment have the effect of increasing the Conversion Price as otherwise determined to any of the provisions of this Section 4(g) except in the case of a combination of shares of a type contemplated in Section 4(g)(iii) and then in no event to an amount larger than the Conversion Price as adjusted pursuant to Section 4(g)(iii). Such essential intent and principles shall be discerned only by reference to this Certificate of Incorporation.

(ix) The holders of not less than 85% of the outstanding shares of Series D Preferred Stock may waive in writing, with respect to a specific issuance of securities identified in such waiver, any adjustment to the Conversion Price pursuant to Section 4(g)(ii) other than any adjustment pursuant to Section 4(g)(ii)(H), provided, however, that such waiver shall apply only as to a specific issuance of securities identified in such waiver.

(h) Coordinated Conversion.

(i) Immediately upon the closing of a Qualified Public Offering (as hereinafter defined), each share of Series D Preferred Stock shall automatically be converted (as used in this Section 4, a "Mandatory Conversion") into (y) that number of fully paid and nonassessable shares of Common Stock obtained by dividing the Stated Value thereof by the Conversion Price then in effect and (z) the right to receive an amount in cash equal to all accrued but unpaid dividends. For the purposes of this Section 4, a "Qualified Public Offering" shall mean an underwritten public offering (or a combination of offerings) pursuant to effective registration under the Securities Act covering the offer and sale of Common Stock for the account of the Corporation in which the gross proceeds to the Corporation (determined without deduction of any expenses incurred or any underwriting or other commissions, fees, discounts or concessions) are not less than \$50,000,000 and which places upon the Corporation a value (prior to the receipt of proceeds of such offering) of at least \$200 million; provided that:

(A) if the offering occurs within one year of the Recapitalization Date the sales price of one share of Common Stock to the public generally in such offering must at least be equal to the number that is obtained by multiplying 1.4 by the then effective Conversion Price; or

(B) if the offering occurs after one year but prior to two years from the Recapitalization Date the sales price of one share of Common Stock to the public generally in such offering must at least be equal to the number that is obtained by multiplying 1.75 by the then effective Conversion Price; or

(C) if the offering occurs after two years or more of the Recapitalization Date the sales price of one share of Common Stock to the public generally in such offering must at least be equal to the number that is obtained by multiplying 2 by the then effective Conversion Price.

In addition, each share of Series D Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate (calculated in accordance with Section 4(f)(i)) and Conversion Price for such shares upon the approval to so convert of the Corporation and the holders of at least 85% of the then-outstanding shares of Series D Preferred Stock and the then-outstanding Series E Preferred Stock, if any, acting together as a single class (based on aggregate stated value), given in writing or by vote at a meeting (such automatic conversion, as used in this Section 4, a "Voluntary Conversion" and, together with a Mandatory Conversion, a "Coordinated Conversion").

(ii) Prior to any Coordinated Conversion, all holders of record of shares of Series D Preferred Stock will be given at least ten (10) days' written notice of the date fixed for such Coordinated Conversion. Such notice will be sent by mail, first class, postage prepaid, to each record holder of shares of Series D Preferred Stock at such holder's address appearing on the Corporation's stock register. On or before the date or estimated date fixed for conversion each holder of shares of Series D Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates

for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 4(h), together with any cash payable in lieu of any fractional shares (as provided in Section 4(f)(iii)) and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends. On the date fixed for conversion, all rights with respect to the Series D Preferred Stock so converted will terminate, excepting only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such shares of Series D Preferred Stock have been converted (calculated in accordance with Section 4(h)(i)), cash as provided in Section 4(f)(iii) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered holders or by their respective attorneys duly authorized in writing. All certificates evidencing shares of Series D Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date fixed for conversion, be deemed to have been retired and cancelled and the shares of Series D Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date or the failure of the Corporation to give notice under this Section 4(h)(ii). As soon as practicable after the date of such Coordinated Conversion and the surrender of the certificate or certificates for Series D Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion (calculated in accordance with Section 4(h)(i)) in accordance with the provisions hereof, cash as provided in Section 4(f)(iii) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion (calculated in accordance with Section 4(h)(i)) and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends; provided, however, that if there is not then in effect a registration statement covering the issuance of such Common Stock and if the holder shall request that a certificate for Common Stock issuable on such conversion be made to the order of any person other than that of the holder as set forth in the Corporation's stock register, the Corporation may require the holder to deliver an opinion of counsel reasonably satisfactory to the Corporation to the effect that such issuance is in compliance with the Securities Act and any applicable state's blue sky laws.

(i) Required Sale.

(i) Required Sale Notice. During the period commencing on August 5, 2006 and ending on September 5, 2006, the holders of a majority of the then-outstanding shares of Series D Preferred Stock and Series E Preferred Stock (it being understood that for the purpose of Sections 4(i)(i) and 4(i)(ii), a person shall be deemed to be the holder of any shares deposited in trust by such person pursuant to the Amended & Restated Trust Agreement (as defined in the Securities Purchase Agreement)), acting together as a single class (based on aggregate stated value) (collectively, the "Requesting Holders") may, in their sole discretion, provide written notice (a "Required Sale Notice")

to the Corporation at its principal office and to the attention of the General Counsel of the Corporation requiring that the Corporation, within 90 days of the date of such Required Sale Notice, engage an Independent Investment Banker (as defined below), chosen by the Corporation and reasonably satisfactory to the Requesting Holders representing a majority (based on aggregate stated value) of the shares of Common Stock held by the Requesting Holders (collectively, the "Majority Holders"), to seek one or more third-party purchasers with respect to all of the outstanding Series D Preferred Stock and Series E Preferred Stock or all or substantially all the assets of the Corporation (or such lesser portion of the Corporation's assets as is adequate to fund payment of the Liquidation Amount in respect of such Series D Preferred Stock and Series E Preferred Stock) or to sell securities for consideration sufficient to fund such payment (a "Required Sale"), it being understood and agreed that the objective of such Required Sale shall be to simply obtain at least sufficient proceeds to enable the Corporation to redeem all of the then-outstanding shares of the Series D Preferred Stock and Series E Preferred Stock in full, in cash, in accordance with their respective terms (or to otherwise ensure that all of the then-outstanding shares of Series D Preferred Stock and the Series E Preferred Stock receive proceeds in cash in an amount at least equal to their respective Liquidation Amounts). At any time after the giving of a Required Sale Notice, the Majority Holders may withdraw their request that the Corporation pursue a Required Sale, by providing a written notice (a "Withdrawal Notice") to the Corporation revoking such request. As used herein, an "Independent Investment Banker" shall be any firm of investment bankers of national repute which is not an Affiliate of the Corporation.

(ii) Opt-Out Shares. Concurrently with the delivery by the Requesting Holders of a Required Sale Notice to the Corporation as provided in Section 4(i)(i), the Requesting Holders shall provide each of the other holders of then-outstanding shares of Series D Preferred Stock and/or Series E Preferred Stock (collectively, the "Non-Requesting Holders") a copy of such Required Sale Notice, whereupon each Non-Requesting Holder shall have the right, exercisable only within 30 days of the date of such Required Sale Notice, time being of the essence, by binding and irrevocable notice to the Corporation and to the Requesting Holders, to designate all, but not less than all, of its then-outstanding shares of Series D Preferred Stock and Series E Preferred Stock as "Opt-Out Shares" under this Section. The Corporation shall also be entitled to deliver a copy of such Required Sale Notice to the Non-Requesting Holders. As used herein, "Opt-In Shares" shall mean any and all of the then-outstanding shares of Series D Preferred Stock and Series E Preferred Stock other than the Opt-Out Shares designated in accordance with the terms of this Section 4(i)(ii).

(iii) Engagement of Independent Investment Banker. As soon as reasonably practicable after receipt of the Required Sale Notice (and in any event within 90 days after receipt of the Required Sale Notice), unless the Corporation shall have received a Withdrawal Notice, the Corporation shall engage an Independent Investment Banker, chosen by the Corporation and reasonably satisfactory to the Majority Holders, to seek one or more bona fide third-party purchasers with respect to a Required Sale.

(iv) Consummation of Required Sale. Provided that a Required Sale Notice shall have been received by the Corporation and the Corporation shall not have

received a Withdrawal Notice, the Corporation shall use its reasonable best efforts to consummate a Required Sale of the Corporation on or prior to June 5, 2007. In furtherance, and not in limitation, of the foregoing, the Corporation shall negotiate in good faith with one or more potential purchasers (whether obtained by the Independent Investment Banker or otherwise) with respect to any transaction meeting the requirements set forth in Section 4(i)(i). Notwithstanding the foregoing, the Corporation shall not be required to consummate a Required Sale if such consummation would violate applicable law or regulatory requirements.

(v) Optional Redemption. At any time after the Corporation shall have received the Required Sale Notice and prior to June 5, 2007 (unless the Corporation shall have received a Withdrawal Notice), the Corporation may, at its option, redeem all, but not less than all, of the Opt-In Shares at a redemption price, in cash, equal to the applicable Liquidation Amount on the date specified for redemption. Upon the redemption in full in cash of all of the Opt-In Shares as provided above, the obligations of the Corporation under this Section 4(i) shall terminate.

(vi) Mandatory Redemption. Provided that a Required Sale Notice shall have been timely received by the Corporation and the Corporation shall not have received a Withdrawal Notice, if either (x) a Required Sale of the Corporation is not consummated or (y) all of the Opt-In Shares shall not have been redeemed in full in cash in accordance with Section 4(i)(v), in each case, on or prior to June 5, 2007, then, on June 5, 2007, the Corporation shall redeem all, and not less than all, of the Opt-In Shares at a redemption price, in cash, equal to the applicable Liquidation Amount on such date. Upon the redemption in full in cash of all of the Opt-In Shares as provided above, the obligations of the Corporation under this Section 4(i) shall terminate.

(vii) Required Financing. Provided that a Required Sale Notice shall have been received by the Corporation and the Corporation shall have not received a Withdrawal Notice, if, at any time after February 5, 2007 and prior to June 5, 2007, the Corporation shall not reasonably believe that a Required Sale of the Corporation meeting the requirements set forth in Section 4(i)(i) shall be consummated on or prior to June 5, 2007, then the Corporation (without prejudice to its obligations to use its reasonable best efforts to consummate a Required Sale of the Corporation) shall use its reasonable best efforts to obtain financing on commercially reasonable terms (to the extent necessary) in an amount sufficient to allow the Corporation to be able to timely fulfill its obligations under Section 4(i)(vi).

(viii) Termination. The obligations of the Corporation under this Section 4(i) shall terminate upon the earliest to occur of the following:

(A) the holders of a majority of the then-outstanding shares of Series D Preferred Stock and Series E Preferred Stock shall have converted such shares of Series D Preferred Stock and Series E Preferred Stock into shares of Common Stock;

(B) the holders of shares of Series D Preferred Stock and/or Series E Preferred Stock shall not have approved, by the requisite statutory vote, the Corporation's entering into an agreement for a Required Sale of the Corporation (but only if such Required Sale of the Corporation would have resulted in the holders of the Series D Preferred Stock and the Series E Preferred Stock receiving cash proceeds in an amount at least equal to their respective Liquidation Amounts), if any such vote is required;

(C) there shall be no outstanding shares of Series E Preferred Stock and no outstanding shares of Series D Preferred Stock;

(D) the Corporation shall have consummated a Required Sale in accordance with the terms of this Section or shall have redeemed the Opt-In Shares pursuant to Sections 4(i)(v) or (vi); and

(E) if the Corporation has not received a timely Required Sale Notice pursuant to Section 4(i)(i), then 5:01 p.m. New York City local time on September 5, 2006, time being of the essence.

(j) Special Redemption.

(i) (A) Provided that no Required Sale Notice shall have been delivered pursuant to Section 4(i) or 5(i), during the period commencing on September 15, 2006 and ending on October 15, 2006, each Minority Holder may, in its sole discretion and acting individually, provide written notice (a "Special Redemption Notice") to the Corporation at its principal office and to the attention of the General Counsel of the Corporation requiring that the Corporation redeem, on June 5, 2009, all, and not less than all, of the then-outstanding shares of Series D Preferred Stock and Series E Preferred Stock held by such Minority Holder (collectively, the "Subject Shares") at a redemption price, in cash, equal to the Liquidation Amount thereof on such date (it being understood and agreed that the Corporation shall, at all times after the date of the Special Redemption Notice and prior to June 5, 2009, be entitled, but not obligated, to redeem Subject Shares, at such times and in such amounts as it shall determine in its sole discretion, in each case at a redemption price, in cash, equal to the Liquidation Amount thereof on the date or dates specified by the Corporation for redemption).

(B) Notwithstanding Section 4(j)(i)(A) to the contrary, if the Board of Directors determines in good faith, within 30 days of the date of the applicable Special Redemption Notice, that sufficient funds (including from outside sources) shall not be reasonably available to the Corporation on June 5, 2009 to enable the Corporation to duly satisfy its obligation to redeem outstanding Subject Shares on June 5, 2009 as provided therein, then the Corporation, by binding and irrevocable notice to the applicable Minority Holder delivered to such Minority Holder within 40 days of the date of the applicable Special Redemption Notice (the "Dividend Ratchet Election Notice"), shall not be required to satisfy its obligation to redeem outstanding Subject Shares on June 5, 2009 as provided



above; provided that the Dividend Rate applicable to the Subject Shares shall be increased on the last business day of each March, June, September and December occurring after June 5, 2007 by 0.50% per annum (provided, however, in no event shall the Dividend Rate exceed fifteen percent (15%) per annum) (it being understood and agreed that the Corporation shall, at all times after the Dividend Ratchet Election, be entitled, but not obligated, to redeem Subject Shares, at such times and in such amounts as it shall determine in its sole discretion, in each case at a redemption price, in cash, equal to the Liquidation Amount thereof on the date or dates specified by the Corporation for redemption). The Corporation may, at its option, issue to the applicable Minority Holders, in exchange for the Subject Shares, shares of a new series of preferred stock which shall contain provisions substantially identical to the provisions of the Series D Preferred Stock or the Series E Preferred Stock, as applicable, exchanged therefor, except as otherwise provided in Section 4(j) or 5(j), as applicable, (the "Minority Holder Exchange Securities"), which Minority Holder Exchange Securities shall vote together with the Series D Preferred Stock or Series E Preferred Stock, as applicable, with the same relative voting power as the Subject Shares had immediately prior to such exchange. Notwithstanding anything to the contrary herein, the Minority Holder Exchange Securities shall not have any provisions analogous to those of the Series D Preferred Stock or the Series E Preferred Stock, as applicable, set forth in Section 4(f), 4(g), 4(h), 4(i), 4(j), 5(f), 5(g), 5(h), 5(i) or 5(j). At all times after the Corporation shall have delivered the Dividend Ratchet Election Notice, each holder of Subject Shares shall be entitled to surrender its certificates representing any portion of the Subject Shares to the Corporation and receive, in lieu thereof, new certificates representing such Subject Shares, which new certificates shall, in addition to any other applicable legends, be stamped or otherwise imprinted with a legend in the following form:

THE CORPORATION HAS MADE THE ELECTION UNDER SECTION 4(j)(i)(B) OF THE CORPORATION'S RESTATED CERTIFICATE OF INCORPORATION AND THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ENTITLED TO DIVIDENDS PURSUANT TO SECTIONS 4(c) AND 4(j) OF ARTICLE IV OF THE CORPORATION'S RESTATED CERTIFICATE OF INCORPORATION.

(ii) Notwithstanding anything to the contrary set forth in this Section 4, at all times after the date of any Special Redemption Notice delivered by a Minority Holder with respect to its Subject Shares:

(A) such Minority Holder shall, with respect to the Series D Preferred Stock constituting Subject Shares, be entitled, under the circumstances set forth in Section 4(d)(i) in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, to receive only an amount per share of Series D Preferred Stock equal to the Liquidation Amount thereof (and such Minority Holder shall no longer be entitled to receive an amount per share of Series D Preferred Stock equal to the greater of (x) the

Liquidation Amount thereof and (y) an amount equal to the amount which would be payable in respect of that number of shares of Common Stock into which one share of Series D Preferred Stock could be converted immediately prior to such liquidation, dissolution or winding up (assuming the conversion of all shares of Series D Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such liquidation, dissolution or winding up to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors);

(B) such Minority Holder shall, with respect to the Series D Preferred Stock constituting Subject Shares, be entitled, under the circumstances described in Section 4(d)(ii) in the event of any merger or consolidation of the Corporation into or with another corporation, a merger or consolidation of any other corporation into or with the Corporation, or the sale or other disposition of all or substantially all of the assets of the Corporation, to receive only an amount per share of Series D Preferred Stock equal to the Liquidation Amount thereof (and such Minority Holder shall no longer be entitled to elect to receive an amount per share of Series D Preferred Stock equal to the greater of (x) the Liquidation Amount thereof and (y) the type and amount of consideration as would be payable to the holder of that number of shares of Common Stock into which one share of Series D Preferred Stock could have been converted immediately prior to such event (assuming the conversion of all shares of Series D Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such event to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors); and

(C) such Minority Holder shall not, with respect to the Series D Preferred Stock constituting Subject Shares, be entitled to exercise the rights otherwise afforded such Minority Holder under, or otherwise be subject to the provisions of, Sections 4(f), 4(g), 4(h) and 4(i).

## SECTION 5: SERIES E PREFERRED STOCK

(a) Definitions. As used in this Section 5:

(i) "Conversion Price" shall mean the conversion price per share of Common Stock, as the same may be adjusted from time to time as provided for herein. The initial Conversion Price shall be \$4.316384.

(ii) "Election Notice" shall have the meaning ascribed to it in Section 5(d)(ii).

(iii) "Junior Stock" shall mean the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and any other

shares of capital stock of any series or class of the Corporation, whether presently outstanding or hereafter issued, which are designated in the instrument creating such series or class as ranking junior to the shares of Series E Preferred Stock in dividend right or in right of distribution upon liquidation, dissolution or winding up of the Corporation. Notwithstanding any other provision in this Certificate of Incorporation to the contrary, the Series E Preferred Stock shall rank pari passu with the Series D Preferred Stock in dividend right and in right of distribution upon liquidation, dissolution or winding up of the Corporation.

(iv) "Liquidation Amount" shall have the meaning ascribed to it in Section 5(d)(i).

(v) "Stated Value," when used with respect to each share of Series E Preferred Stock, shall mean the amount of \$4.316384.

(b) Preference and Parity. Unless the Corporation shall have obtained the requisite approval under Section 5(e), so long as any shares of Series E Preferred Stock remain outstanding, in no event shall any dividend or distribution of any kind whatsoever, whether in cash, securities or other property, be paid or declared or made on Junior Stock (other than dividends or distributions paid or payable in Junior Stock or rights to acquire Junior Stock or any cash payments required to be made in lieu of the issuance of fractional shares or cash dividends as provided in Section 2(h) or 3(h)). Unless the Corporation shall have obtained the requisite approval under Section 5(e), so long as any shares of Series E Preferred Stock remain outstanding, no shares of Junior Stock shall be purchased, redeemed, retired or otherwise acquired by the Corporation for consideration (other than Junior Stock or rights to acquire Junior Stock) (except (i) for the repurchase of stock from employees of the Corporation or its Subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment of such employees at purchase prices initially paid by such employees for such shares or pursuant to other employee repurchase agreements or arrangements, or similar arrangements with employees, in each case approved by the Board of Directors of the Corporation (or the compensation committee thereof), (ii) pursuant to the Corporation's obligation to purchase certain shares pursuant to the Stockholders Agreement and (iii) for cash payments required to be made in lieu of the issuance of fractional shares) unless the Corporation shall have, concurrently with any such purchase, redemption, retirement or other acquisition for consideration by the Corporation, offered to redeem the Series E Preferred Stock at the Liquidation Amount. Subject to the foregoing provisions and not otherwise, such dividends and distributions (payable in cash, securities or other property) as may be determined by the Board of Directors may be declared and paid on Junior Stock from time to time out of the remaining funds of the Corporation legally available therefor, and such purchases, redemptions, retirements or other acquisitions by the Corporation for consideration may be made.

So long as any shares of Series E Preferred Stock remain outstanding, except as contemplated in connection with redemptions in accordance with Section 5(i), 5(j), 4(i) or 4(j) and except as described in the next succeeding sentence, no dividends shall be declared or paid or set apart for payment on any series or class of stock of the Corporation ranking, as to dividends, on a parity with the Series E Preferred Stock, for any period (other than cash payments required to be made in lieu of the issuance of fractional shares, cash dividends as

provided in Section 4(h) and shares of Common Stock issued in connection with the conversion of Preferred Stock authorized under this Certificate of Incorporation) unless all accrued but unpaid dividends (calculated in accordance with Section 5(c) and, to the extent applicable, Section 5(j)) on the Series E Preferred Stock have been or contemporaneously therewith are declared and paid in full in cash or declared in full and a sum of cash irrevocably set apart sufficient for the payment thereof. When dividends are not paid in full or a sum sufficient for such payment is not irrevocably set apart, as aforesaid, upon the shares of Series E Preferred Stock and any other series or class of stock of the Corporation ranking on a parity as to dividends with the Series E Preferred Stock, all dividends declared upon such other stock shall be declared pro rata so that the amounts of dividends per share declared on the Series E Preferred Stock and such other stock shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of Series E Preferred Stock and on such other stock bear to each other.

So long as any shares of Series E Preferred Stock remain outstanding, except as contemplated by Section 5(i), 5(j), 4(i) and 4(j), no other shares of any series or class of stock of the Corporation ranking on a parity with the Series E Preferred Stock in dividend right or in right of distribution upon liquidation, dissolution or winding up shall be purchased, redeemed, retired or otherwise acquired for consideration by the Corporation (other than Junior Stock or rights to acquire Junior Stock) unless (i) all accrued but unpaid dividends (calculated in accordance with Section 5(c)) on the Series E Preferred Stock shall have been declared and paid in full in cash or declared in full and a sum of cash irrevocably set apart sufficient for the payment thereof and (ii) the Corporation shall have, concurrently with any such purchase, redemption, retirement or other acquisition for consideration, offered to purchase, redeem, retire or otherwise acquire for consideration, as the case may be, all shares of Series E Preferred Stock for the Stated Value thereof, if all shares of such other series or class of stock are being purchased, redeemed, retired or otherwise acquired for consideration by the Corporation, and if less than all such shares of such other series or class of stock are being purchased, redeemed, retired or otherwise acquired for consideration by the Corporation, then all such offers to repurchase, redeem, retire or otherwise acquire for consideration shall be made on a pro rata basis so that the amount of aggregate outstanding Stated Value of Series E Preferred Stock subject to the respective offer to repurchase, retirement or other acquisition for consideration and of such other stock shall in all cases bear to each other the same ratio that the aggregate outstanding stated value of such Series E Preferred Stock and of such other stock bear to each other.

(c) Dividend Rights. The holders of each share of Series E Preferred Stock shall be entitled to receive, if, when and as declared by the Board of Directors, out of funds legally available therefor, cumulative dividends in cash at 6% per annum of the Stated Value thereof (as may be adjusted with respect to Subject Shares pursuant to Section 5(j), the "Dividend Rate"). Dividends on outstanding shares of Series E Preferred Stock shall be cumulative and shall accrue from the date of issuance and compound quarterly (on the last business day of each March, June, September and December) at the Dividend Rate from the date of issuance, whether or not declared by the Board of Directors and whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year.

(d) Liquidation, Dissolution, Winding Up, Merger, Etc.

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series E Preferred Stock then-outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up prior and in preference to the Series E Preferred Stock upon such liquidation, dissolution or winding up (such stock, if any, being referred to in this Section 5 as "Senior Stock"), on a parity with the Series D Preferred Stock and each other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up on a parity with the Series E Preferred Stock (the Series D Preferred Stock and each other series or class of stock of the Corporation ranking on liquidation, dissolution or winding up on a parity with the Series E Preferred Stock being referred to in this Section 5 as "Parity Stock"), but before any payment shall be made to the holders of Junior Stock, an amount per share of Series E Preferred Stock equal to the greater of (x) the Stated Value (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares) plus an amount in cash equal to accrued but unpaid dividends (calculated in accordance with Section 5(c)) thereon through the date on which payment of such dividends is received (the "Liquidation Amount") and (y) an amount equal to the amount which would be payable in respect of that number of shares of Common Stock into which one share of Series E Preferred Stock could be converted immediately prior to such liquidation, dissolution or winding up (calculated in accordance with Section 5(f)(i)) (assuming the conversion of all shares of Series E Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such liquidation, dissolution or winding up to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). If, upon any such liquidation, dissolution or winding up, the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of all amounts required to be paid or distributed to holders of Senior Stock shall be insufficient to pay the holders of shares of Series E Preferred Stock and the holders of Parity Stock the full amount to which they shall be entitled, the holders of shares of Series E Preferred Stock and the holders of shares of Parity Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or in respect of said shares were paid in full.

(ii) Upon the occurrence of a merger or consolidation of the Corporation into or with another corporation (other than a Subsidiary of the Corporation, but only if the same shall not adversely affect the rights of the holders of Series E Preferred Stock, as determined in good faith by the Board of Directors), a merger or consolidation of any other corporation into or with the Corporation (other than a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series E Preferred Stock, as determined in good faith by the Board of Directors), or the sale or other disposition (other than a mortgage or pledge as security) of

all or substantially all of the assets of the Corporation to an entity which is not a Subsidiary of the Corporation (whether in a single transaction or a series of related transactions) (each, as used in this Section 5, a "Proposed Transaction"), after and subject to the payment in full of all amounts required to be distributed to the holders of Senior Stock and pro rata with all Parity Stock having similar rights to the holders of Series E Preferred Stock, the holders of Series E Preferred Stock will be entitled to elect (by compliance with the procedure set forth below in this Section 5(d)(ii)) to receive in respect of their shares of Series E Preferred Stock, in their sole discretion, either (i) the Liquidation Amount or (ii) the type and amount of consideration as would be payable to the holder of that number of shares of Common Stock into which one share of Series E Preferred Stock could have been converted immediately prior to the consummation of such Proposed Transaction (calculated in accordance with Section 5(f)(i)) (assuming the conversion of all shares of Series E Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such event to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). Notwithstanding the foregoing, if the assets and funds of the Corporation available for distribution to the holders of Series E Preferred Stock and the holders of Parity Stock shall be insufficient (after payment in full of all amounts required to be paid in respect of Senior Stock) to pay to the holders of Series E Preferred Stock and the holders of Parity Stock the full amount to which they shall be entitled, then the holders of Series E Preferred Stock and the holders of Parity Stock shall share ratably in any distribution of such assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares of Series E Preferred Stock or shares of Parity Stock, as the case may be, held by them upon such distribution if all amounts payable on or in respect of said shares were paid in full. At least five days prior to the date of the Merger Approval (as defined below) with respect to any Proposed Transaction, the Corporation shall deliver notice to the holders of Series E Preferred Stock setting forth (1) the Liquidation Amount as of the expected date of the consummation of such Proposed Transaction and (2) the type and amount of consideration as would be payable in such Proposed Transaction to the holder of that number of shares of Common Stock into which one share of Series E Preferred Stock could have been converted immediately prior to the consummation of such Proposed Transaction (assuming the conversion of all shares of Series E Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to the consummation of such Proposed Transaction to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors). No later than five days after any approval by the holders of Series E Preferred Stock of any Proposed Transaction pursuant to Section 5(e) (as used in this Section 5, "Merger Approval"), any holder of Series E Preferred Stock may make the election referred to above as to all such holder's shares of Series E Preferred Stock by delivering to the Corporation at its principal office (Attention: General Counsel) a written notice, duly executed by such holder, which shall state that such holder wishes to receive in full redemption of all shares of Series E Preferred Stock held by such holder either (A) the Liquidation Amount or (B) the consideration referred to in clause (ii) of the first sentence

of this Section 5(d)(ii) (but shall not elect both), and that such notice is irrevocable (an "Election Notice"). Contemporaneously with the delivery of such Election Notice, such holder shall surrender his, her or its certificate or certificates representing all such holder's shares of Series E Preferred Stock to the Corporation at its principal office (Attention: General Counsel). In the event that any such holder shall not have delivered an Election Notice or shall have delivered an Election Notice that does not comply with the above requirements in all material respects, then such holder shall be deemed to have elected to receive the consideration referred to in clause (i) of the first sentence of this Section 5(d)(ii).

(iii) If the consideration to be received by the holders of Series E Preferred Stock pursuant to any voluntary or involuntary liquidation, dissolution or winding up of the Corporation is other than cash, indebtedness or securities, the value of such consideration shall be its fair market value as determined in good faith by the Board of Directors. Any securities to be delivered pursuant to Section 5(d)(i) above shall be valued at the "Fair Market Value."

(e) Voting.

(i) Each issued and outstanding share of Series E Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series E Preferred Stock is then convertible (calculated in accordance with Section 5(f)(i)) (as adjusted from time to time pursuant to Section 5(g)), at each meeting of stockholders of the Corporation with respect to any and all matters presented to the holders of Common Stock of the Corporation for their action and in connection with any written consent in lieu of a meeting of stockholders, such number to be determined as of the date for determination of stockholders entitled to vote at the meeting or on the date for determining those stockholders entitled to consent to action by written consent in lieu of a meeting, as the case may be. Except as provided by law, by the provisions of this Section 5 or by the provisions of this Certificate of Incorporation establishing any other series of Preferred Stock, the holders of Series E Preferred Stock shall vote together with the holders of Common Stock, and any other classes of the Corporation's capital stock entitled to vote together with the Common Stock, as a single class.

(ii) In addition to any other rights provided by law, the Corporation shall not, without first obtaining the approval of the holders of at least 85% of the then-outstanding Series E Preferred Stock and the Series D Preferred Stock, voting together as a single class (based on aggregate stated value) (except with respect to matters specified in Section 5(e)(i)(A), with respect to which the holders of Series D Preferred Stock shall not be entitled to vote):

(A) amend, repeal, delete, supersede or otherwise modify any provision of the Corporation's Certificate of Incorporation or By-Laws, to the extent that the same would adversely affect the rights of the holders of Series E Preferred Stock (as determined in good faith by the holders of the Series E



Preferred Stock) (other than an amendment to permit any Permitted Dilutive Issuance);

(B) declare, make or pay, or take steps (including without limitation, the setting aside of funds) to authorize or effect the declaration, making or payment of, any dividends or other distributions on any Junior Stock (other than dividends or other distributions paid or payable in Junior Stock or rights to acquire Junior Stock) or purchase, redeem, retire or otherwise acquire, or take steps (including, without limitation, the setting aside of funds) to effect the purchase, redemption, retirement or other acquisition for consideration of, any Junior Stock for consideration (other than Junior Stock or rights to acquire Junior Stock) (except for the repurchase of stock from employees of the Corporation or its Subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment of such employees at purchase prices initially paid by such employees for such shares, pursuant to other employee repurchase agreements or arrangements, or similar arrangements with employees, in each case approved by the Board of Directors of the Corporation (or the compensation committee thereof), pursuant to the Corporation's obligation to repurchase certain shares pursuant to the Stockholders Agreement or the payment of cash in lieu of the issuance of fractional shares);

(C) excepting any issuances that are (i) a Permitted Dilutive Issuance, (ii) pursuant to the Securities Purchase Agreement or (iii) pursuant to the Exchange Agreement, issue or sell, or authorize or effect the issuance or sale by the Corporation of, any equity securities which are senior to, or pari passu with, the Series E Preferred Stock or issue or sell, or authorize or effect the issuance or sale by the Corporation of, any series or class of equity securities (or rights to acquire equity securities) which are convertible or exchangeable into or exercisable for any equity securities of the Corporation which rank senior to, or pari passu with, the Series E Preferred Stock; provided, however, that the rights granted under this Section 5(e)(ii)(C) shall not apply, after the giving of any Required Sale Notice in accordance with Section 5(i), to any transaction or group of transactions which are part of one strategic plan and that, in the aggregate, as determined in good faith by the Board of Directors, will enable the Corporation to timely fulfill its obligations under Section 5(i)(vi);

(D) authorize or effect any sale, lease, transfer, conveyance, mortgage, pledge or other disposition (other than a mortgage or pledge as security) of all or substantially all the assets of the Corporation (by merger, sale of stock or otherwise, in a single transaction or a series of related transactions) (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series D Preferred Stock, as determined in good faith by the Board of Directors); provided, however, that the rights granted under this Section 5(e)(ii)(D) shall not apply, after the giving of any Required Sale Notice in accordance with Section 5(i), to any transaction or group of transactions which are part of one strategic plan and that, in the aggregate, as determined in



good faith by the Board of Directors, will enable the Corporation to timely fulfill its obligations under Section 5(i)(vi);

(E) effect a subdivision, consolidation, conversion, reclassification or other modification of any capital stock of the Corporation if the effect of such subdivision, consolidation, conversion, reclassification or other modification is to impair or reduce or otherwise adversely affect the relative rights of the holders of the Series E Preferred Stock;

(F) authorize or effect any liquidation, dissolution or winding up of the Corporation or adopt or authorize the adoption of any plan for the same; or

(G) sell or otherwise transfer (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series D Preferred Stock, as determined in good faith by the Board of Directors), whether by sale of assets, sale of the capital stock of any subsidiary corporation or other subsidiary entity of the Corporation or otherwise, in a single transaction or a series of related transactions, any line of business of the Corporation having an aggregate fair market value, as determined in good faith by the Board of Directors, of at least \$50,000,000; provided, however, that the rights granted under this Section 5(e)(ii)(G) shall not apply, after the giving of any Required Sale Notice in accordance with Section 5(i), to any transaction or group of transactions which are part of one strategic plan and that, in the aggregate, as determined in good faith by the Board of Directors, will enable the Corporation to timely fulfill its obligations under Section 5(i)(vi).

(iii) The Corporation shall not amend, alter or repeal the preferences, special rights or other powers or privileges of the Series E Preferred Stock so as to adversely affect the Series E Preferred Stock, without the approval of the holders of at least 85% of the aggregate number of then-outstanding shares of Series E Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, and without limiting the foregoing, the authorization or issuance of any series of Preferred Stock with preference or priority over, or being on a parity with, the Series E Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation (other than any Permitted Dilutive Issuance) shall be deemed to adversely affect the Series E Preferred Stock.

(f) Optional Conversion.

(i) Each share of Series E Preferred Stock may be converted at any time, at the option of the holder thereof, into (y) the number of fully-paid and nonassessable shares of Common Stock obtained by dividing (i) the Stated Value thereof together with any accrued but unpaid dividends thereon through the conversion date (calculated in accordance with Section 5(c)) by (ii) the Conversion Price then in effect (the rate at which Series E Preferred Stock converts into Common Stock, as used in this

Section 5, the "Conversion Rate") and (z) cash, if any, payable in lieu of the issuance of fractional shares (as provided in Section 5(f)(iii); provided, however, that on any redemption of any Series E Preferred Stock as and to the extent provided in this Section 5 or any liquidation, dissolution or winding up of the Corporation, the right of conversion shall terminate at the close of business on the full business day next preceding the date fixed for such redemption or for the payment of any amounts distributable on liquidation, dissolution or winding up of the Corporation to the holders of Series E Preferred Stock.

(ii) The initial Conversion Rate for the Series E Preferred Stock shall be one share of Common Stock for each share of Series E Preferred Stock surrendered for conversion, reflecting an initial Conversion Price of \$4.316384 per share of Common Stock. The applicable Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(iii) No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon conversion of Series E Preferred Stock. If more than one certificate evidencing shares of Series E Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series E Preferred Stock so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of such aggregate number of shares of Series E Preferred Stock, the Corporation shall pay to any such surrendering holder cash, in lieu of any such fractional share, in an amount equal to the same fraction of the Fair Market Value of one share of Common Stock as of the close of business on the day of conversion.

(iv) Whenever the Conversion Price shall be adjusted as provided in Section 5(g), the Corporation shall forthwith file, at each office designated for the conversion of Series E Preferred Stock, a statement, signed by the Chairman of the Board, the Chief Executive Officer, any Vice President or the Treasurer of the Corporation, showing in reasonable detail the facts requiring such adjustment and the Conversion Price and Conversion Rate that will be effective after such adjustment. The Corporation shall also mail to each holder of Series E Preferred Stock a notice setting forth in reasonable detail any such adjustments and the information required to be filed pursuant to the immediately preceding sentence to be sent by mail, first class, postage prepaid, to each record holder of Series E Preferred Stock at his, her or its address appearing on the Corporation's stock register. If such notice relates to an adjustment resulting from an event referred to in Section 5(g)(vi), such notice shall be included as part of the notice required to be mailed and published under the provisions of Section 5(g)(vi) hereof.

(v) In order to exercise the conversion privilege set forth in Section 5(f)(i), the holder of any Series E Preferred Stock to be converted shall surrender his, her or its certificate or certificates therefor to the principal office of the transfer agent for the Series E Preferred Stock (or if no transfer agent be at the time appointed, then the Corporation at its principal office), and shall give written notice to the Corporation at such office that the holder elects to convert the Series E Preferred Stock represented by

such certificates, or any number thereof. Such notice shall also state the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, subject to any restrictions on transfer relating to shares of the Series E Preferred Stock or shares of Common Stock issuable upon conversion thereof. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly authorized in writing. The date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of the certificates and notice shall be the conversion date. As soon as practicable after receipt of such notice and the surrender of the certificate or certificates for Series E Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered at such office to such holder, or on his, her or its written order, (i) a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof (calculated in accordance with Section 5(f)(i)) and (ii) cash, if any, payable in lieu of fractional shares (as provided in Section 5(f)(iii)); provided, however, that if there is not then in effect a registration statement under the Securities Act covering the issuance of such Common Stock and if such holder shall request that a certificate for Common Stock issuable on such conversion be made to the order of any person other than that of such holder as set forth in the Corporation's stock register, the Corporation may require the holder to deliver an opinion of counsel reasonably satisfactory to the Corporation to the effect that such issuance is in compliance with the Securities Act and any applicable state's blue sky laws.

(vi) The Corporation shall at all times when shares of Series E Preferred Stock remain outstanding reserve and keep available out of its authorized but unissued stock, for the purposes of effecting the conversion of the Series E Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series E Preferred Stock. Before taking any action which would cause an adjustment reducing the conversion price below the then par value of the shares of Common Stock issuable upon conversion of the Series E Preferred Stock, the Corporation shall take all corporate action which may be necessary in order that the Corporation may validly and legally issue fully-paid and nonassessable shares of such Common Stock at such adjusted conversion price.

(vii) All shares of Series E Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate excepting only the right of the holder thereof to receive shares of Common Stock in exchange therefor (calculated in accordance with Section 5(f)(i)) and cash, if any, as provided in Section (iii) of this Section 5(f) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. Any shares of Series E Preferred Stock so converted shall be retired and cancelled and shall not be reissued as shares of Series E Preferred Stock, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series E Preferred Stock accordingly.

(g) Anti-Dilution Provisions.

(i) In order to prevent dilution of the rights granted hereunder, the Conversion Price shall be subject to adjustment from time to time in accordance with this Section 5(g). For purposes of this Section 5(g), the term "Number of Common Shares Deemed Outstanding" at any given time shall mean the sum of (A) the number of shares of Common Stock outstanding at such time, (B) the number of shares of Common Stock issuable assuming conversion, exercise or exchange at such time of all outstanding Preferred Stock, Options and Convertible Securities and (C) (without duplication) the number of shares of Common Stock issuable with respect to any securities of the types described in Section 5(g)(v) outstanding at such time.

During the Ratchet Adjustment Period, except (x) with respect to a Permitted Dilutive Issuance, (y) as provided in Section 5(g)(v), or (z) with respect to the issuance of additional securities to holders of the same class of securities without consideration in order to effect a stock split or similar subdivision (for which adjustments shall be made if required pursuant to clauses (ii), (iii) and (iv) of this Section 5(g), whether or not such stock split or subdivision occurs during the Ratchet Adjustment Period), so long as any shares of Series E Preferred Stock remain outstanding, if the Corporation issues and sells (A) Common Stock at a purchase price that is lower than the Conversion Price in effect immediately prior to the issuance of such Common Stock, (B) Convertible Securities or Options with an exercise price to purchase Common Stock on the date of issuance thereof that is lower than the then effective Conversion Price on such date, or (C) Convertible Securities or Options with a right to convert or exchange into Common Stock at an effective conversion price which is lower than the Conversion Price on the date of issuance or conversion, as applicable, then, in each case, forthwith upon such issue and sale (each, a "Ratchet Triggering Transaction"), the Conversion Price shall be reduced to equal such purchase price, exercise price or exchange price, as the case may be, and the Conversion Rate shall be correspondingly adjusted; provided, however, that, during the Ratchet Adjustment Period, in no event shall the Conversion Price be reduced to less than \$4.316384 (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares of Common Stock); provided, further, that if, during the Ratchet Adjustment Period, a Ratchet Triggering Transaction would, but for the operation of the immediately preceding proviso, cause the reduction of the Conversion Price to an amount less than \$4.316384 (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares of Common Stock), then the Conversion Price (i) shall be reduced to equal \$4.316384 (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares of Common Stock) and (ii) after giving effect to the reduction described in the immediately preceding clause (i), shall be further adjusted on a weighted average basis (using the same methodology provided for in Section 5(g)(i)) for the marginal dilution resulting from the difference between \$4.316384 (subject to adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares of Common Stock) and the actual purchase price, exercise price, conversion price or exchange price as the case may be, of the securities issued in such Ratchet Triggering Transaction (such adjustment to be determined in good faith by the Board of Directors), and the Conversion Rate shall be

correspondingly adjusted. For purposes of determining the adjusted Conversion Price under this Section 5(g)(i), Sections 5(g)(ii)(C) through (G), inclusive, shall be applicable.

(ii) After the conclusion of the Ratchet Adjustment Period, except as provided in Section 5(g)(v), if the Corporation shall issue or sell, or shall in accordance with Sections 5(g)(ii)(A) to (I), inclusive, be deemed to have issued or sold, any shares of its Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, in each case, forthwith upon such issue or sale (each, a "Triggering Transaction"), the Conversion Price shall, subject to Clauses (A) to (I) of this Section 5(g)(ii), be reduced to the Conversion Price (calculated to the nearest ten thousandth of a cent) determined by dividing:

(1) an amount equal to the sum of (x) the product derived by multiplying the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction by the Conversion Price then in effect, plus (y) the consideration, if any, received by the Corporation upon consummation of such Triggering Transaction, by

(2) an amount equal to the sum of (x) the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction plus (y) the number of shares of Common Stock issued (or deemed to be issued in accordance with Sections 5(g)(ii)(A) to (I)) in connection with the Triggering Transaction.

For purposes of determining the adjusted Conversion Price under this Section 5(g)(ii), the following Clauses (A) to (I), inclusive, shall be applicable:

(A) In case the Corporation at any time shall in any manner grant (whether directly or by assumption in a merger or otherwise) any Options to purchase shares of Common Stock or Convertible Securities, whether or not such Options or the right to convert or exchange such Convertible Securities are immediately exercisable, and the price per share for which the shares of Common Stock are issuable upon exercise (determined by dividing (x) the total amount, if any, received or receivable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or the conversion or exchange of such

Convertible Securities on the date of the issue or sale of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Option, then the total maximum amount of Common Stock issuable upon the exercise of such Options or in the case of Options for Convertible Securities, upon the conversion or exchange of such Convertible Securities shall (as of the date of granting of such Options) be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such shares of Common Stock or such Convertible Securities upon the exercise of such Options or such shares of Common Stock upon conversion or exchange of such Convertible Securities, except as otherwise provided in Section 5(g)(ii)(C).

(B) In case the Corporation at any time shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to convert or exchange thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (x) the total amount received or receivable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable, in cash, securities or other property or in bona fide services rendered to the Corporation in connection with bona fide financing activities, to the Corporation upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall (as of the date of the issue or sale of such Convertible Securities) be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon exercise of the rights to convert or exchange under such Convertible Securities, except as otherwise provided in Section 5(g)(ii)(C).

(C) If the purchase price provided for in any Options referred to in Section 5(g)(ii)(A), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section 5(g)(ii)(A) or (B), or the rate at which any Convertible Securities referred to in Section 5(g)(ii)(A) or (B) are convertible into or exchangeable for Common Stock shall change at any time other than under or by reason of provisions thereof designed to protect against dilution (any such change, an "Adjustment"), then:

(I) Unless the issuance of such Options or Convertible Securities occurred during the Ratchet Adjustment Period and the Adjustment of such Options or Convertible Securities occurred after the

conclusion of the Ratchet Adjustment Period, then the Conversion Price in effect at the time of such change shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities, to the extent outstanding immediately prior to such Adjustment, provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and

(II) If the issuance of such Options or Convertible Securities occurred during the Ratchet Adjustment Period and the Adjustment of such Options or Convertible Securities occurred after the conclusion of the Ratchet Adjustment Period, then the Conversion Price shall be readjusted on a weighted average basis for the marginal dilution resulting from the difference in the purchase price, exercise price, conversion price or exchange price, as the case may be, of such Options or Convertible Securities immediately before and after such Adjustment, as determined in good faith by the Board of Directors.

(D) On the expiration of any Option or the termination of any right to convert or exchange any Convertible Securities (any such expiration or termination, a "Termination"), then:

(I) Unless the issuance of such Options or Convertible Securities occurred during the Ratchet Adjustment Period and the Termination of such Options or Convertible Securities occurred after the conclusion of the Ratchet Adjustment Period, then the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such Termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such Termination, never been issued.

(II) If the issuance of such Options or Convertible Securities occurred during the Ratchet Adjustment Period and the Termination of such Options or Convertible Securities occurred after the conclusion of the Ratchet Adjustment Period, then the Conversion Price shall be readjusted on a weighted average basis for the marginal dilution avoided by such Termination, as determined in good faith by the Board of Directors.

(E) In case any Options shall be issued in connection with the issue or sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, the aggregate consideration received by the Corporation in such transaction shall be allocated among such Options and such other securities of the Corporation as shall be determined in good faith by the Board of Directors.

(F) In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold or deemed to have been issued or sold exclusively for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than or in addition to cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration as determined in good faith by the Board of Directors; provided, however, that if the Corporation issues or sells shares of Common Stock, Options or Convertible Securities for services other than bona fide services rendered to the Corporation in connection with the Corporation's bona fide financing activities, such services will not be deemed to be consideration. In case any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be determined in good faith by the Board of Directors. In each case the amount of consideration received by the Corporation shall be determined without deduction of any expenses incurred or any underwriting or other commissions, fees, discounts or concessions allowed by the Corporation in connection therewith.

(G) The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock for the purpose of this Section 5(g)(ii).

(H) In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock, Options, or Convertible Securities (other than a dividend in Common Stock payable to the holders of Common Stock as contemplated by Section 5(g)(iii)), then in such case any Common Stock, Options or Convertible Securities issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

(I) For purposes of this Section 5(g), in case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (x) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities (other than a dividend in Common Stock payable to the holders of Common Stock as contemplated by Section 5(g)(iii)) or (y) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right or subscription or purchase, as the case may be.

(iii) In case the Corporation shall at any time subdivide (other than by means of a dividend payable in Common Stock as contemplated by Sections 5(g)(ii)(H)



and (I) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be reduced to equal the number that is obtained by multiplying the Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision and denominator of which shall be the number of shares of Common Stock outstanding immediately after such subdivision, and, conversely, in case the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be increased to equal the number that is obtained by multiplying the Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such combination and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such combination.

(iv) In the event that any capital reorganization or reclassification of the capital stock of the Corporation or consolidation or merger of the Corporation with or into any other entity or share exchange involving the outstanding shares of the Corporation's capital stock or the sale or other disposition of all or substantially all of the Corporation's assets to another entity (each, a "Capital Reorganization") shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities, cash or other property with respect to or in exchange for Common Stock, then, as a condition of such Capital Reorganization, unless each holder of Series E Preferred Stock has made a valid election as contemplated by Section 5(d)(ii), lawful and adequate provision shall be made whereby holders of Series E Preferred Stock shall have the right to acquire and receive upon conversion of each share of Series E Preferred Stock such stock, securities, cash or other property issuable or payable (as part of such Capital Reorganization) with respect to or in exchange for such number of outstanding shares of Common Stock as would have been received upon conversion of one share of Series E Preferred Stock at the Conversion Price then in effect (calculated in accordance with Section 5(f)(i)); and, in any such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions of this Section 5(g) with respect to the rights and interest after such Capital Reorganization of holders of Series E Preferred Stock, to the end that the provisions set forth in this Section 5(g) shall thereafter be applicable, as nearly as reasonably may be practicable, in relation to any stock, securities, cash or other property deliverable upon the conversion of the Series E Preferred Stock. The Corporation will not effect any Capital Reorganization, unless prior to the consummation thereof the successor entity (if other than the Corporation) resulting from such Capital Reorganization (including the entity which shall have purchased or otherwise acquired all or substantially all of the Corporation's assets) shall have assumed by written instrument mailed or delivered to the holders of the Series E Preferred Stock at the last address of each such holder appearing on the books of the Corporation, the obligation to deliver to each such holder stock, securities, cash or other property as, in accordance with the foregoing provisions, such holder may be entitled to receive. The foregoing provisions shall similarly apply to successive Capital Reorganizations.

(v) The provisions of this Section 5(g) shall not apply to: (x) the issuance of any Preferred Stock sold or issued pursuant to (i) the Securities Purchase Agreement, (ii) the Exchange Agreement or (iii) a Permitted Dilutive Issuance or (y) any Common Stock (i) issued or issuable pursuant to any stock option, stock purchase or similar plan or arrangement for the benefit of employees or directors of the Corporation or its Subsidiaries in effect on the Recapitalization Date or thereafter adopted by the Board of Directors, (ii) issued or issuable pursuant to options, warrants and conversion rights in existence on the Recapitalization Date or (iii) issued or issuable upon conversion of the Preferred Stock.

(vi) In the event that:

(A) the Corporation shall declare any cash dividend upon its Common Stock,

(B) the Corporation shall declare any dividend upon its Common Stock payable in stock or make any special dividend or other distribution to the holders of its Common Stock (other than a dividend or distribution made in order to effect a stock split or similar subdivision as contemplated by Section 5(g)(iii)),

(C) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights,

(D) there shall occur any capital reorganization or reclassification of the capital stock of the Corporation, including, without limitation, any subdivision or combination of the outstanding shares of Common Stock (other than a subdivision made in order to effect a stock split or similar subdivision as contemplated by Section 5(g)(iii)), or, prior to the giving of a Required Sale Notice in accordance with Section 5(i), any consolidation or merger of the Corporation with or into any other entity (other than a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of Series E Preferred Stock, as determined in good faith by the Board of Directors) or any sale or other disposition (other than a mortgage or pledge as security) of all or substantially all of the assets of the Corporation in one or a series of related transactions (other than to a Subsidiary of the Corporation but only if the same shall not adversely affect the rights of the holders of the Series E Preferred Stock, as determined in good faith by the Board of Directors), or

(E) there shall be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

then, in connection with such event, the Corporation shall give to the holders of the Series E Preferred Stock:

(1) at least ten (10) business days' prior written notice of the date on which the books of the Corporation shall close or a

record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, liquidation, dissolution or winding-up; and

(2) in the case of such dissolution, reorganization, reclassification, consolidation, merger, sale, liquidation or winding up, at least ten (10) business days' prior written notice of the date when the same shall take place.

Such notice in accordance with the foregoing Clause (1) of this Section 5(g)(vi) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing Clause (2) of this Section 5(g)(vi) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, liquidation, dissolution or winding up. Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of the Series E Preferred Stock at the address of each such holder as shown on the books of the Corporation.

(vii) If at any time or from time to time on or after the Recapitalization Date, the Corporation shall grant, issue or sell any Options, Convertible Securities or rights to purchase property (such Options, Convertible Securities or rights are herein referred to in this Section 5 as the "Purchase Rights") pro rata to the record holders of any class of Common Stock of the Corporation and such grants, issuances or sales do not result in an adjustment of the Conversion Price under Section 5(g)(i) or (ii), then each holder of Series E Preferred Stock (other than a holder who has validly made an election as contemplated by Section 5(d)(ii)) shall be entitled to acquire (within thirty (30) days after the later to occur of the initial exercise date of such Purchase Rights or receipt by such holder of the notice concerning Purchase Rights to which such holder shall be entitled under Section 5(g)(v)) and upon the terms applicable to such Purchase Rights either:

(A) the aggregate Purchase Rights which such holder could have acquired if it had held the number of shares of Common Stock acquirable upon conversion of the Series E Preferred Stock immediately before the grant, issuance or sale of such Purchase Rights; provided that if any Purchase Rights were distributed to holders of shares of Common Stock without the payment of additional consideration by such holders, corresponding Purchase Rights shall be distributed to the exercising holders of Series E Preferred Stock as soon as possible after such exercise and it shall not be necessary for the exercising holders of Series E Preferred Stock to specifically request delivery of such rights; or

(B) in the event that any such Purchase Rights shall have expired or shall expire prior to the end of said thirty (30) day period, the number of shares of Common Stock or the amount of property which such holder could

have acquired upon such exercise at the time or times at which the Corporation granted, issued or sold such expired Purchase Rights.

(viii) If any event occurs as to which, in the good faith determination of the Board of Directors, the provisions of this Section 5(g) are not strictly applicable or if strictly applicable would not fairly protect the rights of the holders of Series E Preferred Stock in accordance with the essential intent and principles of such provisions, then the Board of Directors shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to protect such rights as aforesaid, but in no event shall any such adjustment have the effect of increasing the Conversion Price as otherwise determined to any of the provisions of this Section 5(g) except in the case of a combination of shares of a type contemplated in Section 5(g)(iii) and then in no event to an amount larger than the Conversion Price as adjusted pursuant to Section 5(g)(ii). Such essential intent and principles shall be discerned only by reference to this Certificate of Incorporation.

(ix) The holders of not less than 85% of the outstanding shares of Series E Preferred Stock may waive in writing, with respect to a specific issuance of securities identified in such waiver, any adjustment to the Conversion Price pursuant to Section 5(g)(ii) other than any adjustment pursuant to Section 5(g)(ii)(H), provided, however, that such waiver shall apply only as to a specific issuance of securities identified in such waiver.

(h) Coordinated Conversion.

(i) Immediately upon the closing of a Qualified Public Offering (as hereinafter defined), each share of Series E Preferred Stock shall automatically be converted (as used in this Section 5, a "Mandatory Conversion") into (y) that number of fully paid and nonassessable shares of Common Stock obtained by dividing the Stated Value thereof by the Conversion Price then in effect and (z) the right to receive an amount in cash equal to all accrued but unpaid dividends. For the purposes of this Section 5, a "Qualified Public Offering" shall mean an underwritten public offering (or a combination of offerings) pursuant to effective registration under the Securities Act covering the offer and sale of Common Stock for the account of the Corporation in which the gross proceeds to the Corporation (determined without deduction of any expenses incurred or any underwriting or other commissions, fees, discounts or concessions) are not less than \$50,000,000 and which places upon the Corporation a value (prior to the receipt of proceeds of such offering) of at least \$200 million; provided that:

(A) if the offering occurs within one year of the Recapitalization Date the sales price of one share of Common Stock to the public generally in such offering must at least be equal to the number that is obtained by multiplying 1.4 by the then effective Conversion Price; or

(B) if the offering occurs after one year but prior to two years from the Recapitalization Date the sales price of one share of Common Stock to

the public generally in such offering must at least be equal to the number that is obtained by multiplying 1.75 by the then effective Conversion Price; or

(C) if the offering occurs after two years or more of the Recapitalization Date the sales price of one share of Common Stock to the public generally in such offering must at least be equal to the number that is obtained by multiplying 2 by the then effective Conversion Price.

In addition, each share of Series E Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate (calculated in accordance with Section 5(f)(i)) and Conversion Price for such shares upon the approval to so convert of the Corporation and the holders of at least 85% of the then-outstanding shares of Series E Preferred Stock and the then-outstanding Series D Preferred Stock, acting together as a single class (based on aggregate stated value), given in writing or by vote at a meeting (such automatic conversion, as used in this Section 5, a "Voluntary Conversion" and, together with a Mandatory Conversion, a "Coordinated Conversion").

(ii) Prior to any Coordinated Conversion, all holders of record of shares of Series E Preferred Stock will be given at least ten (10) days' written notice of the date fixed for such Coordinated Conversion. Such notice will be sent by mail, first class, postage prepaid, to each record holder of shares of Series E Preferred Stock at such holder's address appearing on the Corporation's stock register. On or before the date or estimated date fixed for conversion each holder of shares of Series E Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5(h), together with any cash payable in lieu of any fractional shares (as provided in Section 5(f)(iii)) and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends. On the date fixed for conversion, all rights with respect to the Series E Preferred Stock so converted will terminate, excepting only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such shares of Series E Preferred Stock have been converted (calculated in accordance with Section 5(h)(i)), cash as provided in Section 5(f)(iii) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered holders or by their respective attorneys duly authorized in writing. All certificates evidencing shares of Series E Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date fixed for conversion, be deemed to have been retired and cancelled and the shares of Series E Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date or the failure of the Corporation to give notice under this Section 5(h)(ii). As soon

as practicable after the date of such Coordinated Conversion and the surrender of the certificate or certificates for Series E Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion (calculated in accordance with Section 5(h)(i)) in accordance with the provisions hereof, cash as provided in Section 5(f)(iii) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion and, in the case of a Mandatory Conversion, an amount in cash equal to all accrued but unpaid dividends; provided, however, that if there is not then in effect a registration statement covering the issuance of such Common Stock and if the holder shall request that a certificate for Common Stock issuable on such conversion be made to the order of any person other than that of the holder as set forth in the Corporation's stock register, the Corporation may require the holder to deliver an opinion of counsel reasonably satisfactory to the Corporation to the effect that such issuance is in compliance with the Securities Act and any applicable state's blue sky laws.

(i) Required Sale.

(i) Required Sale Notice. During the period commencing on August 5, 2006 and ending on September 5, 2006, the holders of a majority of the then-outstanding shares of Series E Preferred Stock and Series D Preferred Stock (it being understood that for the purpose of Sections 5(i)(i) and 5(i)(ii), a person shall be deemed to be the holder of any shares deposited in trust by such person pursuant to the Amended & Restated Trust Agreement (as defined in the Securities Purchase Agreement)), acting together as a single class (based on aggregate stated value), (collectively, the "Requesting Holders") may, in their sole discretion, provide written notice (a "Required Sale Notice") to the Corporation at its principal office and to the attention of the General Counsel of the Corporation requiring that the Corporation, within 90 days of the date of such Required Sale Notice, engage an Independent Investment Banker (as defined below), chosen by the Corporation and reasonably satisfactory to the Requesting Holders representing a majority (based on aggregate stated value) of the shares of Common Stock held by the Requesting Holders (collectively, the "Majority Holders"), to seek one or more third-party purchasers with respect to all of the outstanding Series E Preferred Stock and Series D Preferred Stock or all or substantially all the assets of the Corporation (or such lesser portion of the Corporation's assets as is adequate to fund payment of the Liquidation Amount in respect of such Series E Preferred Stock and Series D Preferred Stock) or to sell securities for consideration sufficient to fund such payment (a "Required Sale"), it being understood and agreed that the objective of such Required Sale shall be to simply obtain at least sufficient proceeds to enable the Corporation to redeem all of the then-outstanding shares of the Series E Preferred Stock and Series D Preferred Stock in full, in cash, in accordance with their respective terms (or to otherwise ensure that all of the then-outstanding shares of Series E Preferred Stock and the Series D Preferred Stock receive proceeds in cash in an amount at least equal to their respective Liquidation Amounts). At any time after the giving of a Required Sale Notice, the Majority Holders may withdraw their request that the Corporation pursue a Required Sale, by providing a written notice (a "Withdrawal Notice") to the Corporation revoking such request. As used herein, an

"Independent Investment Banker" shall be any firm of investment bankers of national repute which is not an Affiliate of the Corporation.

(ii) Opt-Out Shares. Concurrently with the delivery by the Requesting Holders of a Required Sale Notice to the Corporation as provided in Section 5(i)(i), the Requesting Holders shall provide each of the other holders of then-outstanding shares of Series E Preferred Stock and/or Series D Preferred Stock (collectively, the "Non-Requesting Holders") a copy of such Required Sale Notice, whereupon each Non-Requesting Holder shall have the right, exercisable only within 30 days of the date of such Required Sale Notice, time being of the essence, by binding and irrevocable notice to the Corporation and to the Requesting Holders, to designate all, but not less than all, of its then-outstanding shares of Series E Preferred Stock and Series D Preferred Stock as "Opt-Out Shares" under this Section. The Corporation shall also be entitled to deliver a copy of such Required Sale Notice to the Non-Requesting Holders. As used herein, "Opt-In Shares" shall mean any and all of the then-outstanding shares of Series E Preferred Stock and Series D Preferred Stock other than the Opt-Out Shares designated in accordance with the terms of this Section 5(i)(ii).

(iii) Engagement of Independent Investment Banker. As soon as reasonably practicable after receipt of the Required Sale Notice (and in any event within 90 days after receipt of the Required Sale Notice), unless the Corporation shall have received a Withdrawal Notice, the Corporation shall engage an Independent Investment Banker, chosen by the Corporation and reasonably satisfactory to the Majority Holders, to seek one or more bona fide third-party purchasers with respect a Required Sale.

(iv) Consummation of Required Sale. Provided that a Required Sale Notice shall have been received by the Corporation and the Corporation shall not have received a Withdrawal Notice, the Corporation shall use its reasonable best efforts to consummate a Required Sale of the Corporation on or prior to June 5, 2007. In furtherance, and not in limitation, of the foregoing, the Corporation shall negotiate in good faith with one or more potential purchasers (whether obtained by the Independent Investment Banker or otherwise) with respect to any transaction meeting the requirements set forth in Section 5(i)(i). Notwithstanding the foregoing, the Corporation shall not be required to consummate a Required Sale if such consummation would violate applicable law or regulatory requirements.

(v) Optional Redemption. At any time after the Corporation shall have received the Required Sale Notice and prior to June 5, 2007 (unless the Corporation shall have received a Withdrawal Notice), the Corporation may, at its option, redeem all, but not less than all, of the Opt-In Shares at a redemption price, in cash, equal to the applicable Liquidation Amount on the date specified for redemption. Upon the redemption in full in cash of all of the Opt-In Shares as provided above, the obligations of the Corporation under this Section 5(i) shall terminate.

(vi) Mandatory Redemption. Provided that a Required Sale Notice shall have been timely received by the Corporation and the Corporation shall not have

received a Withdrawal Notice, if either (x) a Required Sale of the Corporation is not consummated or (y) all of the Opt-In Shares shall not have been redeemed in full in cash in accordance with Section 5(i)(v), in each case, on or prior to June 5, 2007, then, on June 5, 2007, the Corporation shall redeem all, and not less than all, of the Opt-In Shares at a redemption price, in cash, equal to the applicable Liquidation Amount on such date. Upon the redemption in full in cash of all of the Opt-In Shares as provided above, the obligations of the Corporation under this Section 5(i) shall terminate.

(vii) Required Financing. Provided that a Required Sale Notice shall have been received by the Corporation and the Corporation shall have not received a Withdrawal Notice, if, at any time after February 5, 2007 and prior to June 5, 2007, the Corporation shall not reasonably believe that a Required Sale of the Corporation meeting the requirements set forth in Section 5(i)(i) shall be consummated on or prior to June 5, 2007, then the Corporation (without prejudice to its obligations to use its reasonable best efforts to consummate a Required Sale of the Corporation) shall use its reasonable best efforts to obtain financing on commercially reasonable terms (to the extent necessary) in an amount sufficient to allow the Corporation to be able to timely fulfill its obligations under Section 5(i)(vi).

(viii) Termination. The obligations of the Corporation under this Section 5(i) shall terminate upon the earliest to occur of the following:

(A) the holders of a majority of the then-outstanding shares of Series E Preferred Stock and Series D Preferred Stock shall have converted such shares of Series E Preferred Stock and Series D Preferred Stock into shares of Common Stock;

(B) the holders of shares of Series E Preferred Stock and/or Series D Preferred Stock shall not have approved, by the requisite statutory vote, the Corporation's entering into an agreement for a Required Sale of the Corporation (but only if such Required Sale of the Corporation would have resulted in the holders of the Series E Preferred Stock and the Series D Preferred Stock receiving cash proceeds in an amount at least equal to their respective Liquidation Amounts), if any such vote is required;

(C) there shall be no outstanding shares of Series E Preferred Stock and no outstanding shares of Series D Preferred Stock;

(D) the Corporation shall have consummated a Required Sale in accordance with the terms of this Section or shall have redeemed the Opt-In Shares pursuant to Sections 5(i)(v) or (vi); and

(E) if the Corporation has not received a timely Required Sale Notice pursuant to Section 5(i)(i), then 5:01 p.m. New York City local time on September 5, 2006, time being of the essence.

(j) Special Redemption.



(i) (A) Provided that no Required Sale Notice shall have been delivered pursuant to Section 4(i) or 5(i), during the period commencing on September 15, 2006 and ending on October 15, 2006, each Minority Holder may, in its sole discretion and acting individually, provide written notice (a "Special Redemption Notice") to the Corporation at its principal office and to the attention of the General Counsel of the Corporation requiring that the Corporation redeem, on June 5, 2009, all, and not less than all, of the then-outstanding shares of Series D Preferred Stock and Series E Preferred Stock held by such Minority Holder (collectively, the "Subject Shares") at a redemption price, in cash, equal to the Liquidation Amount thereof on such date (it being understood and agreed that the Corporation shall, at all times after the date of the Special Redemption Notice and prior to June 5, 2009, be entitled, but not obligated, to redeem Subject Shares, at such times and in such amounts as it shall determine in its sole discretion, in each case at a redemption price, in cash, equal to the Liquidation Amount thereof on the date or dates specified by the Corporation for redemption).

(B) Notwithstanding Section 5(j)(i)(A) to the contrary, if the Board of Directors determines in good faith, within 30 days of the date of the applicable Special Redemption Notice, that sufficient funds (including from outside sources) shall not be reasonably available to the Corporation on June 5, 2009 to enable the Corporation to duly satisfy its obligation to redeem outstanding Subject Shares on June 5, 2009 as provided therein, then the Corporation, by binding and irrevocable notice to the applicable Minority Holder delivered to such Minority Holder within 40 days of the date of the applicable Special Redemption Notice (the "Dividend Ratchet Election Notice"), shall not be required to satisfy its obligation to redeem outstanding Subject Shares on June 5, 2009 as provided above; provided that the Dividend Rate applicable to the Subject Shares shall be increased on the last business day of each March, June, September and December occurring after June 5, 2007 by 0.50% per annum (provided, however, in no event shall the Dividend Rate exceed fifteen percent (15%) per annum) (it being understood and agreed that the Corporation shall, at all times after the Dividend Ratchet Election, be entitled, but not obligated, to redeem Subject Shares, at such times and in such amounts as it shall determine in its sole discretion, in each case at a redemption price, in cash, equal to the Liquidation Amount thereof on the date or dates specified by the Corporation for redemption). The Corporation may, at its option, issue to the applicable Minority Holders, in exchange for the Subject Shares, shares of a new series of preferred stock which shall contain provisions substantially identical to the provisions of the Series D Preferred Stock or the Series E Preferred Stock, as applicable, exchanged therefor, except as otherwise provided in Section 4(j) or 5(j), as applicable, (the "Minority Holder Exchange Securities"), which Minority Holder Exchange Securities shall vote together with the Series D Preferred Stock or Series E Preferred Stock, as applicable, with the same relative voting power as the Subject Shares had immediately prior to such exchange. Notwithstanding anything to the contrary herein, the Minority Holder Exchange Securities shall not have any provisions analogous to those of the Series D Preferred Stock or the Series E Preferred Stock, as applicable, set forth in Section 4(f), 4(g), 4(h), 4(i), 4(j), 5(f), 5(g), 5(h), 5(i) or 5(j). At all times after the

Corporation shall have delivered the Dividend Ratchet Election Notice, each holder of Subject Shares shall be entitled to surrender its certificates representing any portion of the Subject Shares to the Corporation and receive, in lieu thereof, new certificates representing such Subject Shares, which new certificates shall, in addition to any other applicable legends, be stamped or otherwise imprinted with a legend in the following form:

THE CORPORATION HAS MADE THE ELECTION UNDER SECTION 5(j)(i)(B) OF THE CORPORATION'S RESTATED CERTIFICATE OF INCORPORATION AND THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ENTITLED TO DIVIDENDS PURSUANT TO SECTIONS 5(c) AND 5(j) OF ARTICLE IV OF THE CORPORATION'S RESTATED CERTIFICATE OF INCORPORATION.

(ii) Notwithstanding anything to the contrary set forth in this Section 5, at all times after the date of any Special Redemption Notice delivered by a Minority Holder with respect to its Subject Shares:

(A) such Minority Holder shall, with respect to the Series E Preferred Stock constituting Subject Shares, be entitled, under the circumstances set forth in Section 5(d)(i) in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, to receive only an amount per share of Series E Preferred Stock equal to the Liquidation Amount thereof (and such Minority Holder shall no longer be entitled to receive an amount per share of Series E Preferred Stock equal to the greater of (x) the Liquidation Amount thereof and (y) an amount equal to the amount which would be payable in respect of that number of shares of Common Stock into which one share of Series E Preferred Stock could be converted immediately prior to such liquidation, dissolution or winding up (assuming the conversion of all shares of Series E Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such liquidation, dissolution or winding up to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors);

(B) such Minority Holder shall, with respect to the Series E Preferred Stock constituting Subject Shares, be entitled, under the circumstances described in Section 5(d)(ii) in the event of any merger or consolidation of the Corporation into or with another corporation, a merger or consolidation of any other corporation into or with the Corporation, or the sale or other disposition of all or substantially all of the assets of the Corporation, to receive only an amount per share of Series E Preferred Stock equal to the Liquidation Amount thereof (and such Minority Holder shall no longer be entitled to elect to receive an amount per share of Series E Preferred Stock equal to the greater of (x) the Liquidation Amount thereof and (y) the type and amount of consideration as would be payable to the holder of that number of shares of Common Stock into which one share of Series E Preferred Stock could have been converted immediately prior to such event

(assuming the conversion of all shares of Series E Preferred Stock and all other options, warrants, rights and convertible or exchangeable securities outstanding immediately prior to such event to the extent that there may exist any economic basis to convert, exercise or exchange such securities (e.g. such securities are "in the money") as determined in good faith by the Board of Directors); and

(C) such Minority Holder shall not, with respect to the Series E Preferred Stock constituting Subject Shares, be entitled to exercise the rights otherwise afforded such Minority Holder under, or otherwise be subject to the provisions of, Sections 5(f), 5(g), 5(h) and 5(i).

#### SECTION 6: COMMON STOCK

(a) Dividends. Subject to the preferences and other rights of the Preferred Stock as set out above, the holders of Common Stock shall be entitled to receive dividends, if, when and as declared by the Board of Directors out of funds legally available therefor; provided that, so long as the Series D Preferred Stock or Series E Preferred Stock remains outstanding, in no event shall the amount of any such dividends exceed, for any twelve-month period, an amount per share equal to (x) the total dividends payable in such twelve-month period (assuming a dividend rate of 6% per annum) on the Series D Preferred Stock and on the Series E Preferred Stock divided by (y) the aggregate number of shares of Common Stock into which the Series D Preferred Stock and the Series E Preferred Stock are convertible at the beginning of such twelve-month period.

(b) Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, voluntary or involuntary, after payment or provision for payment to the holders of the Corporation's Preferred Stock or any other class or series of stock of the Corporation of the preferential amounts to which they may be entitled as set out above, the remaining assets of the Corporation available to stockholders shall be distributed equally per share to the holders of Common Stock, subject to any participation rights of the Preferred Stock or any other class or series of stock of the Corporation set forth herein.

(c) Voting. Except as otherwise provided herein or by law, each holder of Common Stock shall be entitled to one vote in respect of each share of Common Stock held of record on all matters submitted to a votes of stockholders.

#### ARTICLE V

In furtherance and not in limitation of the powers conferred by statute, the By-Laws of the Corporation may be made, altered, amended or repealed by the stockholders or by a majority of the entire Board of Directors.

#### ARTICLE VI

The number of directors of the Corporation may be changed by the By-Laws or by the Board of Directors pursuant to the By-Laws. Beginning with the initial annual meeting, the Board of Directors shall be divided into three classes: Class I, Class II and Class III. The terms

of office of the classes of directors elected at the initial annual meeting shall expire at the times of the annual meetings of the stockholders as follows: Class I on the next annual meeting, Class II on the second next annual meeting and Class III on the third next annual meeting, or thereafter in each case when their respective successors are elected and qualified. At each subsequent annual election, the directors chosen to succeed those whose terms are expiring shall be identified as being of the same class as the directors whom they succeed, and shall be elected for a term expiring at the time of the third succeeding annual meeting of stockholders, or thereafter in each case when their respective successors are elected and qualified. The number of directorships shall be apportioned among the classes so as to maintain the classes as nearly equal in number as possible.

#### ARTICLE VII

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this 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 this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this 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 this 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 this 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 this Corporation, as the case may be, agree to any compromise or agreement and to any reorganization of this 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 stockholders or class of stockholders of this Corporation, as the case may be, and also on this Corporation.

#### ARTICLE VIII

Elections of directors need not be by written ballot.

#### ARTICLE IX

(a) The Corporation shall indemnify to the fullest extent permitted under and in accordance with the laws of the State of Delaware any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, trustee, employee or agent of or in any other capacity with another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) Expenses incurred in defending a civil or criminal action, suit or proceeding shall (in the case of any action, suit or proceeding against a director of the Corporation) or may (in the case of any action, suit or proceeding against an officer, trustee, employee or agent) be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors upon receipt of an undertaking by or on behalf of the indemnified person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article.

(c) The indemnification and other rights set forth in this Section shall not be exclusive of any provisions with respect thereto in the By-Laws or any other contract or agreement between the Corporation and any officer, director, employee or agent of the Corporation.

(d) Neither the amendment nor repeal of this Article IX, Section (a), (b) or (c), nor the adoption of any provision of this Restated Certificate of Incorporation inconsistent with Article IX, Section (a), (b) or (c), shall eliminate or reduce the effect of this Article IX, Sections (a), (b) and (c), in respect of any matter occurring before such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of action, suit or claim relating to any such matter which would have given rise to a right of indemnification or right to receive expenses pursuant to this Article VII, Section (a), (b) or (c), if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted.

(e) No director shall be personally liable to the Corporation or any stockholder for monetary damages for breach of fiduciary duty as a director, except for any matter in respect of which such director (a) shall be liable under Section 174 of the General Corporation Law of the State of Delaware or any amendment thereto or successor provision thereto, or (b) shall be liable by reason that, in addition to any and all other requirements for liability, he:

(i) shall have breached his duty of loyalty to the Corporation or its stockholders;

(ii) shall not have acted in good faith or, in failing to act, shall not have acted in good faith;

(iii) shall have acted in a manner involving intentional misconduct or a knowing violation of law or, in failing to act, shall have acted in a manner involving intentional misconduct or a knowing violation of law; or

(iv) shall have derived an improper personal benefit.

If the General Corporation Law of the State of Delaware is amended after the Recapitalization Date 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.

**THIRD:** The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

**FOURTH:** That said amendment and restatement was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Corporation has caused this Certificate to be signed by its Chief Executive Officer this 5th day of June, 2001.

NEUSTAR, INC.

By: /s/ Jeffrey E. Ganek

Name: Jeffrey E. Ganek

Title: Chief Executive Officer