

FILED EFFECTIVE

FOURTH ARTICLES OF AMENDMENT  
TO  
AMENDED AND RESTATED  
ARTICLES OF INCORPORATION OF  
PROCLARITY CORPORATION

02 JUN 20

SECRETARY OF STATE  
STATE OF IDAHO

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Pursuant to Section 30-1-1006 of the Idaho Business Corporation Act (the "IBCA"), PROCLARITY CORPORATION, an Idaho corporation (the "Corporation"), hereby adopts the following Fourth Articles of Amendment to its Amended and Restated Articles of Incorporation (the "Articles"):

**FIRST:** The name of the Corporation is ProClarity Corporation.

**SECOND:** These Fourth Articles of Amendment have been duly adopted in accordance with Section 30-1-1003 of the IBCA, the Board of Directors of the Corporation having adopted resolutions setting forth the proposed Fourth Articles of Amendment, declaring their advisability, and directing that they be submitted to the stockholders of the Corporation for their approval; the holders of each class of stock of the Corporation having not less than the minimum number of votes of each class of stock that would be necessary to authorize or take such action having voted in favor thereof.

**THIRD:** Article IV of the Articles is amended in its entirety to read as follows:

ARTICLE IV

CAPITAL STOCK

A. AUTHORIZED SHARES. The Corporation is authorized to issue two classes of capital stock, designated, respectively, "Common Stock" and "Preferred Stock". The total number of shares of capital stock that the Corporation is authorized to issue is 110,000,000 shares, consisting of (i) 100,000,000 shares of Common Stock, having no par value; and (ii) 10,000,000 shares of Preferred Stock, having no par value, the first series of which shall consist of 195,697 shares, and shall be designated as Series A Convertible Preferred Stock (the "Series A Preferred"), the second series of which will consist of 7,380,952 shares, and shall be designated as Series B Participating Convertible Preferred Stock (the "Series B Preferred"), and the third series of which will consist of 15,000 shares, and shall be designated as Series B-1 Redeemable Preferred Stock (the "Series B-1 Preferred" and, together with the Series B Preferred, the "Series B/B-1 Preferred").

B. DESIGNATION OF SERIES. The remaining undesignated Preferred Stock may be issued in one or more series. Except as provided in this Article IV, the Board of Directors is hereby authorized, within the limitations and restrictions stated in these Articles, to fix or alter the dividend rights, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices and the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or

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decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of such shares then outstanding (and, in case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series); all as may be determined from time to time by the Board of Directors and stated in the resolution or resolutions providing for issuance of such series of Preferred Stock (collectively, a "Preferred Stock Designation"), and as may be permitted by the IBCA.

C. COMMON STOCK. Except as may otherwise be provided in a Preferred Stock Designation, the holders of Common Stock will be entitled to one vote on each matter submitted to a vote at a meeting of stockholders for each share of Common Stock held of record by such holder as of the record date for such meeting.

D. SERIES A PREFERRED TERMS.

The Series A Preferred shall have the rights, preferences, privileges and the qualifications, limitations and restrictions thereof, as follows:

Section 1. Dividends. The holders of Series A Preferred, in preference to the holders of any Common Stock of the Corporation, shall be entitled to receive cash dividends, when and as declared by the Corporation's Board of Directors, but only out of funds that are legally available therefor. Such dividends shall be payable only when, as and if declared by the Board of Directors, and the Board of Directors shall not, under any circumstances, be required to declare or pay dividends to the holders of Series A Preferred. So long as any shares of Series A Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Common Stock, at a rate greater than the rate at which dividends or distributions are made on the Series A Preferred. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series A Preferred in an amount equal per share (on and as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1 shall not, however, apply to a dividend payable in Common Stock. All of the rights provided with respect to the Series A Preferred hereunder shall terminate when such Series A Preferred is converted into Common Stock.

Section 2. Voting Rights.

2A. General Obligations. Except as otherwise required by law or as otherwise set forth in these Articles, all shares of Series A Preferred shall vote together with the shares of the Corporation's Common Stock and the holders of the Corporation's Series B Preferred as provided in paragraph 5A of Subdivision E of this Article IV, as a single class, whenever the law or these Articles require the approval of any matter by the shares or shareholders of the Corporation. For purposes of all votes at any annual or special meeting of shareholders of the Corporation, or any action taken by written consent, except as otherwise required by law or as set forth herein, each holder of shares of Series A Preferred shall be entitled to such number of votes for the Series A Preferred held by the holder on the record date for the meeting at which such matter is to be considered and/or approved, or on the effective date of a written consent under which the matter is approved, as shall be equal to the whole number of shares of the Corporation's Common Stock into which his, her or its shares of Series A Preferred are convertible immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

2B. Protective Provisions. In addition to the voting rights set forth in paragraph 2A above, so long as any shares of Series A Preferred remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of Series A Preferred:

(i) alter, change or amend the rights, preferences or privileges of the Series A Preferred or increase or decrease the number of authorized shares of Series A Preferred; or

(ii) amend the Corporation's Articles of Incorporation so as to increase the total authorized number of shares of Preferred Stock to greater than 10,000,000.

Section 3. Liquidation Preference. So long as any shares of Series A Preferred remain outstanding, the rights of holders of Series A Preferred in the event of a liquidation, dissolution or winding up of the Corporation shall be as follows:

3A. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series A Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, the amount of Twenty-One Dollars (\$21.00) per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all declared but unpaid dividends on such share (the "Series A Liquidation Preference"), for each share of Series A Preferred then held by them, and the holders of Series A Preferred shall not be entitled to any further payment. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred pursuant to this Section 3 and the holders of Series B/B-1 Preferred pursuant to Section 2 of Subdivision E hereof shall be insufficient to permit the payment to such holders of the full Preferred Stock Liquidation Preferences (as defined in Section 11 of Subdivision E hereof), then the entire assets and funds of the Corporation legally available for distribution shall be distributed pro rata among the holders of the Series A Preferred and the

Series B/B-1 Preferred based upon the aggregate Preferred Stock Liquidation Preferences of the shares of Series A Preferred and Series B/B-1 Preferred held by each such holder.

3B. The following events shall be considered a liquidation under this Section 3:

(i) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than 50% of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Corporation (an "Acquisition");

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation (an "Asset Transfer") to an entity in which the shareholders of the Corporation immediately prior to the sale own less than 50% of the entity immediately after the sale, excluding any sale or transfer of assets to change the domicile of the corporation.

3C. Whenever the distribution provided for in this Section 3 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation; provided, however, that any securities to be delivered to the holders of Series A Preferred shall be valued as follows:

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

(a) If traded on a securities exchange or the Nasdaq National Market or SmallCap Market shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the date of distribution;

(b) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the date of distribution;

(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 of the Corporation.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subparagraphs 3C(i)(A), (B) or (C) above to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

#### Section 4. Conversion Rights.

4A. Optional Conversion. Subject to and in compliance with the provisions of this Section 4, any shares of Series A Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the Series A Conversion Ratio then in effect (determined as provided in paragraph 4B below) by the number of shares of Series A Preferred being converted.

4B. Conversion Ratio and Price. The “Series A Conversion Ratio” shall be the quotient obtained by dividing the amount of \$7.00 per share (the “Series A Original Issue Price”) by \$.70 (the “Series A Conversion Price”). The Series A Conversion Price shall be adjusted from time to time in accordance with this Section D.4. All references to the Series A Conversion Price herein shall mean the Series A Conversion Price as so adjusted.

4C. Mechanics of Conversion. Each holder of Series A Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series A Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series A Preferred being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series A Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series A Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering capital stock for conversion as permitted herein, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the shares issuable upon such conversion shall not be deemed to have converted such shares until immediately prior to the closing of such sale of securities.

4D. Adjustment for Stock Splits and Combinations. If the Corporation shall, at any time or from time to time effect a subdivision of the outstanding Common Stock, the Series A Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time combine the outstanding shares of Common Stock into a smaller number of shares, the Series A Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph 4D shall become effective at the close of business on the date the subdivision or combination becomes effective.

4E. Adjustment for Common Stock Dividends and Distributions. If the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in

additional shares of Common Stock or any other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents"), in each such event the Series A Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, plus the number of shares of Common Stock and/or Common Stock Equivalents (assuming the conversion, exchange or exercise into or for Common Stock) issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this paragraph 4E to reflect the actual payment of such dividend or distribution.

4F. Adjustments for Other Dividends and Distributions. Except in the event the Series A Preferred receives dividends pursuant to paragraph 4E above, if the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities of other entities, evidences of indebtedness issued by the Corporation or other entities, assets (including such dividends) or securities of the Corporation other than shares of Common Stock or Common Stock Equivalents, in each such event provision shall be made so that the holders of Series A Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities, indebtedness or assets which they would have received had their Series A Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 4F with respect to the rights of the holders of the Series A Preferred or with respect to such other distributed securities, indebtedness or assets by their terms.

4G. Adjustment for Reclassification, Exchange and Substitution. Except for an Acquisition or Asset Transfer as defined in paragraph 3B or a subdivision or combination of shares or stock dividend as provided elsewhere in this Section 4, if at any time or from time to time the Common Stock issuable upon the conversion of the Series A Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise, in any such event each holder of Series A Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred could have been converted immediately prior to such recapitalization, reclassification or other change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

4H. Sale of Shares Below Series A Conversion Price.

(i) In addition to the adjustment of the Series A Conversion Price provided for in paragraphs 4D-4G above, if at any time or from time to time after the date that the first share of Series A Preferred is issued (the "Series A Original Issue Date"), the Corporation issues or sells, or is deemed by the express provisions of this paragraph 4H to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on any class of stock as provided in paragraph 4E above, and other than a subdivision or combination of shares of Common Stock as provided in paragraph 4D above, for an Effective Price (as hereinafter defined) less than the then effective Series A Conversion Price, then and in each such case the then existing Series A Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subparagraph 4H(ii) below) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series A Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities (which bear an exercise or conversion price which is lower than the Effective Price) on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this paragraph 4H, the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any expenses payable by the Corporation, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this paragraph 4H, if the Corporation issues or sells any rights, warrants or options for the purchase of (or to subscribe for or otherwise acquire), or stock or other securities or debt convertible into,

Additional Shares of Common Stock (such convertible stock or securities being herein referred to as “Convertible Securities”) and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Conversion Price, in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided, that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided, further, that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of rights or options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided, further, that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights or options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights or options or Convertible Securities. No further adjustment of the Series A Conversion Price, as adjusted upon the issuance of such rights or options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series A Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities; provided, that such readjustment shall not apply to prior conversions of Series A Preferred. No readjustment pursuant to this subparagraph 4H(iii) of the Series A Conversion Price shall have the effect of increasing such Series A Conversion Price to an amount which exceeds the lower of (1) such Series A Conversion Price on the original adjustment date, or (2) such Series A Conversion Price that would have resulted from



any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) “Additional Shares of Common Stock” shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this paragraph 4H, whether or not subsequently reacquired or retired by the Corporation other than (1) shares of Common Stock issued upon conversion of the Series A Preferred or upon the conversion, exercise or exchange of any convertible securities, obligations or rights; (2) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalization and the like) granted after the Series A Original Issue Date to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary, pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors (plus any reissuances upon expiration or termination of options or repurchases of shares); (3) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Series A Original Issue Date; (4) shares of Common Stock or options, warrants or convertible securities issued pursuant to any equipment leasing arrangement, or debt financing from a bank or similar financial institution approved by the Board of Directors; (5) the issuance of securities pursuant to a joint venture or research, development or product distribution agreement, or other business arrangement (including any arrangement with a vendor or customer) with another corporation or other entity or person, pursuant to a plan, agreement or arrangement approved by the Board of Directors; provided, that the principal purpose thereof is not for financing or funding of the Corporation; or (6) shares of Common Stock or options, warrants or convertible securities issued pursuant to a merger, consolidation or acquisition of a business or assets of a business; provided, that such transaction is approved by the Board of Directors of the Corporation. The “Effective Price” of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this paragraph 4H, into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this paragraph 4H, for such Additional Shares of Common Stock.

4I. Certificate of Adjustment. In each case of an adjustment or readjustment of the Series A Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series A Preferred, if the Series A Preferred is then convertible pursuant to this Section 4, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series A Preferred at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred, furnish or caused to be furnished to such holder a like certificate setting forth (1) such adjustments and readjustments, (2) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (3) the Series A Conversion Price at the time in effect, (4) the number of Additional Shares of Common Stock

and (5) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred.

4J. Notice of Record Date. Upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in paragraph 3B or other capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any Asset Transfer (as defined in paragraph 3B), or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series A Preferred at least twenty (20) days prior to the record date specified therein a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, (3) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up, and (4) the date, if any, on which a stockholders' meeting is called to approve any transaction referred to in this paragraph 4J.

4K. Automatic Conversion.

(i) Each share of Series A Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Conversion Price, (A) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation of not less than \$10,000,000, prior to underwriting commissions and expenses and at a price per share no less than the then-applicable Series A Liquidation Preference per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) (the "Initial Offering"); and (B) at any time upon the affirmative election of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the outstanding shares of Series A Preferred.

(ii) Upon the occurrence of the event specified in subparagraph 4K(i) above, the outstanding shares of Series A Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred are either delivered to the Corporation or its transfer agent as provided herein, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series A Preferred, the holders of Series A Preferred shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for

the Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of paragraph 4C.

4L. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of shares of Series A Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

4M. Reservation of Common Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

4N. Notices. Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

4O. Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series A Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred so converted were registered.

4P. No Dilution or Impairment. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding

or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of Series A Preferred against dilution or other impairment.

Section 5. No Redemption. The Corporation shall be under no obligation to redeem all or any portion of the Series A Preferred at any time, except and to the extent provided in Section 4A of Subdivision E of these Articles.

Section 6. No Reissuance of Series A Preferred. No share or shares of Series A Preferred acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue. The Corporation may, from time to time, take such appropriate corporate action as may be necessary to reduce the authorized number of shares of Series A Preferred.

E. SERIES B AND SERIES B-1 PREFERRED TERMS

The Series B and Series B-1 Preferred shall have the rights, preferences, privileges and the qualifications, limitations and restrictions thereof, as follows:

Section 1. Dividends.

1A. General Obligation. When and as declared by the Corporation's Board of Directors and to the extent permitted under the Idaho Business Corporations Act (the "IBCA"), the Corporation shall pay preferential dividends in cash to the holders of the Series B/B-1 Preferred as provided in this Section 1. Except as otherwise provided herein, dividends on each share of the Series B/B-1 Preferred (a "Share") shall accrue on a daily basis at the rate of 7% per annum of the Original Cost thereof (compounded annually beginning December 31, 2002) from and including the date of issuance of such Share to and including the first to occur of (i) the date on which all amounts payable in respect thereof are paid to the holder of such Share in connection with the liquidation, dissolution or winding up of the Corporation or the redemption of such Share by the Corporation, (ii) the date on which such Share is converted into shares of Conversion Stock hereunder or (iii) the date on which such share is otherwise acquired by the Corporation. Such dividends shall accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. The date on which the Corporation initially issues any Share shall be deemed to be its "date of issuance" regardless of the number of times transfer of such Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Share.

1B. Distribution of Partial Dividend Payments. Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series B/B-1 Preferred, such payment shall be distributed pro rata among the holders thereof based upon the aggregate accrued but unpaid dividends on the Shares held by each such holder.

1C. Participating Dividends. In the event that the Corporation declares or pays any dividends upon the Common Stock (whether payable in cash, securities or other property) other than dividends payable solely in shares of Common Stock issued upon the outstanding shares of Common Stock, the Corporation shall also declare and pay to the holders of the Series B Preferred, at the same time that it declares and pays such dividends to the holders of the Common Stock, the dividends which would have been declared and paid with respect to the Common Stock issuable upon conversion of the Series B Preferred had all of the outstanding Series B Preferred been converted immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined.

Section 2. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), each holder of Series B Preferred shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities, an amount in cash equal to the greater of (i) \$2.10 for each Share of Series B Preferred then held by such holder (as such amount is appropriately adjusted for any subsequent stock splits, stock combinations, stock dividends or the like with respect to the Series B Preferred) plus an additional amount in cash equal to all accrued and unpaid dividends thereon (the "Series B Liquidation Preference") or (ii) \$1.05 for each Share of Series B Preferred then held by such holder (as such amount is appropriately adjusted for any subsequent stock splits, stock combinations, stock dividends or the like with respect to the Series B Preferred) plus an additional amount in cash equal to all accrued and unpaid dividends thereon (the "Alternative Series B Liquidation Preference") and plus the consideration which would have been paid with respect to the Common Stock issuable upon conversion of the Series B Preferred held by such holder upon any such liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary) after payment in full of the Alternative Series B Liquidation Preference and the Series B-1 Liquidation Preference pursuant to this Section 2 (to the extent applicable) and payment in full of the Series A Liquidation Preference pursuant to Section 3 of Subdivision D hereof (to the extent applicable) had all of the outstanding Series B Preferred been converted into shares of Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), each holder of Series B-1 Preferred shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities, an amount in cash equal to the aggregate Series B-1 Original Cost of all Shares of Series B-1 Preferred held by such holder plus an additional amount in cash equal to all accrued and unpaid dividends thereon (the "Series B-1 Liquidation Preference"). If, upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of the Series A Preferred and the Series B/B-1 Preferred are insufficient to permit payment to such holders of the aggregate amounts which they are entitled to be paid under this Section 2 and under Section 3 of Subdivision D hereof in respect of the Series A Preferred, then the entire assets available to be distributed to the Corporation's stockholders shall be distributed pro rata among such holders of the Series A Preferred and the Series B/B-1 Preferred based upon the aggregate Preferred Stock Liquidation Preferences of the shares of Series A Preferred and Series B/B-1 Preferred held by each such holder. Not less than 20 days prior to the payment date stated therein, the Corporation shall mail written notice of any such liquidation, dissolution or winding up (including any deemed liquidation, dissolution or winding up described in the next sentence) to each record holder of Series B/B-1 Preferred by registered or certified mail (return receipt requested and

postage prepaid), setting forth in reasonable detail the amount of proceeds to be paid with respect to each Share of Series B/B-1 Preferred and each share of Common Stock and Series A Preferred in connection with such liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up described in the next sentence). For purposes of this Section 2, any Fundamental Change, Change in Ownership or Organic Change shall (unless otherwise determined by the holders of a majority of the outstanding Shares of Series B/B-1 Preferred) be deemed to be a liquidation, dissolution and winding up of the Corporation, and each holder of Series B/B-1 Preferred shall be entitled to receive in connection therewith payment from the Corporation (or the successor or purchasing entity) of an amount equal to the aggregate amount specified herein that such holders would have received upon a liquidation, dissolution and winding up of the Corporation in accordance with this Section 2. The value of any securities to be delivered to the holders of Series B/B-1 Preferred in connection with any such Fundamental Change, Change in Ownership or Organic Change shall be the Market Price thereof as of the closing date of any such transaction or, at the election of the holders of a majority of the outstanding Series B/B-1 Preferred, as such value may be provided or determined in the definitive agreement(s) entered into in connection with any such Fundamental Change, Change in Ownership or Organic Change.

**Section 3. Priority of Series B/B-1 Preferred on Dividends and Redemptions.**

So long as at least 10% of the Series B Preferred remains outstanding or any Series B-1 Preferred remains outstanding, without the prior written consent of the holders of a majority of the outstanding shares of Series B/B-1 Preferred, the Corporation shall not, nor shall it permit any Subsidiary to, redeem, purchase or otherwise acquire directly or indirectly any Junior Securities, nor shall the Corporation directly or indirectly pay or declare any dividend or make any distribution upon any Junior Securities (other than dividends payable in shares of Common Stock issued upon the outstanding shares of Common Stock); provided that the Corporation may repurchase shares of Common Stock (i) pursuant to the Put (as defined in the Stockholders Agreement), (ii) pursuant to the Stock Repurchase Agreement, (iii) pursuant to cashless exercises of stock options under the Company's Stock Option Plan, and (iv) at original cost from former employees of the Company and its Subsidiaries upon termination of employment for an aggregate purchase price of no more than \$100,000 in any twelve-month period in accordance with arrangements approved by the Corporation's Board of Directors so long as no Event of Noncompliance is in existence at the time of or immediately after such repurchase or would be caused by such repurchase.

**Section 4. Redemptions.**

**4A. Series B Preferred.** At any time during the 90-day period immediately following June [ ], 2009, the holders of a majority of the Series B Preferred then outstanding may require the Corporation to redeem all or any portion of the Shares of Series B Preferred owned by such holders by giving written notice to the Corporation of such election. Within five days after receipt of any such request, the Corporation shall give written notice of such request to all other holders of Series B Preferred and to the holders of the Series A Preferred, and such other holders may request redemption of all or any portion of the Shares of Series B Preferred and Series A Preferred owned by such holders by giving written notice to the Corporation within ten days after receipt of the Corporation's notice. The Corporation shall be required to redeem all Shares of Series B Preferred and all shares of Series A Preferred with respect to which such

redemption requests have been made within 30 days after receipt of the initial redemption request at a price per Share of Series B Preferred equal to the greater of (i) \$2.10 (as appropriately adjusted for any subsequent stock splits, stock combinations, stock dividends or the like with respect to the Series B Preferred) plus an additional amount equal to all accrued and unpaid dividends thereon or (ii) the sum of (A) \$1.05 (as appropriately adjusted for any subsequent stock splits, stock combinations, stock dividends or the like with respect to the Series B Preferred) plus an additional amount equal to all accrued and unpaid dividends thereon plus (B) the Market Price of the Common Stock issuable upon conversion of such Share of Series B Preferred as of the date of such redemption request, and at a price per share of Series A Preferred equal to \$21.00 per share (as appropriately adjusted for any subsequent stock splits, stock combinations, stock dividends or the like with respect to the Series A Preferred) plus an additional amount equal to any declared but unpaid dividends thereon.

4B. Series B-1 Preferred. Upon the issuance at any time and from time to time of Series B-1 Preferred, the Corporation immediately shall redeem (without any action on the part of the holders of the Series B-1 Preferred) all outstanding Shares of Series B-1 Preferred at a price per Share equal to the Original Cost thereof (plus all accrued and unpaid dividends thereon).

4C. Redemption Payments. For each Share (which, for purposes of this Section 4C, also includes shares of Series A Preferred) which is to be redeemed hereunder, the Corporation shall be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such Share) an amount in immediately available funds equal to the redemption price specified in the paragraph pursuant to which such redemption is taking place. If the funds of the Corporation legally available for redemption of Shares on any Redemption Date are insufficient to redeem the total number of Shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of Shares pro rata among the holders of the Shares to be redeemed based upon the aggregate redemption price of the Shares to be redeemed then held by each such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Shares, such funds shall immediately be used to redeem the balance of the Shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed. Any Shares not redeemed shall remain outstanding and shall be entitled to all of the rights and preferences provided in this Article IV.

4D. Notice of Redemption. Except as otherwise provided herein, the Corporation shall mail written notice of each redemption of any Series B/B-1 Preferred to each record holder thereof not more than 60 nor less than 30 days prior to the date on which such redemption is to be made. In case fewer than the total number of Shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed Shares shall be issued to the holder thereof without cost to such holder within five business days after surrender of the certificate representing the redeemed Shares.

4E. Determination of the Number of Each Holder's Shares to be Redeemed. Except as otherwise provided herein, the number of Shares of Series B/B-1 Preferred to be redeemed from each holder thereof in redemptions by the Corporation under this Section 4 shall be the number of Shares determined by multiplying the total number of Shares of Series B/B-1

Preferred to be redeemed times a fraction, the numerator of which shall be the total number of Shares then held by such holder and the denominator of which shall be the total number of Shares then outstanding.

4F. Dividends After Redemption. No Share shall be entitled to any dividends accruing after the date on which the applicable redemption price is paid to the holder of such Share. On such date, all rights of the holder of such Share shall cease, and such Share shall no longer be deemed to be issued and outstanding.

4G. Redeemed or Otherwise Acquired Shares. Any Shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired and shall not be reissued, sold or transferred.

4H. Other Redemptions or Acquisitions. The Corporation shall not, nor shall it permit any Subsidiary to, redeem or otherwise acquire any Shares of Series B/B-1 Preferred, except as expressly authorized herein.

#### Section 5. Voting Rights.

5A. General. The holders of the Series B/B-1 Preferred shall be entitled to notice of all stockholders meetings in accordance with the Corporation's Bylaws, and, in addition to any circumstances in which the holders of any class or series of Series B/B-1 Preferred shall be entitled to vote as a separate class or series under the IBCA, the holders of Series B Preferred shall be entitled to vote on all matters (including the election of directors) submitted to the stockholders for a vote together with the holders of the Common Stock and the Series A Preferred voting together as a single class with each share of Common Stock entitled to one vote per share and each Share of Series B Preferred entitled to a number of votes (including fractions thereof) equal to the number of shares of Common Stock (including fractions thereof) issuable upon conversion of such Share as of the record date for such vote (or, if no record date is specified, as of the date of such vote).

5B. Election of Directors by Series B Preferred. In the election of directors of the Corporation, so long as at least 10% of the Series B Preferred is outstanding the holders of the Series B Preferred, voting together as a single class to the exclusion of all other classes and series of the Corporation's capital stock and with each Share of Series B Preferred entitled to one vote, shall be entitled (by majority vote) to elect two directors to serve on the Corporation's Board of Directors until their successors are duly elected by the holders of the Series B Preferred or such directors are removed from office by the majority vote of the holders of the Series B Preferred. If the holders of the Series B Preferred for any reason fail to elect anyone to fill any such directorship, such position shall remain vacant until such time as the holders of the Series B Preferred elect a director to fill such position and shall not be filled by resolution or vote of the Corporation's Board of Directors or the Corporation's other stockholders. In addition, for so long as at least 10% of the Series B Preferred remains outstanding, the holders of the Common Stock and the holders of the Series A Preferred and Series B Preferred (each voting on an as-if-converted basis) shall have the right voting together as a single class to elect three (3) directors to serve on the Corporation's Board of Directors until their successors are duly elected by such holders or such directors are removed from office by such holders.



5C. Protective Provisions. So long as at least 10% of the Series B Preferred remains outstanding or any Series B-1 Preferred remains outstanding, the Corporation shall not, without the vote or written consent of the holders of a majority of the Series B/B-1 Preferred then outstanding:

(i) authorize, issue or enter into any agreement providing for the issuance (contingent or otherwise) of (or take any action that would amend the terms of or reclassify any existing securities so as to constitute) (a) any notes or debt securities containing equity features (including, without limitation, any notes or debt securities convertible into or exchangeable or exercisable for capital stock or other equity securities, issued in connection with the issuance of capital stock or other equity securities or containing profit participation features), (b) any capital stock or other equity securities (or any securities convertible into or exchangeable or exercisable for any capital stock or other equity securities) which are senior to or on a parity with the Series B Preferred or Series B-1 Preferred with respect to the payment of dividends, redemptions or distributions upon liquidation, dissolution or winding up of the Corporation or otherwise or (c) any additional shares of preferred stock (however designated) or any Common Stock (except for issuances of Common Stock to the Corporation's and its Subsidiaries' directors, employees and consultants as contemplated by paragraph 3C(viii) of the Stock Purchase Agreement);

(ii) sell or transfer or permit any Subsidiary to sell or transfer all or substantially all of the assets of the Corporation and its Subsidiaries on a consolidated basis in any transaction or series of transactions (including any sale or other disposition of capital stock of any of the Corporation's Subsidiaries (whether by merger, consolidation or otherwise), but excluding sales of inventory in the ordinary course of business);

(iii) merge or consolidate with any Person or permit any Subsidiary to merge or consolidate with any Person (other than a merger or consolidation between or among Wholly-Owned Subsidiaries);

(iv) liquidate, dissolve or effect a recapitalization or reorganization in any form of transaction (including, without limitation, any reorganization into a limited liability company, a partnership or any other non-corporate entity which is treated as a partnership for federal income tax purposes or the formation of a parent holding company for the Corporation, and including any stock split, stock dividend, stock combination or like event involving the Series B Preferred or Series B-1 Preferred);

(v) increase the number of authorized shares of Series B Preferred or Series B-1 Preferred or alter, change or otherwise affect or impair the rights, preferences or powers or the relative preferences and priorities of the holders of Series B Preferred or Series B-1 Preferred; or

(vi) make any amendment to these Articles of Incorporation or the Corporation's Bylaws or file any resolution of the Corporation's board of directors with the Idaho Secretary of State.

Section 6. Conversion.

6A. Conversion Events and Procedure.

(i) Upon the consummation of a Qualified Public Offering, all of the outstanding Series B Preferred shall automatically convert (without the payment of any additional consideration) into (a) a number of Shares of Series B-1 Preferred (including fractional Shares) computed by dividing (i) the sum of the aggregate Original Cost of such Shares of Series B Preferred to be converted plus all accrued and unpaid dividends thereon by (ii) \$1,000, and (b) a number of shares of Conversion Stock computed by multiplying the number of Shares to be converted by \$1.05 and dividing the result by the Conversion Price then in effect. The Corporation shall provide written notice of such automatic conversion to all holders of Series B Preferred at least three business days prior to such Qualified Public Offering and such conversion shall be conditioned upon the consummation of such Qualified Public Offering and shall be deemed to be effective immediately prior to the consummation thereof.

(ii) In connection with the exercise of rights pursuant to paragraph 3(c) of the Stockholders Agreement, any holder of Series B Preferred may convert up to a number of shares of Series B Preferred that would result in the issuance to such holder of (a) such number of shares of Common Stock as shall be equal to the number of shares of Common Stock that such holder has the right to sell pursuant to paragraph 3(c) of the Stockholders Agreement (computed by multiplying the number of Shares to be converted by \$1.05 and dividing the result by the Conversion Price then in effect), and (b) a number of Shares of Series B-1 Preferred (including fractional Shares) computed by dividing (i) the sum of the aggregate Original Cost of such Shares of Series B Preferred to be converted plus all accrued and unpaid dividends thereon by (ii) \$1,000.

(iii) At any time and from time to time, any holder of Series B Preferred may convert all or any portion of the Series B Preferred (including any fraction of a Share) held by such holder into a number of shares of Conversion Stock computed by multiplying the number of Shares to be converted by \$1.05 and dividing the result by the Conversion Price then in effect.

(iv) Any conversion of Series B Preferred pursuant to subparagraph 6A(ii) above shall be deemed to have been effected as of the date provided therein. Each other conversion of Series B Preferred shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series B Preferred to be converted have been surrendered for conversion at the principal office of the Corporation. At the time any such conversion has been effected, the rights of the holder of the Shares converted as a holder of Series B Preferred shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Conversion Stock and, when applicable, Series B-1 Preferred are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Conversion Stock and, when applicable, Series B-1 Preferred represented thereby.

(v) The conversion rights of any Share subject to redemption hereunder shall terminate on the Redemption Date for such Share unless the Corporation has failed to pay to the holder thereof the full amount payable as of such date.

(vi) Notwithstanding any other provision hereof, if a conversion of Series B Preferred is to be made in connection with a Public Offering, a Change in Ownership, a Fundamental Change or other transaction affecting the Corporation, the conversion of any Shares of Series B Preferred may, at the election of the holder thereof, be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated.

(vii) Promptly (and in any event within two business days) after a conversion has been effected and the delivery to the Corporation of a certificate or certificates representing the number of Shares of Series B Preferred having been converted, the Corporation shall deliver to the converting holder:

(a) a certificate or certificates representing the number of shares of Conversion Stock and, when applicable, Series B-1 Preferred issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(b) payment in an amount equal to all dividends accrued or declared with respect to each Share of Series B Preferred converted (but in respect of which Shares of Series B-1 Preferred were not issued upon such conversion) which have not been paid prior thereto in accordance with the provisions of subparagraph (viii) below, plus the amount payable under subparagraph (xii) below with respect to such conversion; and

(c) a certificate representing any Shares of Series B Preferred which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(viii) With respect to any Share of Series B Preferred being converted for which Series B-1 Preferred is not issued upon conversion, if the Corporation is not permitted under applicable law to pay any portion of any accrued or declared but unpaid dividends on the Series B Preferred being converted, the Corporation shall pay such dividends to the converting holder as soon thereafter as funds of the Corporation are legally available for such payment. At the request of any such converting holder, the Corporation shall provide such holder with written evidence of its obligation to such holder.

(ix) The issuance of certificates for shares of Conversion Stock and, when applicable, Series B-1 Preferred upon conversion of Series B Preferred shall be made without charge to the holders of such Series B Preferred for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Conversion Stock and, when applicable, Series B-1 Preferred. Upon conversion of each Share of Series B Preferred, the Corporation shall take all such actions as are necessary in order to insure that the Conversion Stock and, when applicable, Series B-1 Preferred issuable with respect to such conversion shall be validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof.

(x) The Corporation shall not close its books against the transfer of Series B Preferred or of Conversion Stock or Series B-1 Preferred issued or issuable upon

conversion of Series B Preferred in any manner which interferes with the timely conversion of Series B Preferred. The Corporation shall assist and cooperate with any holder of Shares required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of Series B Preferred hereunder (including, without limitation, making any filings required to be made by the Corporation and the Corporation shall pay all filing fees and expenses payable by the Corporation or any such holder in connection therewith).

(xi) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Conversion Stock and Series B-1 Preferred, solely for the purpose of issuance upon the conversion of the Series B Preferred, such number of shares of Conversion Stock and Series B-1 Preferred as may be issuable upon the conversion of all outstanding Series B Preferred. All shares of Conversion Stock and Series B-1 Preferred which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens, charges and encumbrances. The Corporation shall take all such actions as may be necessary to ensure that all such shares of Conversion Stock and Series B-1 Preferred may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which any of the Corporation's securities may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action which would cause the number of authorized but unissued shares of Conversion Stock or Series B-1 Preferred to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Series B Preferred.

(xii) If any fractional interest in a share of Conversion Stock would, except for the provisions of this subparagraph (xii), be delivered upon any conversion of the Series B Preferred, the Corporation, in lieu of delivering the fractional share therefor, shall pay an amount to the holder thereof equal to the Market Price of such fractional interest as of the date of conversion.

#### 6B. Conversion Price.

(i) The initial Conversion Price shall be \$1.05. In order to prevent dilution of the conversion rights granted under this Section 6, the Conversion Price shall be subject to adjustment from time to time pursuant to this paragraph 6B.

(ii) If and whenever the Corporation issues or sells, or in accordance with paragraph 6C below is deemed to have issued or sold, any shares of 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 immediately upon such issue or sale or deemed issue or sale the Conversion Price shall be reduced to the Conversion Price determined by dividing (a) the sum of (1) the product derived by multiplying the Conversion Price in effect immediately prior to such issue or sale by the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (2) the consideration, if any, received by the Corporation upon such issue or sale, by (b) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale.

(iii) Notwithstanding the foregoing, there shall be no adjustment to the Conversion Price hereunder with respect to the issuance and sale of Common Stock to employees and officers of the Corporation and its Subsidiaries pursuant to the Corporation's employer stock purchase plan or the granting of stock options to directors, employees and consultants of the Corporation and its Subsidiaries or the exercise thereof for an aggregate of not more than 8,753,925 shares of Common Stock (as such number of shares is appropriately adjusted for subsequent stock splits, stock combinations, stock dividends and recapitalizations and as such number shall include all shares issued pursuant to the Corporation's employee stock purchase plan as of the date of the Stock Purchase Agreement and all stock options outstanding as of the date of the Stock Purchase Agreement).

6C. Effect on Conversion Prices of Certain Events. For purposes of determining the adjusted Conversion Price under paragraph 6B above, the following shall be applicable:

(i) Issuance of Rights or Options. If the Corporation in any manner grants or sells any Options and the price per share for which Common Stock is issuable upon the exercise of such Options, or upon conversion or exchange of any Convertible Securities issuable upon exercise of such Options, is less than the Conversion Price in effect immediately prior to the time of the granting or sale of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Options for such price per share. For purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon exercise of all such Options, plus in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of such Conversion Price shall be made when Convertible Securities are actually issued upon the exercise of such Options or when Common Stock is actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Securities and the price per share for which Common Stock is issuable upon conversion or exchange thereof is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (A) the total amount received or receivable 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 to the Corporation upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of such Conversion Price shall be made when Common Stock is actually issued upon the conversion or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustments of such Conversion Price had been or are to be made pursuant to other provisions of this Section 6, no further adjustment of the such Conversion Price shall be made by reason of such issue or sale.

(iii) Change in Option Price or Conversion Rate. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Conversion Price in effect at the time of such change shall be immediately adjusted 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. For purposes of paragraph 6C, if the terms of any Option or Convertible Security which was outstanding as of the date of issuance of the Series B Preferred are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change; provided that no such change shall at any time cause the Conversion Price hereunder to be increased.

(iv) Treatment of Expired Options and Unexercised Convertible Securities. Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Security without the exercise of any such Option or right, the Conversion Price then in effect hereunder shall be adjusted immediately to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued. For purposes of paragraph 6C, the expiration or termination of any Option or Convertible Security which was outstanding as of the date of issuance of the Series B Preferred shall not cause the Conversion Price hereunder to be adjusted unless, and only to the extent that, a change in the terms of such Option or Convertible Security caused it to be deemed to have been issued after the date of issuance of the Series B Preferred.

(v) Calculation of Consideration Received. If any Common Stock, Option or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor (net of discounts, commissions and related expenses). If any Common Stock, Option or Convertible Security is issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Corporation shall be the Market Price thereof as of the date of receipt. If any Common Stock, Option or Convertible Security is issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving

corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Option or Convertible Security, as the case may be. The fair value of any consideration other than cash and securities shall be determined jointly by the Corporation and the holders of a majority of the outstanding Series B Preferred. If such parties are unable to reach agreement within a reasonable period of time, the fair value of such consideration shall be determined by an independent appraiser experienced in valuing such type of consideration jointly selected by the Corporation and the holders of a majority of the outstanding Series B Preferred. The determination of such appraiser shall be final and binding upon the parties, and the fees and expenses of such appraiser shall be borne by the Corporation.

(vi) Integrated Transactions. In case any Option is issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties thereto, the Option shall be deemed to have been issued for a consideration of \$.01.

(vii) Treasury Shares. 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 or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(viii) Record Date. If the Corporation takes a record of the holders of Common Stock for the purpose of entitling them (a) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (b) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

6D. Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and if the Corporation at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

6E. Organic Change. Prior to the consummation of any Organic Change, the Corporation shall make appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series B Preferred then outstanding) to ensure that each of the holders of Series B Preferred shall thereafter have the right to acquire and receive, in lieu of or in addition to (as the case may be) the shares of Series B-1 Preferred and Common Stock immediately theretofore acquirable and receivable upon the conversion of such holder's Series B Preferred, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted its Series B Preferred into shares of Series B-

1 Preferred and Common Stock immediately prior to such Organic Change (plus all accrued and unpaid dividends on the Series B Preferred held by such holder immediately prior to such Organic Change). In each such case, the Corporation shall also make appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series B Preferred then outstanding) to ensure that the provisions of this Section 6 and Sections 7 and 8 below shall thereafter be applicable to the Series B Preferred (including, in the case of any such consolidation, merger or sale in which the successor entity or purchasing entity is other than the Corporation, an immediate adjustment of the Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Common Stock acquirable and receivable upon conversion of the Series B Preferred, if the value so reflected is less than the Conversion Price in effect immediately prior to such consolidation, merger or sale). The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor entity (if other than the Corporation) resulting from such consolidation or merger or the entity purchasing such assets assumes by written instrument (in form and substance satisfactory to the holders of a majority of the Series B Preferred then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire. Each holder of Series B Preferred shall have the right to elect the benefits of either this paragraph 6E or, to the extent applicable, Section 2 above in connection with such Organic Change.

6F. Certain Events. If any event occurs of the type contemplated by the provisions of this Section 6 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series B Preferred; provided that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this Section 6 or decrease the number of shares of Common Stock issuable upon conversion of each Share of Series B Preferred.

6G. Notices.

(i) Promptly after any adjustment of the Conversion Price, the Corporation shall give written notice thereof to all holders of Series B Preferred, setting forth in reasonable detail and certifying the calculation of such adjustment.

(ii) The Corporation shall give written notice to all holders of Series B Preferred at least 20 days prior to the date on which the Corporation closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with respect to any pro rata subscription offer to holders of Common Stock or (c) for determining rights to vote with respect to any Organic Change, liquidation, dissolution or winding up of the Corporation.

(iii) The Corporation shall also give written notice to the holders of Series B Preferred at least 20 days prior to the date on which any Organic Change, Fundamental Change or Change in Ownership shall take place.



6H. Redeemed or Otherwise Acquired Series B Preferred. Any Shares of Series B Preferred which are redeemed or otherwise acquired by the Corporation (including, without limitation, in connection with the conversion thereof) shall be canceled and retired and shall not be reissued, sold or transferred.

Section 7. Purchase Rights. If at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "Purchase Rights"), then each holder of Series B Preferred shall be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon conversion of such holder's Series B Preferred immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

Section 8. Events of Noncompliance.

8A. Definition. An Event of Noncompliance shall have occurred if:

(i) the Corporation fails to make any redemption payment with respect to the Series B/B-1 Preferred which it is required to make hereunder, whether or not such payment is legally permissible or is prohibited by any agreement to which the Corporation or any of its Subsidiaries is subject; or

(ii) the Corporation fails to pay the full amount of the Put Price (as defined in the Stockholders Agreement) in cash at the Put Closing (as defined in the Stockholders Agreement) in accordance with the terms of the Stockholders Agreement, whether or not such payment is legally permissible or is prohibited by any agreement to which the Corporation or any of its Subsidiaries is subject.

8B. Consequences of Events of Noncompliance.

(i) If an Event of Noncompliance has occurred and is continuing, the dividend rate on the Series B/B-1 Preferred with respect to which the Corporation has failed to make a redemption payment or has failed to pay the full amount of the Put Price shall increase immediately (on a prospective and not retroactive basis) by an increment of five (5) percentage points.

(ii) If an Event of Noncompliance has occurred, the holder or holders of a majority of the Series B/B-1 Preferred then outstanding may demand (by written notice delivered to the Corporation) immediate redemption of all or any portion of the Series B/B-1 Preferred owned by such holder or holders at a price per Share equal to its Original Cost (plus all accrued and unpaid dividends thereon), which amount shall be paid on a parity with all other Shares for which redemption has been demanded hereunder, plus in the case of the Series B Preferred an amount equal to the number of shares of Common Stock then issuable upon conversion of such Share multiplied by the Market Price per share of Common Stock as of such date. The Corporation shall give prompt written notice of such election to the other holders of

Series B/B-1 Preferred (but in any event within five days after receipt of the initial demand for redemption from the holder or holders of a majority of the Series B/B-1 Preferred then outstanding), and each such other holder may demand immediate redemption of all or any portion of such holder's Series B/B-1 Preferred by giving written notice thereof to the Corporation within seven days after receipt of the Corporation's notice. The Corporation shall redeem all Series B/B-1 Preferred as to which rights under this paragraph 8B have been exercised within 30 days after receipt of the initial demand for redemption from the holder or holders of a majority of the Series B/B-1 Preferred then outstanding.

(iii) If an Event of Noncompliance of the type described in subparagraph 8A(i) or subparagraph 8A(ii) has occurred and continued for a period of 90 days, the number of directors constituting the Corporation's Board of Directors shall, at the request of the holders of a majority of the Series B/B-1 Preferred then outstanding (acting together as a single class), be increased by one member, and the holders of Series B/B-1 Preferred (acting together as a single class) shall have the special right, voting separately as a single class (with each share of Series B/B-1 Preferred being entitled to one vote) and to the exclusion of all other classes and series of the Corporation's stock, to elect an individual to fill such newly created directorship, to fill any vacancy of such directorship and to remove any individual elected to such directorship. The newly created directorship shall constitute a separate class of directors, and the director so elected by the holders of the Series B/B-1 Preferred shall be entitled to cast a number of votes on each matter considered by the Board of Directors (including for purposes of determining the existence of a quorum) equal to the sum of the number of votes entitled to be cast by all of the other directors plus one. The special right of the holders of Series B/B-1 Preferred to elect such member to the Board of Directors may be exercised at the special meeting called pursuant to this subparagraph (vi), at any annual or other special meeting of stockholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a stockholders meeting. Such special right shall continue until such time as there is no longer any Event of Noncompliance in existence, at which time such special right shall terminate subject to revesting upon the occurrence and continuation of any Event of Noncompliance which gives rise to such special right hereunder. At any time when such special right has vested in the holders of Series B/B-1 Preferred, a proper officer of the Corporation shall, upon the written request of the holder or holders of at least 25% of the Series B/B-1 Preferred then outstanding, addressed to the secretary of the Corporation, call a special meeting of the holders of Series B/B-1 Preferred for the purpose of electing a director pursuant to this subparagraph. Such meeting shall be held at the earliest legally permissible date at the principal office of the Corporation, or at such other place designated by the holders of at least 25% of the Series B/B-1 Preferred then outstanding. If such meeting has not been called by a proper officer of the Corporation within 10 days after personal service of such written request upon the secretary of the Corporation or within 20 days after mailing the same to the secretary of the Corporation at its principal office, then the holders of at least 25% of the Series B/B-1 Preferred then outstanding may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such Person so designated upon the notice required for annual meetings of stockholders and shall be held at the Corporation's principal office, or at such other place designated by the holders of at least 25% of the Series B/B-1 Preferred then outstanding. Any holder of Series B/B-1 Preferred so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of stockholders to be called pursuant to this subparagraph. At any meeting or at any adjournment thereof at which the

holders of Series B/B-1 Preferred have the special right to elect directors, the presence, in person or by proxy, of the holders of a majority of the Series B/B-1 Preferred then outstanding (considered as a single class) shall be required to constitute a quorum for the election or removal of such director by the holders of the Series B/B-1 Preferred exercising such special right. The vote of a majority of such quorum shall be required to elect or remove such director. The director so elected by the holders of Series B/B-1 Preferred shall continue to serve as a director until the expiration of the greater of (a) a period of six months following the date on which there is no longer any Event of Noncompliance of the type described in subparagraph 8A(i) or subparagraph 8A(ii) in existence or (b) the remaining period of the full term for which such director has been elected. After the expiration of such six-month period or when the full term for which such director has been elected ceases (provided that the special right to elect directors has terminated), as the case may be, the number of directors constituting the board of directors of the Corporation shall decrease to such number as constituted the whole board of directors of the Corporation immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to the special right to elect directors.

(iv) If any Event of Noncompliance exists, each holder of Series B/B-1 Preferred shall also have any other rights which such holder is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

Section 9. Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Series B/B-1 Preferred. Upon the surrender of any certificate representing Series B/B-1 Preferred at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of Shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Series B/B-1 Preferred represented by such new certificate from the date to which dividends have been fully paid on such Series B/B-1 Preferred represented by the surrendered certificate.

Section 10. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Shares of Series B/B-1 Preferred, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor or investment fund, then its own agreement shall be satisfactory), or in the case of any such mutilation, upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Shares of such series represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate and dividends shall accrue on the Series B/B-1 Preferred represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 11. Definitions. For purposes of this Subdivision A, the following capitalized terms shall have the meanings set forth below.

“Alternative Series B Liquidation Preference” has the meaning given to such term in Section 2 of this Subdivision E.

“Change in Ownership” means any transaction or event (including, without limitation, any sale, transfer or issuance or series of sales, transfers and/or issuances of Common Stock or other capital stock by the Corporation or any holders thereof) which results in any Person or group of Persons (as the term “group” is used under the Securities Exchange Act of 1934, as amended), other than the holders of Common Stock and Series B Preferred as of the Closing Date (as defined in the Stock Purchase Agreement), owning capital stock of the Corporation possessing the voting power (under ordinary circumstances) to elect a majority of the Corporation’s Board of Directors.

“Common Stock” means the Corporation’s Common Stock, no par value per share, and any other capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation.

“Common Stock Deemed Outstanding” means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to subparagraphs 6C(i) and 6C(ii) hereof whether or not the Options or Convertible Securities are actually exercisable at such time (but excluding any shares of Common Stock issuable upon conversion of the Series B Preferred).

“Conversion Stock” means shares of the Corporation’s Common Stock, no par value per share; provided that if there is a change such that the securities issuable upon conversion of the Series B Preferred are issued by an entity other than the Corporation or there is a change in the type or class of securities so issuable, then the term “Conversion Stock” shall mean one share of the security issuable upon conversion of the Series B Preferred if such security is issuable in shares, or shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

“Convertible Securities” means any stock or securities directly or indirectly convertible into or exchangeable for Common Stock.

“Fundamental Change” means (a) any sale or transfer of more than 50% of the assets of the Corporation and its Subsidiaries on a consolidated basis (computed on the basis of the greater of (i) book value in accordance with generally accepted accounting principles consistently applied or (ii) fair market value determined in the reasonable good faith judgment of the Corporation’s Board of Directors) in any transaction or series of related transactions (other than sales of inventory in the ordinary course of business), (b) any merger or consolidation to which the Corporation is a party, except for a merger in which the Corporation is the surviving corporation, the terms of the Preferred Stock are not changed or altered in any respect, the Preferred Stock is not exchanged for cash, securities or other property, and after giving effect to

such merger, the holders of Common Stock and Series B Preferred as of the Closing Date (as defined in the Stock Purchase Agreement) shall continue to own the Corporation's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the Corporation's Board of Directors and (c) any redemption or repurchase of capital stock representing a majority of the voting power of the outstanding shares of capital stock of the Corporation.

"Indebtedness" means at a particular time, without duplication, (i) any indebtedness for borrowed money or issued in substitution for or exchange of indebtedness for borrowed money, (ii) any indebtedness evidenced by any note, bond, debenture or other debt security, (iii) any indebtedness for the deferred purchase price of property or services with respect to which a Person is liable, contingently or otherwise, as obligor or otherwise (other than trade payables and other current liabilities incurred in the ordinary course of business which are not more than 60 days past due), (iv) any commitment by which a Person assures a creditor against loss (including contingent reimbursement obligations with respect to letters of credit), (v) any indebtedness guaranteed in any manner by a Person (including guarantees in the form of an agreement to repurchase or reimburse), (vi) any obligations under capitalized leases with respect to which a Person is liable, contingently or otherwise, as obligor, guarantor or otherwise, or with respect to which obligations a Person assures a creditor against loss, (vii) any indebtedness secured by a lien, charge or encumbrance on a Person's assets and (viii) any unsatisfied obligation for "withdrawal liability" to a "multiemployer plan" as such terms are defined under the Employee Retirement Income Security Act of 1974, as amended.

"Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series B/B-1 Preferred.

"Market Price" of any security means the average of the closing prices of such security's sales on the principal securities exchanges on which such security may at the time be listed, or, if there has been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, or, if on any day such security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of 21 days consisting of the day prior to the day as of which "Market Price" is being determined and the 20 consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the "Market Price" shall be the fair value thereof determined jointly by the Corporation and the holders of a majority of the Series B Preferred. If such parties are unable to reach agreement within a reasonable period of time, such fair value shall be determined by an independent appraiser experienced in valuing securities jointly selected by the Corporation and the holders of a majority of the Series B Preferred. The determination of such appraiser shall be final and binding upon the parties, and the Corporation shall pay the fees and expenses of such appraiser.

"Options" means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

“Organic Change” means any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Corporation’s assets or other transaction, in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation, dissolution or winding up) stock, securities or assets with respect to or in exchange for Common Stock.

“Original Cost” means the Series B Original Cost and the Series B-1 Original Cost, or either of them, as the context requires.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

“Preferred Stock Liquidation Preferences” means the Series A Liquidation Preference, the Series B Liquidation Preference and the Series B-1 Liquidation Preference, or any of them, as the context requires.

“Public Offering” means any offering by the Corporation of its Common Stock to the public pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force.

“Qualified Public Offering” means a firm commitment Public Offering of shares of the Corporation’s Common Stock underwritten by a nationally recognized investment banking firm in which (i) the aggregate proceeds to the Corporation for such shares (net of discounts, commissions and related expenses) shall be at least \$30,000,000, (ii) the price per share paid by the public for such shares (net of discounts, commissions and related expenses) shall be at least \$5.00 (as appropriately adjusted for any subsequent stock splits, stock combinations, stock dividends, recapitalizations and the like with respect to the Common Stock) and (iii) either (A) all of the shares of Series B-1 Preferred which are outstanding or issuable upon automatic conversion in connection with such Qualified Public Offering are redeemed immediately upon and as of the closing of such Qualified Public Offering or (B) contemporaneously with such Qualified Public Offering cash in an amount sufficient to redeem all outstanding Shares of Series B-1 Preferred (including all such Shares which are issuable upon automatic conversion in connection with such Qualified Public Offering) is segregated and irrevocably held by the Corporation for payment to the holders of Series B-1 Preferred pursuant to paragraph 4B of this Subdivision A.

“Redemption Date” as to any Share means the date specified in the notice of any redemption at the holder’s option or the applicable date specified herein in the case of any other redemption; provided that no such date shall be a Redemption Date unless the aggregate amount payable in respect of such Share is actually paid in full on such date, and if not so paid in full, the Redemption Date shall be the date on which such amount is fully paid.

“Series A Liquidation Preference” has the meaning given to such term in Section 3 of Subdivision D of this Article IV.

“Series B Liquidation Preference” has the meaning given to such term in Section 2 of this Subdivision E.

“Series B-1 Liquidation Preference” has the meaning given to such term in Section 2 of this Subdivision E.

“Series B Original Cost” of any Share of Series B Preferred as of any particular date shall be equal to \$1.05.

“Series B-1 Original Cost” of any Share of Series B-1 Preferred as of any particular date shall be equal to \$1,000.00.

“Stock Purchase Agreement” means that certain Stock Purchase Agreement, dated as of June [ ], 2002, by and among the Corporation and the other Persons signatory thereto (as the same may be amended from time to time in accordance with its terms).

“Stock Repurchase Agreement” has the meaning given to such term in the Stock Purchase Agreement (as such Stock Repurchase Agreement may be amended from time to time in accordance with its terms).

“Stockholders Agreement” has the meaning given to such term in the Stock Purchase Agreement (as such Stockholders Agreement may be amended from time to time in accordance with its terms).

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of the limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability company, partnership, association or other business entity.

“Wholly-Owned Subsidiary” means, with respect to any Person, a Subsidiary of which all of the issued and outstanding capital stock or other ownership interests are owned by such Person or another Wholly-Owned Subsidiary of such Person.

Section 12. Amendment and Waiver. No amendment, modification or waiver shall be binding or effective with respect to any provision of Sections 1 to 13 of this Subdivision A without the prior written consent of the holders of a majority of the Series B/B-1 Preferred outstanding at the time such action is taken; provided that if any such amendment, modification or waiver would adversely affect any series or class of Series B/B-1 Preferred relative to the

holders of the other series of Series B/B-1 Preferred voting in favor of such amendment, modification, or waiver, such amendment, modification or waiver shall also require the written consent of the holders of a majority of the outstanding series of Series B/B-1 Preferred so adversely affected; provided further that if any such amendment, modification or waiver is to a provision in these Articles of Incorporation that requires a specific vote to take an action thereunder or to take an action with respect to the matters described therein, such amendment, modification or waiver shall not be effective unless such vote is obtained with respect to such amendment, modification or waiver; and provided further that no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of the applicable percentage of the Series B/B-1 Preferred then outstanding.

Section 13. Notices. All notices, demands or other communications to be given or delivered hereunder shall be in writing and shall be deemed to have been given when delivered personally to the recipient or one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid) or five (5) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

**FOURTH:** Pursuant to Sections 30-1-1002(7) and 30-1-602 of the IBCA, the foregoing amendment was adopted by the Board of Directors of the Corporation on June 6, 2002, and did not require approval of all of the shareholders of the Corporation under the IBCA. However, the Articles of Incorporation of the Corporation, as in effect prior to the foregoing amendment, required the approval of the holders of the Corporation's Series A Preferred Stock. The foregoing amendment was adopted by the holders of Series A Preferred Stock on June 17, 2002.

**FIFTH:** The designation, number or outstanding shares, number of shares entitled to vote, and number of votes represented at the meeting of the holders of Series A Preferred Stock are as follows:

<u>Designation</u>	<u>Number of Shares Outstanding</u>	<u>Number of Shares Entitled to Vote</u>	<u>Number of Shares Represented at Meeting</u>
Series A Preferred Stock	195,697	195,697	195,697

**SIXTH:** The total number of votes cast in favor of the amendment by the holders of Series A Preferred Stock was 192,127, the number of votes cast against the amendment by the holders of Series A Preferred Stock was 3,570, and the number of votes cast by the holders of Series A Preferred Stock was sufficient for approval by that voting group.

**SEVENTH:** The amendment does not provide for an exchange, reclassification or cancellation of issued shares.

**IN WITNESS WHEREOF,** the undersigned has executed these Fourth Articles of Amendment in duplicate this 17th day of June, 2002.



*Dennis R. Weyrauch*  
Dennis R. Weyrauch  
Secretary