

FILED/EFFECTIVE

Nov 0 11 23 AM '01

**THIRD ARTICLES OF AMENDMENT
TO
AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
GROUPSTONE, INC.
(fka ENVIRONMENTAL NEWS NETWORK, INC.)**

The undersigned, **DAVID KAPLAN**, hereby certifies that:

1. He is the duly elected Secretary of **GROUPSTONE, INC.**, an Idaho corporation (the "Corporation").

2. Pursuant to Section 30-1-602 of the Idaho Business Corporation Act and the authority given by the Corporation's Amended and Restated Articles of Incorporation, the Board of Directors of the Corporation has duly adopted the following recitals and resolutions:

WHEREAS, the Amended and Restated Articles of Incorporation of the Corporation provide for a class of shares known as Preferred Stock, issuable from time to time in one or more series; and

WHEREAS, the Board of Directors of the Corporation, pursuant to its authority as aforesaid, desires to fix the terms of three series of said Preferred Stock, the number of shares constituting each such series and the designation of each of series.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors deems it advisable to adopt, and hereby adopts, the following Third Amendment to the Amended and Restated Articles of Incorporation, as follows:

FIRST: The name of the Corporation is **GROUPSTONE, INC.**

SECOND: The following amendments to the Amended and Restated Articles of Incorporation were adopted by the Board of Directors on October 25, 2001, and shareholder action was not required.

1
IDaho SECRETARY OF STATE
11/08/2001 05:00
CK: 85837 CT: 28168 BH: 428694
1 @ 30.00 = 30.00 AMEND PROF # 2
1 @ 20.00 = 20.00 EXPEDITE C # 3

C101228

THIRD: Article IV of the Amended and Restated Articles of Incorporation is hereby 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 Sixty Million (60,000,000) shares, consisting of (i) Fifty Million (50,000,000) shares of Common Stock, having no par value; and (ii) Ten Million (10,000,000) shares of Preferred Stock, having no par value, One Million (1,000,000) shares of which shall be designated as Series A Convertible Preferred Stock (the "Series A Preferred"), Nine Hundred Thirty-Three Thousand Three Hundred Thirty-Three (933,333) shares of which shall be designated as Series B Convertible Preferred Stock (the "Series B Preferred"), and Four Million (4,000,000) shares of which shall be designated as Series C Convertible Preferred Stock (the "Series C Preferred"). The Series A Preferred, the Series B Preferred, and the Series C Preferred may be collectively referred to herein as the "Convertible Preferred Stock."

B. DESIGNATION OF SERIES. The 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 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 Preferred Stock (collectively, a "Preferred Stock Designation").

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. RIGHTS PREFERENCES AND RESTRICTIONS OF CONVERTIBLE PREFERRED STOCK. The Convertible Preferred Stock shall have the rights, preferences, privileges and the qualifications, limitations and restrictions thereof, as follows:

1. Dividend Rights. (a) Holders of Series A Preferred, in preference to the holders of Series B Preferred, Series C Preferred, or any Common Stock of the Corporation; (b) holders of Series B Preferred, in preference to the holders of Series C Preferred or any Common Stock of the Corporation; and (c) holders of Series C Preferred, in preference to the holders of any Common Stock of the Corporation, shall be entitled to receive cash dividends, when and if declared by the 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 Convertible Preferred Stock. So long as any shares of Convertible Preferred Stock 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 Convertible Preferred Stock. 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 Convertible Preferred Stock 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 D.1 shall not, however, apply to a dividend payable in Common Stock.

2. Voting Rights.

(a) General Rights. Except as otherwise provided herein or as required by law, the Convertible Preferred Stock shall be voted equally with the shares of Common Stock of the Corporation and not as a separate class, at any annual or

special meeting of shareholders of the Corporation, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Convertible Preferred Stock shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Convertible Preferred Stock are convertible (pursuant to Section D.4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) **Separate Vote of Series A Preferred.** For so long as at least 250,000 shares of Series A Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of a majority of the outstanding shares of Series A Preferred, voting separately as a class, shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration or repeal of, or addition to, any provision of the Articles or Bylaws of the Corporation that affects adversely the rights, preferences or privileges of the Series A Preferred or increases or decreases the number of authorized shares of Series A Preferred;

(ii) The creation of any new series or class of shares having a preference or priority as to dividends or assets superior to or on a parity with that of the Series A Preferred;

(iii) The creation of any bonds, notes or other obligations convertible into, exchangeable for or having option rights to purchase shares of stock with any preference or priority as to dividends or assets superior to or on a parity with that of the Series A Preferred;

(iv) The reclassification of any class or series of Common Stock into shares with a preference or priority as to dividends or assets superior to or on a parity with that of the Series A Preferred; or

(v) The voluntary dissolution or liquidation of the Corporation.

(c) **Separate Vote of Series B Preferred.** For so long as at least 166,666 shares of Series B Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of a majority of the outstanding shares of Series B Preferred, voting separately as a class, shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration or repeal of, or addition to, any provision of the Articles or Bylaws of the Corporation that affects adversely the rights, preferences or privileges of the Series B Preferred or increases or decreases the number of authorized shares of Series B Preferred;

(ii) The creation of any new series or class of shares having a preference or priority as to dividends or assets superior to or on a parity with that of the Series B Preferred (other than the Series A Preferred);

(iii) The creation of any bonds, notes or other obligations convertible into, exchangeable for or having option rights to purchase shares of stock with any preference or priority as to dividends or assets superior to or on a parity with that of the Series B Preferred (other than the Series A Preferred);

(iv) The reclassification of any class or series of Common Stock into shares with a preference or priority as to dividends or assets superior to or on a parity with that of the Series B Preferred; or

(v) The voluntary dissolution or liquidation of the Corporation.

(d) **Separate Vote of Series C Preferred.** For so long as at least 600,000 shares of Series C Preferred remain outstanding, the holders of the Series C Preferred, by the vote or written consent of the holders of a majority of the outstanding shares of Series C Preferred voting separately as a class, shall be entitled to elect one member to serve on the Company's Board of Directors and, in addition to any other vote

or consent required herein or by law, the vote or written consent of the holders of a majority of the outstanding shares of Series C Preferred, voting separately as a class, shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration or repeal of, or addition to, any provision of the Articles or Bylaws of the Corporation that affects adversely the rights, preferences or privileges of the Series C Preferred or increases or decreases the number of authorized shares of Series C Preferred;

(ii) The creation of any new series or class of shares having a preference or priority as to dividends or assets superior to or on a parity with that of the Series C Preferred (other than the Series A Preferred and Series B Preferred);

(iii) The creation of any bonds, notes or other obligations convertible into, exchangeable for or having option rights to purchase shares of stock with any preference or priority as to dividends or assets superior to or on a parity with that of the Series C Preferred (other than the Series A Preferred and Series B Preferred);

(iv) The reclassification of any class or series of Common Stock into shares with a preference or priority as to dividends or assets superior to or on a parity with that of the Series C Preferred; or

(v) The voluntary dissolution or liquidation of the Corporation.

3. Liquidation Rights.

(a) **Liquidation Preference of Convertible Preferred Stock.** Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "Liquidity Event"), in which the proceeds available for distribution to all shareholders, after payment of the debts and obligations of the Corporation, are **less than** \$12,000,000, (i) the holders of Series A Preferred shall be entitled to receive, before any distribution or payment shall be made to the holders of Common Stock and Series B Preferred, an amount per share of Series A Preferred equal to \$1.00 per share (the "Series A Original Issue");

Price", reduced by the amount of any cash dividends previously declared and paid on such Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares), for each share of Series A Preferred held by them (the "Series A Liquidation Preference"); (ii) following payment in full of the Series A Liquidation Preference, the holders of Series B Preferred shall be entitled to receive, before any distribution or payment shall be made to the holders of Common Stock, an amount per share of Series B Preferred equal to \$1.50 per share (the "Series B Original Issue Price"), reduced by the amount of any cash dividends previously declared and paid on such Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares), for each share of Series B Preferred held by them (the "Series B Liquidation Preference"); and (iii) following payment in full of the Series A Liquidation Preference and Series B Liquidation Preference, the holders of Series C Preferred shall be entitled to receive, before any distribution or payment shall be made to the holders of Common Stock, an amount per share of Series C Preferred equal to \$2.00 per share (the "Series C Original Issue Price"), reduced by the amount of any cash dividends previously declared and paid on such Series C Preferred (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares), for each share of Series C Preferred held by them (the "Series C Liquidation Preference"). After the payment of the full Series A Liquidation Preference, Series B Liquidation Preference, and Series C Liquidation Preference as described above, the remaining assets of the Corporation legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Convertible Preferred Stock on an as-if-converted to Common Stock basis. A Liquidity Event which is valued at **more than** \$12,000,000 shall not give rise to the Series A Liquidation Preference on behalf of holders of Series A Preferred or the Series B Liquidation Preference on behalf of holders of Series B Preferred or the Series C Liquidation Preference on behalf of holders of Series C Preferred. In such event, the assets of the Corporation legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and the Convertible Preferred Stock on an as-if-converted to Common Stock basis.

(b) **Events Deemed Liquidity Event.** The following events shall be considered a Liquidity Event under this Section

D.3; provided such event has been approved by the holders of a majority of the then outstanding Common Stock voting as a separate class:

(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 fifty percent (50%) of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which in excess of fifty percent (50%) of the Corporation's voting power is transferred (an "Acquisition"); or

(ii) a sale, lease, transfer or other disposition of all or substantially all of the assets of the Corporation (an "Asset Transfer").

(c) **Valuation.** Whenever the distribution provided for in this Section D.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 Convertible Preferred Stock 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; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors 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 paragraphs (i) (A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(d) **Pro Rata Distribution to Series A Preferred.** If, upon any liquidation, distribution or winding up, the assets of the Corporation shall be insufficient to make payment in full to all holders of Series A Preferred of their Series A Liquidation Preference set forth in Section D.3(a) above, then such assets shall be distributed among the holders of Series A Preferred, at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(e) **Pro Rata Distribution to Series B Preferred.** If, upon any liquidation, distribution or winding up, the assets of the Corporation, following payment in full of the Series A Liquidation Preference, shall be insufficient to make payment in full to all holders of Series B Preferred of their Series B Liquidation Preference set forth in Section D.3(a) above, then such assets shall be distributed among the holders of Series B Preferred, at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(f) **Pro Rata Distribution to Series C Preferred.** If, upon any liquidation, distribution or winding up, the assets of the Corporation, following payment in full of the Series A Liquidation Preference and Series B Liquidation Preference, shall be insufficient to make payment in full to all holders of Series C Preferred of their Series C Liquidation Preference set forth in Section D.3(a) above, then such assets shall be distributed among the holders of Series C Preferred, at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

4. Conversion Rights.

The holders of Convertible Preferred Stock shall have the following rights with respect to the conversion of the Convertible Preferred Stock into shares of Common Stock (the "Conversion Rights"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section D.4, any shares of Convertible Preferred Stock 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 Convertible Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the Conversion Ratio for such Convertible Preferred Stock then in effect (determined as provided in Section D.4(b) below) by the number of shares of Convertible Preferred Stock being converted.

(b) Conversion Ratio and Price.

(i) The "Series A Conversion Ratio" shall be the quotient obtained by dividing the Series A Original Issue Price by the Series A Conversion Price, calculated as hereinafter provided. The conversion price for the Series A Preferred (the "Series A Conversion Price") shall initially be the Series A Original Issue Price. Such initial 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.

(ii) The "Series B Conversion Ratio" shall be the quotient obtained by dividing the Series B Original Issue Price by the Series B Conversion Price, calculated as hereinafter provided. The conversion price for the Series B Preferred (the "Series B Conversion Price") shall initially be the Series B Original Issue Price. Such initial Series B Conversion Price shall be adjusted from time to time in accordance with this Section D.4. All references to the Series B Conversion Price herein shall mean the Series B Conversion Price as so adjusted.

(iii) The "Series C Conversion Ratio" shall be the quotient obtained by dividing the Series

C Original Issue Price by the Series C Conversion Price, calculated as hereinafter provided. The conversion price for the Series C Preferred (the "Series C Conversion Price") shall initially be the Series C Original Issue Price. Such initial Series C Conversion Price shall be adjusted from time to time in accordance with this Section D.4. All references to the Series C Conversion Price herein shall mean the Series C Conversion Price as so adjusted.

The term "Conversion Price" as used herein shall refer to the Series A Conversion Price, the Series B Conversion Price, and the Series C Conversion Price. All references to the respective Conversion Price of the respective Convertible Preferred Stock herein shall mean the Conversion Price as adjusted from time to time in accordance with this Section D.4.

(c) **Mechanics of Conversion.** Each holder of Convertible Preferred Stock who desires to convert the same into shares of Common Stock pursuant to this Section D.4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Convertible Preferred Stock, 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 Convertible Preferred Stock 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 Convertible Preferred Stock 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 Convertible Preferred Stock 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.

(d) **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 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 Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section D.4(d) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(e) **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 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 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 Conversion Price shall be recomputed accordingly as of the close of business on such record date and

thereafter the Conversion Price shall be adjusted pursuant to this Section D.4(e) to reflect the actual payment of such dividend or distribution.

(f) Adjustments for Other Dividends and Distributions. Except in the event the Convertible Preferred Stock receives dividends pursuant to Section D.4(e) 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 Convertible Preferred Stock 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 Convertible Preferred Stock 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 D.4 with respect to the rights of the holders of the Convertible Preferred Stock or with respect to such other distributed securities, indebtedness or assets by their terms.

(g) Adjustment for Reclassification, Exchange and Substitution. Except for an Acquisition or Asset Transfer as defined in Section D.3(b) or a subdivision or combination of shares or stock dividend as provided elsewhere in this Section D.4, if at any time or from time to time the Common Stock issuable upon the conversion of the Convertible Preferred Stock 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 Convertible Preferred Stock 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 Convertible Preferred Stock 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.

(h) Sale of Shares Below Series A Conversion Price.

(i) In addition to the adjustment of the Series A Conversion Price provided for in Sections D.4(d)-(g) 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 Section D.4(h) 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 Section D.4(e) above, and other than a subdivision or combination of shares of Common Stock as provided in Section D.4(d) 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 Section D.4(h)(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 Section D.4(h), 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 Section D.4(h), 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 Section D.4(h)(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 Section D.4(h), 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 and Series B Preferred; (2) up to 1,000,000 shares (plus any reissuances upon expiration or termination of options or repurchases of 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 date that the first share of Series B Preferred is issued (the "Series B 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; or (3) shares of Common stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Series B 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; (5) 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; and (6) shares of Series B Preferred issued by 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 Section D.4(h), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section D.4(h), for such Additional Shares of Common Stock.

(i) Sale of Shares Below Series B Conversion Price.

(i) In addition to the adjustment of the Series B Conversion Price provided for in Sections D.4(d)-(g) above, if

at any time or from time to time after the Series B Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this Section D.4(i) 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 Section D.4(e) above, and other than a subdivision or combination of shares of Common Stock as provided in Section D.4(d) above, for an Effective Price (as hereinafter defined) less than the then effective Series B Conversion Price, then and in each such case the then existing Series B 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 B 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 Section D.4(i)(ii) below) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series B 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 B 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 Section D.4(i), 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 Section D.4(i), 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 B 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 B 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 B Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series B 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 B Preferred. No readjustment pursuant to this Section D.4(i)(iii) of the Series B Conversion Price shall have the effect of increasing such Series B Conversion Price to an amount which exceeds the lower of (1) such Series B Conversion Price on the original adjustment date, or (2) such Series B 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 *Section D.4(i)*, 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 and Series B Preferred; (2) up to 1,000,000 shares (plus any reissuances upon expiration or termination of options or repurchases of 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 B 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; or (3) shares of Common stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Series B 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; (5) 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; and (6) shares issued in the Corporation's Initial Offering (as hereinafter defined). 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 *Section D.4(i)*, into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this *Section D.4(i)*, for such Additional Shares of Common Stock.

(j) Sale of Shares Below Series C Conversion Price.

(i) In addition to the adjustment of the Series C Conversion Price provided for in *Sections D.4(d)-(g)* above, if at any time or from time to time after the Series C Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this *Section D.4(j)* 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 *Section D.4(e)* above, and other than a subdivision or combination of shares of Common Stock as provided in *Section D.4(d)* above, for an Effective Price (as hereinafter defined) less than the then effective Series C

Conversion Price, then and in each such case the then existing Series C 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 C 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 *Section D.4(j)(ii)* below) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Series C 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 C 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 *Section D.4(j)*, 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 Section D.4(j), 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 C 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 C 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 C Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series C 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 C Preferred. No readjustment pursuant to this Section D.4(j)(iii) of the Series C Conversion Price shall have the effect of increasing such Series C Conversion Price to an amount which exceeds the lower of (1) such Series C Conversion Price on the original adjustment date, or (2) such Series C Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section D.4(j), 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 and Series B Preferred; (2) shares (plus any reissuances upon expiration or termination of options or repurchases of 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 C 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; or (3) shares of Common stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Series C 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; (5) 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; and (6) shares issued in the Corporation's Initial Offering (as hereinafter defined). 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 Section D.4(j), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section D.4(j), for such Additional Shares of Common Stock.

(k) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Convertible Preferred Stock, if the Convertible Preferred Stock is then convertible pursuant to this Section D.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 Convertible Preferred Stock 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 Convertible Preferred Stock, 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 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 Convertible Preferred Stock.

(1) **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 *Section D.3(b)*) 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 *Section D.3(b)*), or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Convertible Preferred Stock 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 *Section D.4(1)*.

(m) **Automatic Conversion.**

(i) Each share of Convertible Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Conversion Price, (A) with respect to the shares of Series A Preferred only, at such time as each holder of Series A Preferred has received cumulative cash dividends equal to the Series A Original Issue Price for each share of Series A Preferred held by such holder; (B) with respect to the shares of Series B Preferred only, at such time as each holder of Series B Preferred has received cumulative

cash dividends equal to the Series B Original Issue Price for each share of Series B Preferred held by such holder; (C) with respect to the shares of Series C Preferred only, at such time as each holder of Series C Preferred has received cumulative cash dividends equal to the Series C Original Issue Price for each share of Series C Preferred held by such holder; (D) 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 (the "Initial Offering"); (E) with respect to the shares of Series A Preferred only, 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; (F) with respect to the shares of Series B Preferred only, 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 B Preferred; (G) with respect to the shares of Series C Preferred only, 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 C Preferred, provided that such affirmative election includes affirmative votes by the Series C Preferred voting shares of Citadel Capital Management Group ("Citadel") if Citadel holds any such shares at the time of the election; or (H) upon an Acquisition or Asset Transfer which does not trigger the Series A Liquidation Preference or Series B Liquidation Preference or Series C Liquidation Preference, as provided in Section D.3.

(ii) Upon the occurrence of the event specified in Section D.4(m)(i) above, the outstanding shares of Convertible Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, 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 Convertible Preferred Stock 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 Corporation to indemnify the

Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Convertible Preferred Stock, the holders of Convertible Preferred Stock 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 Convertible Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of *Section D.4(d)*.

(n) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Convertible Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Convertible Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of 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.

(o) **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 the Convertible Preferred Stock, 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 the Convertible Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Convertible Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(p) **Notices.** Any notice required by the provisions of this *Section D.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.

(q) 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 Convertible Preferred Stock, 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 Convertible Preferred Stock so converted were registered.

(r) 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 the Convertible Preferred Stock against dilution or other impairment.

5. Redemption. The Corporation shall be under no obligation to redeem all or any portion of the Convertible Preferred Stock at any time.

6. No Reissuance of Convertible Preferred Stock. No share or shares of Convertible Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued.

7. No Preemptive Rights. Except as may be granted by the Corporation pursuant to written agreements, no shareholder of this Corporation shall have any preemptive rights with respect to (i) any shares of any class of stock of the Corporation,

whether now or hereafter authorized, (ii) any warrants, rights, or options to purchase any such shares, or (iii) any obligations convertible into any such shares or into warrants, rights or options to purchase any such shares.

FOURTH: The foregoing amendments do not provide for an exchange, reclassification or cancellation of issued shares and do not effect a change in the amount of stated capital.

* * *

In Witness Whereof, this Corporation has caused these Third Articles of Amendment to be signed in duplicate by its duly authorized officer this 7th day of November, 2001.

GROUPSTONE, INC.

By: David E. Kaplan
David E. Kaplan

Secretary