

06-02-2000

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OPR/FINANCE

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RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

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

Submission Type

New 5.8.00

Resubmission (Non-Recordation)  
Document ID #

Correction of PTO Error  
Reel #  Frame #

Corrective Document  
Reel #  Frame #

Conveyance Type

Assignment  License

Security Agreement  Nunc Pro Tunc Assignment

Merger

Change of Name

Other

Effective Date  
Month Day Year

Conveying Party

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

Individual  General Partnership  Limited Partnership  Association

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

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

FOR OFFICE USE ONLY

05/31/2000 DNGUYEN 00000188 75800127

01 FC:481  
02 FC:482

40.00 OP  
1025.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK  
REEL: 002082 FRAME: 0539

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

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

#

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

Mark if additional numbers attached

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

Trademark Application Number(s)			Registration Number(s)		
<input type="text" value="75808127"/>	<input type="text" value="75850951"/>	<input type="text" value="75657419"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75807896"/>	<input type="text" value="75861755"/>	<input type="text" value="75873829"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75808291"/>	<input type="text" value="75873826"/>	<input type="text" value="75671888"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

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

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**Statement and Signature**

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

Sharon McClinton

*Sharon McClinton*

5-4-2000

Name of Person Signing

Signature

Date Signed

**RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY**

FORM PTO-1618C  
Expires 06/30/99  
OMS 0651-0027

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

**Conveying Party**

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

Individual     General Partnership     Limited Partnership     Corporation     Association

Other

Citizenship State of Incorporation/Organization

**Receiving Party**

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

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**Trademark Application Number(s)**

**Registration Number(s)**

75851301	75571536	75528254
75528253	75671889	75829065
75836053	75853919	75835917
75875875	75851360	75852676
75853817	75852542	75851017
75857649	75875852	75875853
75875851	75882530	75793396

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**Registration Number(s)**

75882503	75881383	75882505
75882504	75879144	75882449
75883625	75883706	75884167
75883707	75883897	75833850
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Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "DIGITALCONVERGENCE.COM INC.", CHANGING ITS NAME FROM "DIGITALCONVERGENCE.COM INC." TO "DIGITALCONVERGENCE.:COM INC.", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF DECEMBER, A.D. 1999, AT 5:30 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID RESTATED CERTIFICATE IS THE THIRD DAY OF JANUARY, A.D. 2000.

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



*Edward J. Freel*  
Edward J. Freel, Secretary of State

2945000 8100

991551592

0158751

DATE: 12-22-99

TRADEMARK  
REEL: 002082 FRAME: 0543

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
DIGITALCONVERGENCE.COM INC.**

DigitalConvergence.com Inc. (the "Corporation") is a corporation organized and existing under and by virtue of the Delaware General Corporation Law. Pursuant to the provisions of Section 242 and Section 245 of the Delaware General Corporation Law, the Corporation adopts the following Amended and Restated Certificate of Incorporation. The original Certificate of Incorporation was filed with the Delaware Secretary of State on September 25, 1998, which Certificate of Incorporation was amended by the Certificate of Amendment thereto filed with the Delaware Secretary of State on September 28, 1999, and the Certificate of Designation of Series A Convertible Preferred Stock of DigitalConvergence.com Inc. thereto filed with the Delaware Secretary of State on September 30, 1999 (as so amended, the "Original Certificate of Incorporation").

This Amended and Restated Certificate of Incorporation, which further amends and restates the Original Certificate of Incorporation was duly adopted as of December 15, 1999 in accordance with the provisions of Sections 228, 242 and 245 of the Delaware General Corporation Law. This Amended and Restated Certificate of Incorporation (including, without limitation, Exhibit A hereto) shall be effective at 12:01 a.m., E.S.T., on January 3, 2000 (the "Effective Date").

The provisions of the Original Certificate of Incorporation are hereby further amended and restated to read in their entirety as follows:

First: The name of the Corporation is DigitalConvergence.:Com Inc.

Second: The address of the registered office of the Corporation in the State of Delaware is 9 East Loockerman Street in the City of Dover, County of Kent. The name and address of its registered agent is National Registered Agents, Inc., 9 East Loockerman Street, Dover, Delaware 19901.

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

Fourth:

I. Shares Authorized. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 110,280,000 shares, of which 110,250,000 shares shall

be common stock, par value \$.01 per share (the "Common Stock"), and 30,000 shares shall be preferred stock, par value \$.01 per share (the "Preferred Stock").

II. Conversion. Upon the Effective Date of the filing of this Amended and Restated Certificate of Incorporation with the Delaware Secretary of State, each share of Common Stock (the "Converted Common Stock") outstanding immediately prior thereto shall, without any action on the part of the holder thereof, be converted into, and deemed for all purposes to be, 630 shares of Common Stock. The executive officers of the Corporation or their designees shall use the Effective Date as the record date for determining the holders of record of the Converted Common Stock. The executive officers of the Corporation or their designees shall issue to such holders of record certificates, endorsed with such legends as are required or are appropriate, representing 629 shares of Common Stock for every one share of the Converted Common Stock as shall be registered on the Corporation's stock transfer records for such holder. The executive officers, or their designees, shall enter the fact of the issuance of the new certificates for Common Stock in the appropriate name or names of the holders of such shares on the Corporation's stock records and transfer books.

III. Designations: The following are the powers, designations, preferences and rights, and the qualifications, limitations or restrictions thereof, of each class of stock of the Corporation:

A. Preferred Stock:

The Preferred Stock may be issued in one or more series. The Board of Directors of the Corporation (the "Board of Directors") is hereby authorized to issue the shares of Preferred Stock in each series and to fix from time to time before issuance the number of shares to be included in any series and the designation, relative powers, preferences and rights and qualifications, limitations or restrictions of all shares of such series. The authority of the Board of Directors with respect to each series shall include, without limiting the generality of the foregoing, the determination of any or all of the following:

1. the number of shares of any series and the designations to distinguish the shares of such series from the shares of all other series;
2. the voting powers, if any, of such shares in the series and whether such voting powers are full or limited;
3. the redemption provisions, if any, applicable to such series, including the redemption price or prices to be paid;
4. whether dividends, if any, shall be cumulative or noncumulative, the dividend rate of such series, and the dates and preferences of dividends on such series;
5. the rights of such series upon the voluntary or involuntary dissolution of, or upon any distribution of the assets of, the Corporation;

6. the provisions, if any, pursuant to which the shares of such series are convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of stock, or any other security, of the Corporation or any other corporation, and price or prices or the rates of exchange applicable thereto;

7. the right, if any, to subscribe for or to purchase any securities of the Corporation or any other corporation;

8. the provisions, if any, of a sinking fund applicable to such series; and

9. any other relative, participating, optional or other special powers, preferences, rights, qualifications, limitations or restrictions thereof;

all as shall be determined from time to time by the Board of Directors and as shall be stated in a resolution or resolutions providing for the issuance of such Preferred Stock (a "Preferred Stock Designation").

Holders of Preferred Stock shall not be entitled to receive notice of any meeting of stockholders at which they are not entitled to vote.

B. Common Stock. The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof as set forth in one or more Preferred Stock Designations.

Fifth: From time to time the Corporation may issue its authorized shares for such consideration per share (not less than the par value thereof) as may be fixed by the Board of Directors. Shares so issued for which the consideration shall have been paid or delivered to the Corporation shall be deemed fully paid stock and shall not be liable to any further call or assessment thereon, and the holders of such shares shall not be liable for any further payments in respect of such shares.

No holder of any shares of any class or series shall as such holder have any preemptive right to subscribe for or purchase any other shares or securities of any class or series, whether now or hereafter authorized, which at any time may be offered for sale or sold by the Corporation.

Each holder of record of the Common Stock of the Corporation shall be entitled to one vote for every share of Common Stock outstanding in his or its name on the books of the Corporation.

Sixth: Except as otherwise fixed by or pursuant to the provisions of this Certificate of Incorporation relating to the rights of the holders of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the then authorized number of directors of the Corporation (as determined in accordance with the Bylaws), but in no event shall the number of directors be fewer than one (1) nor more than nine (9). No decrease in the number of directors



constituting the Board of Directors shall shorten the term of any incumbent director. No director need be a stockholder.

Except as otherwise fixed by or pursuant to the provisions of this Certificate of Incorporation relating to the rights of the holders of Preferred Stock to elect directors under specified circumstances, any director may be removed from office with or without cause by the affirmative vote of the holders of at least a majority of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class.

Notwithstanding the foregoing, whenever the holders of Preferred Stock shall have the right to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies, and other features of such directorships shall be governed by the terms of this Certificate of Incorporation applicable thereto or the Preferred Stock Designation relating to the issuance of such Preferred Stock.

Seventh: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

- (1) To make, alter or repeal the Bylaws of the Corporation;
- (2) To authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation;
- (3) To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created; and
- (4) By a majority of the whole Board of Directors, to designate one or more committee, each committee to consist of two or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution creating the committee or in the Bylaws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, the Bylaws may provide that in the absence or disqualification of any member of such committee or committees the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Eighth: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class

of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under Section 79 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

Ninth: Meetings of the stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statute) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation. Election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

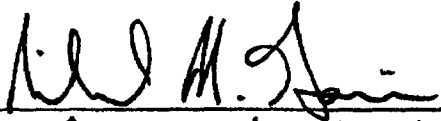
Tenth: The Corporation is to have perpetual existence.

Eleventh: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders of the Corporation herein are granted subject to this reservation.

Twelfth: No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Delaware General Corporation Law. Any repeal or modification of this Section by the stockholders of the Corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the 17th day of December, 1999.

DIGITALCONVERGENCE.COM INC.

By:   
Name: MICHAEL H. GARINI  
Title: PRESIDENT / COO

**Exhibit A**

**CERTIFICATE OF DESIGNATION  
OF SERIES A CONVERTIBLE PREFERRED STOCK**

of

**DIGITALCONVERGENCE.COM INC.**

Pursuant to Section 151 of the General Corporation Law  
of the State of Delaware

We, the undersigned, J. Jovan Philyaw and William S. Leftwich, the Chief Executive Officer and Secretary, respectively, of DigitalConvergence.com Inc., a Delaware corporation (the "Corporation"), pursuant to Section 151 of the General Corporation Law of the State of Delaware, do hereby make this Certificate of Designation and do hereby state and certify that, pursuant to the authority expressly vested in the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation, the Board of Directors by written consent unanimously adopted the following resolutions providing for the issuance of a series of Preferred Stock designation as the Series A Convertible Preferred Stock:

RESOLVED, that the Board of Directors of the Corporation, in accordance with the provisions of its Certificate of Incorporation, does hereby provide for the issue of a series of the Corporation's Preferred Stock, and does hereby fix and herein state the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof as follows:

**Section 1.     Designation and Amount.**

There shall be a series of Preferred Stock designated as "Series A Convertible Preferred Stock" (the "Series A Preferred") and the number of shares of such series shall be twenty-eight thousand (28,000). Each share of Series A Preferred is referred to herein as a "Share" and, collectively, the "Shares."

**Section 2.     Dividends and Distributions.**

The holders of Shares of Series A Preferred shall be entitled to receive dividends when, as and if declared by the Board of Directors out of funds legally available therefor. In the event that the Corporation declares or pays any dividends upon the common stock, par value \$0.01 per share, of the Corporation (the "Common Stock") (whether payable in cash, securities or other property),

the Corporation shall also declare and pay to the holders of the Series A 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 A Preferred pursuant to Section 4 hereof had all of the outstanding Shares been so 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 3.     Liquidation Rights.

In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), distributions shall be made to the holders of Series A Preferred in respect of such Series A Preferred before any amount shall be paid to the holders of any other class or series of capital stock of the Corporation in the following manner:

(a)     Series A Preferred.

The holders of the Series A Preferred shall be entitled to receive an amount equal to (i) the Conversion Value plus any declared but unpaid dividends and (ii) the holders of Series A Preferred shall be entitled to share ratably, on an "as if converted" basis, of all remaining assets and surplus funds along with the holders of Common Stock (and any other class of capital stock of the Corporation which has such "as if converted" status with respect to a Liquidation). If the proceeds from a Liquidation are not sufficient to pay to the holders of Series A Preferred the preference amount set forth in (i) above, then such holders shall instead be entitled to receive the entire assets and funds of the Corporation legally available for distribution to the holders of capital stock, which assets and funds shall be distributed ratably among the holders of the Series A Preferred.

(b)     Events Deemed a Liquidation.

For purposes of this Section 3, the holders of a majority of the Series A Preferred may elect to have treated as a Liquidation the consolidation or merger of the Corporation with or into any other corporation or the sale or other transfer in a single transaction or a series of related transactions of all or substantially all of the assets of the Corporation, or any other reorganization of the Corporation, unless the shareholders of the Corporation immediately prior to any such transaction are holders of a majority of the voting securities of the surviving or acquiring corporation immediately thereafter with comparable rights with respect to their respective classes of shares (and for purposes of this calculation equity securities which any shareholder or the Corporation owned immediately prior to such merger or consolidation as a shareholder of another party to the transaction shall be disregarded).

(c) Valuation of Securities and Property.

In the event the Corporation proposes to distribute assets other than cash in connection with any Liquidation, the value of the assets to be distributed to the holders of Shares of Series A Preferred shall be determined in good faith by the Board of Directors. Any securities not subject to contractual restrictions on free marketability shall be valued as follows:

(i) if traded on a national securities exchange or the NASDAQ National Market System ("NASDAQ"), the value shall be deemed to be the average of the security's closing prices on such exchange or NASDAQ over the thirty (30) trading day period ending three (3) days prior to the distribution;

(ii) if actively traded over-the-counter (other than NASDAQ), the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the distribution; or

(iii) 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.

The method of valuation of securities subject to contractual restrictions on free marketability shall be adjusted to make an appropriate discount from the market value determined as above in clauses (i), (ii) or (iii) to reflect the fair market value thereof as determined in good faith by the Board of Directors. The holders of at least 50% of the outstanding Series A Preferred shall have the right to challenge any determination by the Board of Directors of fair market value pursuant to this Section 3(c), in which case the determination of fair market value shall be made by an independent appraiser selected jointly by the Board of Directors and the challenging parties, the cost of such appraisal to be borne equally by the Corporation and the challenging parties.

Section 4. Conversion.

The holders of Series A Preferred have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert.

Each Share of Series A Preferred shall initially be convertible, at the option of the holder thereof, at any time on or after the date of issuance thereof, into the number of fully paid and nonassessable shares of Common Stock which results from dividing the Conversion Price (as hereinafter specified) per share in effect at the time of conversion into the per share Conversion Value in effect at the time of conversion. The initial Conversion Price of the Series A Preferred shall be \$3,150 per share, and the Conversion Value of the Series A Preferred shall be \$3,150 per share. The initial Conversion Price of the Series A Preferred shall be subject to adjustment from time to time as provided in Section 4(d) hereof. The Conversion Value shall not be subject to adjustment

(except in connection with a Recapitalization). Upon conversion, all declared but unpaid dividends on the Series A Preferred so converted shall be paid in cash, to the extent permitted by applicable law (and if not then permitted by applicable law, at such time as the Corporation is permitted by applicable law to pay any such dividends).

(b) Automatic Conversion.

Each Share of Series A Preferred shall automatically be converted into shares of Common Stock upon (i) the election of the holders of at least two-thirds of the then outstanding Shares of Series A Preferred or (ii) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of securities for the account of the Corporation to the public: (a) the gross proceeds of which equals or exceed \$75,000,000; and (b) whereby the aggregate value of the shares of Common Stock issuable on conversion of each Share of Series A Preferred (utilizing the offering price in such underwriting) is at least two times the Conversion Value. Upon conversion, all declared but unpaid dividends on the Series A Preferred shall be paid in cash, to the extent permitted by applicable law (and if not then permitted by applicable law, at such time as the Corporation is permitted by applicable law to pay any such dividends).

(c) Mechanics of Conversion.

Before any holder of Series A Preferred shall be entitled to convert the same into shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the principal office of the Corporation or of 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; provided, however, that in the event of an automatic conversion pursuant to Section 4(b) hereof, 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; and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless and until the certificates evidencing such Shares of Series A Preferred are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Series A Preferred, a certificate or certificates for the number of shares of Common Stock to which he or she shall be entitled as aforesaid and a check payable to the holder in the amount of any declared but unpaid dividends payable pursuant to Section 2 hereof, if any. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the Shares of Series A Preferred to be converted, or, in the case of automatic conversion, immediately prior to the occurrence of the event leading to such automatic conversion, and the person or persons entitled to

receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the Corporation fails to pay all such dividends within twenty (20) days of the date of conversion, the holder entitled to such dividends may elect to have the Corporation issue to such holder, in lieu of such cash payment, additional shares of Common Stock calculated by dividing the total amount payable on such date by the Conversion Value.

(d) Adjustments to Conversion Price.

(i) Special Definitions.

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

(1) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

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

(3) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable: (A) upon conversion of Shares of Series A Preferred; (B) as a dividend or distribution on Series A Preferred; (C) in a transaction described in Section 4(d)(vi); (D) pursuant to the Corporation's Stock Option Plan in any amount less than twelve percent (12%) of the fully diluted Common Stock and Series A Preferred; or (E) by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common by the foregoing clauses (A), (B), (C), (D) or this clause (E).

(4) "Original Issue Date" shall mean the date on which the first Share of Series A Preferred was issued.

(ii) Adjustment of Conversion Price Resulting From Issuance of Additional Shares.

No adjustment in the Conversion Price of the Series A Preferred shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for the Series A Preferred in effect on the date of, and immediately prior to, such issue.



(iii) Deemed Issue of Additional Shares of Common Stock.

In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options (other than Options under the Corporation's Stock Option Plan that upon exercise would not constitute Additional Shares of Common Stock) or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the exercise of such Options and conversion or exchange of such Convertible Securities shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) except as provided in Section 4(d)(iii)(2), no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof (other than under or by reason of provisions designed to protect against dilution), the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; and

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

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the Conversion Price in effect on the date of and immediately prior to such issue, then and in each such event the Conversion Price of the Series A Preferred shall be reduced to a price (calculated to the nearest cent) determined by multiplying such Conversion Price of the Series A Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price of the Series A Preferred, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued.

(v) Determination of Consideration.

For purposes of this Section 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property:

(A) insofar as it consists of cash, such consideration shall be computed at the aggregate amount of cash received by the Corporation; (B) insofar as it consists of property other than cash, such consideration shall be computed at the fair value thereof at the time of such issue, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment; and (C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, such consideration shall be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined by the Board of Directors in the good faith exercise of its reasonable business judgment.

(2) Options and Convertible Securities.

The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for

Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Other Adjustments.

(1) Subdivisions, Combinations, or Consolidations of Common Stock.

In the event the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by stock split, stock dividend, combination or like event, into a greater or lesser number of shares of Common Stock, the Conversion Price of the Series A Preferred in effect immediately prior to such subdivision, combination, consolidation or stock dividend shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

(2) Reclassifications.

In the case, at any time after the date hereof, of any capital reorganization or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger (A) in which the Corporation is the continuing entity and which does not result in any change in the Common Stock or (B) which is treated as a Liquidation pursuant to Section 3(b) above), the Shares of Series A Preferred shall, after such reorganization, reclassification, consolidation or merger be convertible into the kind and number of shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation or merger such holder had converted his Shares of Series A Preferred into Common Stock. The provisions of this clause 4(d)(vi)(2) shall similarly apply to successive reorganizations, reclassifications, consolidations or mergers.

(e) Certificate as to Adjustments.

Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series A Preferred pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, if any, (ii) the Conversion Price of the Series A Preferred at the time in effect, and (iii) the number of shares of

Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred.

(f) Status of Converted Stock.

In case any Shares of Series A Preferred shall be converted pursuant to Section 4 hereof, the Shares so converted shall be canceled, shall not be reissuable and shall cease to be a part of the authorized capital stock of the Corporation.

(g) Fractional Shares.

In lieu of any fractional shares in the aggregate to which the holder of Series A Preferred would otherwise be entitled upon conversion, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined by the Board of Directors in the good faith exercise of its reasonable business judgment.

(h) Miscellaneous.

(i) All calculations under this Section 4 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(ii) The holders of at least 50% of the outstanding Series A Preferred shall have the right to challenge any determination by the Board of Directors of fair market value pursuant to this Section 4, in which case such determination of fair market value shall be made by an independent appraiser selected jointly by the Board of Directors and the challenging parties, the cost of such appraisal to be borne equally by the Corporation and the challenging parties.

(iii) No adjustment in the Conversion Price of the Series A Preferred will be made if such adjustment would result in a change in such Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in such Conversion Price.

(i) No Impairment.

The Corporation will not through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series A Preferred against impairment.

(j) Reservation of Stock Issuable Upon Conversion.

The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Shares of 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.

Section 5. Voting Rights.

(a) General.

Except as otherwise required by law, by Section 5(b) hereof or by Section 8 hereof, the holder of each Share of Series A Preferred will be entitled to vote on all matters with the Common Stock as a single class, and not as a separate class or series. Each Share of Series A Preferred will entitle the holder to the number of votes per share equal to the full number of shares of Common Stock into which each Share of Series A Preferred is convertible on the record date for such vote. The holders of Series A Preferred shall receive notice of and shall be entitled to attend in person or by proxy any meeting of the holders of Common Stock.

(b) Voting for Directors.

The holders of the Series A Preferred shall otherwise also be entitled to vote in the election of directors pursuant to the terms of Section 5(a) above. In addition, for so long as there are not less than 1900 Shares of Series A Preferred outstanding, at any time when Michael Jordan is not a director of the Corporation, the holders of a majority of the Series A Preferred shall be entitled to nominate and elect one (1) director. Any vacancy on the Board occurring because of the death, resignation or removal of Michael Jordan or a director elected by the holders of the Series A Preferred, shall be filled by the vote or written consent of the holders of a majority of the Series A Preferred. A director nominated and elected by the Series A Preferred may be removed from the Board with or without cause by the vote or consent of the holders of the outstanding class with voting power entitled to elect him or her in accordance with the Delaware General Corporation Law.

Section 6. Notices of Record Date.

In the event of 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, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred, at least twenty (20) days prior to the date specified therein,

a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the anticipated amount and character of such dividend, distribution or right.

Section 7. Notices.

Any notice required by the provisions of the Certificate to be given to the holders of Series A Preferred shall be deemed given when deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

Section 8. Approval of Certain Transactions While Any Series A Preferred is Outstanding.

So long as not less than 1900 Shares of Series A Preferred are outstanding, the Corporation shall not, without first obtaining the written approval of the holders of at least two-thirds of the Series A Preferred then outstanding, voting as a separate class, take any action that:

(a) amends, alters or repeals the Corporation's Bylaws or Certificate of Incorporation so as to adversely affect the preferences, special rights or other powers of Shares of Series A Preferred;

(b) increases or decreases the authorized number of Shares of Series A Preferred;

(c) creates any new class or series of shares that has a preference over or is on a parity with the Series A Preferred with respect to voting, dividends or liquidation preferences (except that the Corporation may grant voting rights to shares of a series of preferred stock which have the right to vote with holders of Common Stock on an as-converted basis, but in any event not in preference to Shares of Series A Preferred);

(d) reclassifies stock into shares having a preference over or parity with the Series A Preferred with respect to voting, dividends or liquidation preferences (except that the Corporation may grant voting rights to shares of a series of preferred stock which have the right to vote with holders of Common Stock on an as-converted basis, but in any event not in preference to Shares of Series A Preferred);

(e) authorizes any dividend or other distribution (other than a stock dividend) with respect to the Preferred Stock or the Common Stock (other than cash dividends payable to the holders of Series A Preferred);

(f) repurchases any shares of capital stock of the Corporation other than the purchase of Common Stock from employees acquired pursuant to the Corporation's 1999 Stock Option Plan pursuant to contractual rights to repurchase shares of Common Stock held by employees, directors or consultants of the Corporation or its subsidiaries upon termination of their