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U.S. Patent & TMO/TM Mail Rcpt Dt. #76

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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

101782351

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Kartoffelsoft, Inc. 7-300
Individual(s) Association
General Partnership Limited Partnership
Corporation-State - Kansas
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Kartoffelsoft Incorporated
Internal Address:
Street Address: 3475 Edison Way #H
City: Menlo Park State: CA Zip: 94025
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State Delaware
Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other
Execution Date: May 29, 1998

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s)
2,286,063
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Linda G. Henry
Internal Address:
Street Address: Fenwick & West LLP
Two Palo Alto Square
City: Palo Alto State: California Zip: 94306

6. Total number of applications and registrations involved: 1
7. Total fee (37 CFR 3.41): \$40.00
Enclosed
Authorized to be charged to deposit account
8. Deposit account number: 50-0261
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. 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.
Linda G. Henry Name of Person Signing
Signature
Date July 2, 2001

Total number of pages including cover sheet, attachments, and document: 27

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF
 DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
 THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:
 "KARTOFFELSOFT INC.", A KANSAS CORPORATION,
 AND INTO "HOMESTEAD TECHNOLOGIES, INC." UNDER THE NAME
 "KARTOFFELSOFT INCORPORATED", A CORPORATION ORGANIZED AND
 UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED
 IN THIS OFFICE THE TWENTY-NINTH DAY OF MAY, A.D. 1998,
 AT TEN O'CLOCK A.M.

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BYLAWS



Edward J. Freel

Edward J. Freel, Secretary of State

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IDENTIFICATION

9122011

DATE

06-05-98

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (hereinafter called the "Merger Agreement") made as of May 26, 1998, by and between KARTOFFELSOFT INC., a Kansas corporation (KartoffelSoft"), and HOMESTEAD TECHNOLOGIES, INC., a Delaware corporation (Homestead"). KartoffelSoft and Homestead are sometimes referred to as the "Constituent Corporations."

RECITALS

The authorized capital stock of KartoffelSoft consists of Two Million (2,000,000) shares of Common Stock, 1/10 of \$.01 par value, of which One Hundred Thirty Thousand (130,000) shares are designated Series B Non-Voting Common Stock, and One Hundred Fifty Thousand Eight Hundred Twenty (158,820) shares of Preferred Stock, 1/10 of \$.01 par value. The authorized capital stock of Homestead, prior to the effectuation of the transactions set forth in this Merger Agreement, is One Thousand (1,000) shares of Common Stock, \$.001 par value. The authorized capital stock of Homestead upon effectuation of the transactions set forth in this Merger Agreement will consist of Fifty Million (50,000,000) shares of Common Stock, 1/10 of \$.01 par value of which Thirty-Eight Million (38,000,000) shares will be designated as Voting Common Stock and Five Million (5,000,000) shares will be designated Nonvoting Common Stock, 1/10 of \$.01 par value, and Seven Million (7,000,000) shares of Preferred Stock, \$.001 par value.

The directors of the Constituent Corporations deem it advisable and to the best interests of the Constituent Corporations that KartoffelSoft merge into Homestead upon the terms and conditions herein provided, and have adopted a resolution approving this Merger Agreement.

The shareholders of KartoffelSoft and the sole stockholder of Homestead have approved this Merger Agreement.

AGREEMENT

The parties do hereby adopt the plan of reorganization encompassed by this Merger Agreement and do hereby agree that KartoffelSoft shall merge into Homestead on the following terms and conditions and other provisions:

TERMS AND CONDITIONS.

1.1 Merger. KartoffelSoft shall be merged with and into Homestead (the "Merger"), and Homestead shall be the surviving corporation (the "Surviving Corporation") effective upon the date when this Merger Agreement is filed with the Secretary of State of the State of Delaware (the "Effective Date").

1.2 Filing of Amended and Restated Certificate of Incorporation. Upon the filing of this Merger Agreement, the Amended and Restated Certificate of Incorporation attached hereto as

TRADEMARK

as Exhibit A shall be the Certificate of Incorporation of the Surviving Corporation, and the name of the Surviving Corporation shall be "KartoffelSoft Incorporated."

1.3 Succession. On the Effective Date, Homestead shall continue its corporate existence under the laws of the State of Delaware, and the separate existence and corporate organization of KartoffelSoft, except insofar as it may be continued by operation of law, shall be terminated and

1.4 Transfer of Assets and Liabilities. On the Effective Date, the rights, privileges, powers and franchises, both of a public as well as of a private nature, of each of the Constituent Corporations shall be vested in and possessed by the Surviving Corporation, subject to all of the liabilities, duties and restrictions of or upon each of the Constituent Corporations; and all and singular rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, of each of the Constituent Corporations, and all debts due to each of the Constituent Corporations on whatever account, and all things in action or belonging to each of the Constituent Corporations shall be transferred to and vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest, shall be thereafter the property of the Surviving Corporation as they were of the constituent Corporations, and the title to any real estate vested by deed or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger; provided, however, that the liabilities of the Constituent Corporations and of their shareholders, members and officers shall not be affected and all rights of creditors and all liens upon any property of either of the Constituent Corporations shall be preserved unimpaired, and any claim pending or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place except as they may be modified with the consent of such creditors and all debts, liabilities and duties of or upon each of the constituent Corporations shall attach to the Surviving Corporation, and may be enforced against the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

1.5 Common Stock of KartoffelSoft and Homestead. On the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, (a) each share of Common Stock (other than Series B Non-Voting Common Stock) of KartoffelSoft issued and outstanding immediately prior thereto shall be converted into ten (10) fully paid and nonassessable shares of Voting Common Stock of Homestead, (b) each share of Series B Non-Voting Common Stock of KartoffelSoft issued and outstanding immediately prior thereto shall be converted into ten (10) fully paid and nonassessable shares of Nonvoting Common Stock of Homestead, (c) each share of Preferred Stock and Common Stock of KartoffelSoft held in treasury by KartoffelSoft immediately prior thereto shall be cancelled and no consideration shall be given in exchange therefor, and (d) each share of Common Stock of Homestead issued and outstanding immediately prior thereto shall be converted into ten (10) shares of the status of authorized but unissued shares.

1.6 Stock Certificates. On and after the Effective Date, all of the shares of the Common Stock of KartoffelSoft which prior to that time represented shares of the Common Stock of KartoffelSoft shall be deemed for all purposes to evidence ownership of and to represent the shares of KartoffelSoft represented by such certificates heretofore issued and shall be so registered on the books and records of the

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transfer agents. The registered owner of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of Homestead evidenced by such outstanding certificate as above provided.

17 Options. On the Effective Date, the Surviving Corporation will assume and continue KartoffelSoft's 1996 Stock Option Plan and the outstanding and unexercised portions of all options to purchase Series B Non-Voting Common Stock of KartoffelSoft, including without limitation all options outstanding under such stock plan and any other outstanding options, shall be converted into options of Homestead, such that an option for one (1) share of KartoffelSoft, Series B Non-Voting Common Stock shall be converted into an option for ten (10) shares of Homestead, Series B Nonvoting Common Stock with the per share exercise price of the Homestead option to be one tenth of the per share exercise price of the KartoffelSoft option. No other changes in the terms and conditions of such options will occur. Effective on the Effective Date, the Surviving Corporation hereby assumes the outstanding and unexercised portions of such options, the obligations of KartoffelSoft with respect to such options, and the obligations of KartoffelSoft with respect to such options.

18 Employee Benefit Plans. On the Effective Date, the Surviving Corporation shall assume all obligations of KartoffelSoft under any and all employee benefit plans in effect as of the Effective Date. On the Effective Date, the Surviving Corporation shall adopt and continue in effect all employee benefit plans upon the same terms and conditions as were in effect immediately prior to the Merger and shall reserve that number of shares of Homestead Common Stock with respect to each such employee benefit plan as is proportional to the number of shares of KartoffelSoft Common Stock (if any) so reserved on the Effective Date.

CHARTER DOCUMENTS, DIRECTORS AND OFFICERS.

19 Certificate of Incorporation and Bylaws. The Amended and Restated Certificate of Incorporation, as attached hereto as Exhibit A, and Bylaws of Homestead in effect as of the Effective Date, shall be the Certificate of Incorporation and Bylaws of the Surviving Corporation from and after the Effective Date, until amended in accordance with the provisions of the Homestead Charter and applicable laws.

20 Directors. The directors of the Surviving Corporation on and after the Effective Date shall be Justin Kitch, Tim Draper, David Heap, Jim Kitch and George Harad to the expiration of their terms and until their successors are elected and qualified.

21 Officers. The officers of KartoffelSoft immediately preceding the Effective Date shall become the officers of the Surviving Corporation on and after the Effective Date to serve at the pleasure of its Board of Directors.

MISCELLANEOUS.

3.1 Further Assurances. From time to time, and when required by the Surviving Corporation or by its successors and assigns, there shall be executed and delivered on behalf of KartoffelSoft such deeds and other instruments, and there shall be taken or caused to be taken by

such further and other action, as shall be appropriate or necessary in order to vest or perfect in the Surviving Corporation the title to and possession of the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of KartoffelSoft and otherwise to carry out the purposes of this Merger Agreement, and the officers and directors of the Surviving Corporation are fully authorized in the name and on behalf of KartoffelSoft or otherwise to take any and all such action and to execute and deliver and all such deeds and other instruments.

3.2 Amendment. This Merger Agreement may be amended at any time in any manner except that the principal terms may not be amended without the further approval of the shareholders of KartoffelSoft) as may be determined in the judgment of the respective Board of Directors of Homestead and KartoffelSoft to be necessary, desirable, or expedient in order to carry out the intention of the parties hereto or to effect or facilitate the purpose and intent of this Agreement.

3.3 Conditions to Merger. The obligations of the Constituent Corporations to effect the transactions contemplated hereby is subject to satisfaction of the following condition (which may be waived by either of the Constituent Corporations in its sole discretion to the extent permitted by law): any and all consents, permits, authorizations, approvals, and orders deemed necessary in the discretion of KartoffelSoft to be material to consummation of the Merger shall have been obtained.


3.4 Abandonment or Deferral. At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of KartoffelSoft or Homestead or both, notwithstanding the approval of this Merger Agreement by the shareholders of KartoffelSoft or Homestead, or the consummation of the Merger may be deferred for a reasonable period of time if, in the opinion of the Boards of Directors of KartoffelSoft and Homestead, such action would be in the best interest of such corporations. In the event of termination of this Merger Agreement, this Merger Agreement shall become void and of no effect and there shall be no liability on the part of either Constituent Corporation or its Board of Directors or shareholders with respect thereto, except that KartoffelSoft shall pay all expenses incurred in connection with the Merger or in respect of this Agreement or relating thereto.

Counterparts. In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.


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IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by the Board of Directors of KartoffelSoft and Homestead, is hereby executed on behalf of each said corporation and attested by their respective officers thereunto duly authorized.


KARTOFFELSOFT, INC.
A Kansas corporation

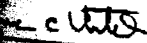
By 
Justin S. Kitch
President

Attest:


Justin S. Kitch
Secretary

HOMESTEAD TECHNOLOGIES, INC.
A Delaware corporation

By 
Justin S. Kitch
President


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IN WITNESS WHEREOF, the foregoing Agreement and Plan of Merger which has been adopted by the shareholders of the Constituent Corporations and which actions so adopting have been certified on the Agreement by the President and Secretary of each of the Constituent Corporations, each of the Constituent Corporations has caused this Agreement and Plan of Merger to be executed in its corporate name by duly authorized officers on this 26th day of May, 1998.

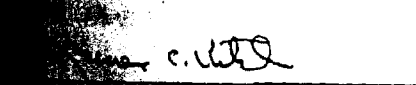
Attest:

KARTOFFELSOFT INC.


Justin S. Kitch, Secretary

By: 
Justin S. Kitch, President

HOMESTEAD TECHNOLOGIES, INC.


Justin S. Kitch, Secretary

By: 
Justin S. Kitch, President

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HOMESTEAD TECHNOLOGIES, INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, Justin S. Kitch and James C. Kitch, do hereby certify that:

They are the President and Secretary, respectively, of Homestead Technologies, Inc., a Delaware corporation (the "Corporation").


The Agreement and Plan of Merger attached to this Certificate providing for the merger of KartoffelSoft Inc., a Kansas corporation, with and into the Corporation was duly approved by the Board of Directors and by the sole stockholder of the Corporation.

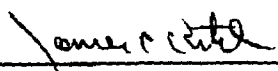
The Corporation has one authorized class of shares, designated Common Stock. The number of shares of Common Stock outstanding and entitled to vote upon the merger was One Thousand (1,000) shares of Common Stock.

The terms of the Agreement and Plan of Merger were approved by the Corporation by a vote of the number of shares of Common Stock of the Corporation which equaled or exceeded the vote required. The percentage vote required for such approval was more than fifty percent (50%).

Each of the undersigned declares under penalty of perjury that he has read the foregoing and knows the contents thereof and that the same is true of his own knowledge.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 26th day of 1998.


Justin S. Kitch
President


James C. Kitch
Secretary

KARTOFFELSOFT INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, Justin S. Kitch, does hereby certify that:

I am the President and Secretary of KartoffelSoft Inc., a Kansas corporation (the "Corporation").


The Agreement and Plan of Merger attached to this Certificate providing for the merger of the Corporation with and into Homestead Technologies, Inc., a Delaware Corporation, was duly approved by the Board of Directors and by the shareholders of the Corporation.


The Corporation has two authorized classes of shares, Common Stock, including a portion thereof designated as Series B Non-Voting Common Stock, and Preferred Stock. The total number of outstanding shares of Common Stock is One Million Three Hundred Twenty Thousand (1,320,000), none of which are shares of Series B Non-Voting Common Stock.

The terms of the Agreement and Plan of Merger were approved by the unanimous written consent of the shareholders of the Corporation pursuant to K.S.A. 17-6518 and K.S.A. 17-6702.

Each of the undersigned declares under penalty of perjury that he has read the foregoing and knows the contents thereof and that the same is true of his own knowledge.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 26 day of


Justin S. Kitch
President


Justin S. Kitch
Secretary

IRREVOCABLE CONSENT

KNOW ALL MEN BY THESE PRESENTS:

That Homestead Technologies, Inc. (renamed "KartoffelSoft Incorporated" following the merger as described below), a corporation organized under the laws of the State of Delaware, hereby consents, without power of revocation, to being served with process in the State of Kansas ("the State") in any proceeding filed in the proper court of any county in the State where the proper venue for enforcement of any obligation of any constituent corporation of the Homestead Technologies, Inc. as well as for enforcement of any obligation of Homestead Technologies, Inc. (the "Surviving Corporation") arising from the merger of KartoffelSoft, Inc., a Kansas corporation ("the Disappearing Corporation") and the Surviving Corporation, including any suit or other proceeding to enforce the right of any stockholder as determined in appraisal proceedings under the provisions of K.S.A. 17-6712, and amendments thereto, and shall irrevocably designate the Secretary of State of the State of Kansas as its agent to accept service of process in any suit or other proceedings and do herein specify the address to which a copy of such process shall be mailed by the Secretary of State.


John Kitch
Edison Way #H
Park, CA 94025

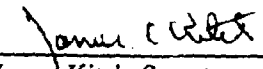
After said corporation stipulates and agrees that such service shall be taken and held in full faith and credit to be as valid and binding as if due service had been made upon the President and the corporation.

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WITNESS WHEREOF, Said corporation has caused these presents to be executed by its
and its Secretary on May 26, 1998.

**HOMESTEAD TECHNOLOGIES, INC.,
a Delaware Corporation**


Justin S. Kitch, President


James Kitch, Secretary

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DIARY

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
HOMESTEAD TECHNOLOGIES, INC.

Homestead Technologies, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, **DOES HEREBY CERTIFY:**

FIRST: The original Certificate of Incorporation of Homestead Technologies, Inc. was filed with the Secretary of the State of Delaware on April 28, 1998.

SECOND: The Amended and Restated Certificate of Incorporation of Homestead Technologies, Inc. in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 245 and 242 of the General Corporation Law of the State of Delaware by the sole director of Homestead Technologies, Inc.

THIRD: Pursuant to a resolution of the Board of Directors, this Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit A was submitted to the sole stockholder of Homestead Technologies, Inc. for its approval, and was approved, in accordance with Section 228, 242, and 245 of the General Corporation Law of the State of Delaware.

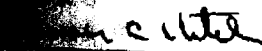
FOURTH: The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, Homestead Technologies, Inc. has caused this Certificate to be signed by the President and the Secretary this 26th day of May, 1998.

HOMESTEAD TECHNOLOGIES, INC.

By: 
Justin S. Kitch
President

SECRET:


Justin S. Kitch
Secretary

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N. 3.30.98

May 29 1998 3:35PM CSC

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF

KARTOFFELSOFT INCORPORATED

I.

A. The name of the corporation is **KARTOFFELSOFT INCORPORATED** (the "Corporation" or the "Company").

B. The address of the registered office of the Corporation in the State of Delaware is: 5 East North Street, Dover, County of Kent. The name of the Corporation's registered agent at that address is AmeriSearch Corporate Services Inc.

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

II.

A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Fifty Million (50,000,000) shares, Forty-Three Million (43,000,000) shares of which shall be Common Stock (the "Common Stock"), of which Thirty-Eight Million (38,000,000) shall be designated Voting Common Stock ("Voting Common Stock") and Five Million (5,000,000) shall be designated Nonvoting Common Stock ("Nonvoting Common Stock"), and Seven Million (7,000,000) shares of which shall be Preferred Stock (the "Preferred Stock"), all of which shall be designated "Series A Preferred Stock (the "Series A Preferred"). The Preferred Stock shall have a par value of one hundredth of one dollar per share and the Common Stock shall have a par value of one hundredth of one dollar per share. The Voting Common Stock and the Nonvoting Common Stock shall have all the rights prescribed by law to Common Stock, except that the Nonvoting Common Stock shall not have any voting rights.

B. The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred are as follows:

1. DIVIDEND RIGHTS.

a. Holders of Series A Preferred, in preference to the holders of any other class of stock of the Company ("Junior Stock"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at a rate of eight percent (8%) of the "Original Issue Price" per annum on each outstanding share of Series A Preferred (as adjusted for any stock dividends, combinations, splits, stock redemptions and the like with respect to such shares). The Original Issue Price of the Series A Preferred shall be \$0.7001. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

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b. So long as any shares of Series A Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company) until all dividends (set forth in Section 1a above) on the Series A Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series A Preferred in an amount equal per share (on an 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 1b shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock, or (iii) any repurchase of any outstanding securities of the Company that is unanimously approved by the Company's Board of Directors.

2. VOTING RIGHTS.

a. **General Rights.** Except as otherwise provided herein or as required by law, the Series A Preferred shall be voted equally with the shares of the Voting Common Stock of the Company and not as a separate class, at any annual or special meeting of the holders of the Company, and may act by written consent in the same manner as the Voting Common Stock, in either case upon the following basis: each holder of shares of Series A Preferred 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 Series A Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent. The Voting Common Stock shall not have any voting rights, except as expressly required by law.

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

(i) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation), that alters or changes the voting powers, preferences, or other special privileges, or restrictions of the Series A Preferred so as to affect them adversely;

(ii) Any increase or decrease (other than by redemption or otherwise) in the authorized number of shares of Series A Preferred.

(iii) Any authorization or any designation, whether by Certificate of Designation or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking senior to the Series A Preferred in respect of redemption, liquidation preference or dividends or any increase in the authorized or number of any such new class or series; or

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(iv) Any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 3c).

c. **Application of Section 2115 of the California Corporations Code.** In the event that this Corporation is subject to Section 2115(b) of the California Corporations Code at any time, or from time to time, then the following shall apply:

(i) Every stockholder entitled to vote in any election of directors of the Corporation during such time the Corporation is subject to Section 2115(b) may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder may so choose;

(ii) No stockholder, however, may cumulate such stockholder's votes for one or more candidates unless (i) the names of such candidates have been properly placed in nomination, in accordance with the Bylaws of the Corporation, prior to the voting, (ii) the stockholder has given advance notice to the Corporation of the intention to cumulate votes in accordance with the Bylaws, and (iii) the stockholder has given proper notice to the other stockholders attending, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes.

(iii) If any stockholder has given proper notice, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. The candidates receiving the highest number of votes of the shares entitled to be voted for them up to the number of directors to be elected by such shares shall be declared elected.

3. LIQUIDATION RIGHTS.

a. Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Junior Stock, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series A Preferred equal to the Original Issue Price of the Series A Preferred plus all declared and unpaid dividends on the Series A Preferred Stock (as adjusted for any stock splits, combinations, splits, recapitalizations and the like with respect to such shares) plus the value of the Series A Preferred held by them.

b. After the payment of the full liquidation preference of the Series A Preferred as set forth in Section 3a above, the assets of the Company legally available for distribution, if any, (i) if such liquidation, dissolution or winding up shall have occurred on or before May 29, 2002, shall be distributed ratably to the holders of the Common Stock and the Series A Preferred on an as-if-converted to Common Stock basis and, (ii) if such liquidation, dissolution or winding up shall have occurred after May 29, 2002, shall be distributed ratably to the holders of the Common Stock.

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(iv) Any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 3c).

c. **Application of Section 2115 of the California Corporations Code.** In the event that this Corporation is subject to Section 2115(b) of the California Corporations Code at any time, or from time to time, then the following shall apply:

(i) Every stockholder entitled to vote in any election of directors of the Corporation during such time the Corporation is subject to Section 2115(b) may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder may so choose;

(ii) No stockholder, however, may cumulate such stockholder's votes for one or more candidates unless (i) the names of such candidates have been properly placed in nomination, in accordance with the Bylaws of the Corporation, prior to the voting, (ii) the stockholder has given advance notice to the Corporation of the intention to cumulate votes in accordance with the Bylaws, and (iii) the stockholder has given proper notice to the other stockholders at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes.

(iii) If any stockholder has given proper notice, all stockholders shall cumulate their votes for any candidates who have been properly placed in nomination. The candidates receiving the highest number of votes of the shares entitled to be voted for them up to the number of directors to be elected by such shares shall be declared elected.

3. LIQUIDATION RIGHTS.

a. Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Junior Stock, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series A Preferred equal to the Original Issue Price of the Series A Preferred Stock plus all declared and unpaid dividends on the Series A Preferred Stock (as adjusted for any stock splits, combinations, splits, recapitalizations and the like with respect to such shares) plus one share of Series A Preferred held by them.

b. After the payment of the full liquidation preference of the Series A Preferred Stock as set forth in Section 3a above, the assets of the Company legally available for distribution shall be distributed as follows: (i) if such liquidation, dissolution or winding up shall have occurred on or before May [], 2002, shall be distributed ratably to the holders of the Common Stock and the Series A Preferred on an as-if-converted to Common Stock basis and, (ii) if such liquidation, dissolution or winding up shall have occurred after May [], 2002, shall be distributed ratably to the holders of the Common Stock.

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c. The following events shall be considered a liquidation under this

Section:

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

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

(iii) If, upon any liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in Section 3a, 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.

(iv) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the NASDAQ National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

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

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely in virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board of Directors.

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4. CONVERSION RIGHTS.

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

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

b. **Series A Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A Preferred (the "Series A Preferred Conversion Rate") shall be the quotient obtained by dividing the Original Issue Price of the Series A Preferred by the "Series A Conversion Price," calculated as provided in Section 4c.

c. **Series A Conversion Price.** The conversion price for the Series A Preferred shall initially be the Original Issue Price of the Series A Preferred (the "Series A Conversion Price"). Such initial Series A Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series A Conversion Price herein shall refer to the Series A Conversion Price as so adjusted.

d. **Mechanics of Conversion.** Each holder of Series A Preferred who desires to convert the same into shares of Voting Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or its transfer agent for the Series A Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series A Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Voting 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 Voting Common Stock (at the time of conversion), any declared and unpaid dividends on the shares of Series A Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series A Preferred to be converted, and the person entitled to receive the shares of Voting Common Stock issuable upon conversion shall be treated for all purposes as the record holder of such shares of Voting Common Stock on such date.

e. **Adjustment for Stock Splits and Combinations.** If the Company shall at any time or from time to time after the date that the first share of Series A Preferred is issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Series A Conversion Price

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effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Series A Conversion Price in effect immediately before such combination shall be proportionately increased. Any adjustment under this Section 4e shall be effective at the close of business on the date the subdivision or combination becomes effective.

f. Adjustment for Common Stock Dividends and Distributions.

The Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or distribution payable in additional shares of Common Stock, in each such event the Series A Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction (i) 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 (ii) the denominator of which is the 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 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 such record date, the Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be recomputed pursuant to this Section 4f to reflect the actual payment of such dividend or distribution.

g. Adjustment for Reclassification, Exchange and Substitution.

If at any time or from time to time after the Original Issue Date, the Voting Common Stock issuable upon the conversion of the Series A Preferred is changed into the same or a different class or classes of shares of any class or classes of stock, whether by recapitalization, reclassification or other change (other than an Acquisition or Asset Transfer as defined in Section 3c or a subdivision, combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets as provided for elsewhere in this Section 4), in any such event each holder of Series A Preferred shall have the right thereafter to convert such stock into the kind and amount of stock or other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

h. Reorganizations, Mergers, Consolidations or Sales of Assets.

If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Company (other than an Acquisition or Asset Transfer as defined in Section 3c or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares as provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon

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of the Series A Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Voting Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment of such stock or securities by the terms thereof. In any such case, appropriate adjustments shall be made in the application of the provisions of this Section 4 with respect to the holders of Series A Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series A Conversion Price then in effect) shall be applicable to the number of shares issuable upon conversion of the Series A Preferred) shall be applicable to the same extent and be as nearly equivalent as practicable.

i. Sale of Shares Below Series A Conversion Price.

(i) If at any time or from time to time after the Original Issue the Company issues or sells, or is deemed by the express provisions of this subsection i to have issued or sold, Additional Shares of Common Stock (as defined in subsection i(iv) below), or as a dividend or other distribution on any class of stock as provided in Section 4f other than a subdivision or combination of shares of Common Stock as provided in subsection i above, for an Effective Price (as defined in subsection i(iv) below) less than the then existing 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 subsection i(ii)) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at the 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 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 any 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 outstanding on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under subsection i, the consideration received by the Company for any issue or sale of securities (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or expenses paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (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 defined in subsection i(iii)) or rights or options to purchase either Additional Shares of Common

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or Convertible Securities are issued or sold together with other stock or securities or other of the Company 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 options.

(iii) For the purpose of the adjustment required under this Section 4i, if the Company issues or sells (i) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (ii) rights or options for the purchase of Additional Shares of Common Stock or 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 Company 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 of such rights or options 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 Company 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 Company 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 Company (other than by cancellation of debt 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 are not ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without regard to such clauses; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by antidilution adjustments, the Effective Price shall be recalculated using the figure to which the minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series A Conversion Price, as adjusted upon the issuance of such rights, 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 Convertible Securities. If any such rights or options or the conversion privilege represented by 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 adjusted 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 Company upon such exercise, plus the consideration, if any, actually received by the

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Company 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 Company (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.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4i, whether or not subsequently reacquired or retired by the Company other than shares of Common Stock issued upon conversion of the Series A Preferred, (B) 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 dividends, combinations, splits, recapitalizations and the like), issued or granted after the Initial Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements or agreements that are approved by the Board, (C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Initial Issue Date, (D) shares of Common Stock issued for consideration other than cash in a merger, consolidation, acquisition or similar business combination and (E) shares of Common Stock issued pursuant to any equipment leasing arrangement, or debt financing from a similar financial institution. 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 Company under this Section 4i into the aggregate consideration received, or deemed to have been received by the Company for such issue under this Section 4i, for such Additional Shares of Common Stock.

j. Certificate of Adjustment. In each case of an adjustment or readjustment of the Series A Conversion Price for the number of shares of Common Stock or Convertible Securities issuable upon conversion of the Series A Preferred, if the Series A Preferred is convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate of adjustment or readjustment, and shall mail such certificate, by first class mail, prepaid, to each registered holder of Series A Preferred at the holder's address as shown on the Company's books. The certificate shall set forth such adjustment or readjustment, and shall detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series A Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be issuable upon conversion of the Series A Preferred.

k. Notices of Record Date. Upon (i) any taking by the Company of a dividend or other distribution of assets to the holders of any class of securities for the purpose of determining the holders thereof entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined

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(c) or other capital reorganization of the Company, any reclassification or
of the capital stock of the Company, any merger or consolidation of the
with or into any other corporation, or any Asset Transfer (as defined in Section 3c), or
or involuntary dissolution, liquidation or winding up of the Company, the
will mail to each holder of Series A Preferred at least twenty (20) days prior to the
specified therein a notice specifying (A) the date on which any such record is to be
purpose of such dividend or distribution and a description of such dividend or
(B) the date on which any such Acquisition, reorganization, reclassification,
consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected
effective, and (C) the date, if any, that is to be fixed as to when the holders of record
Stock (or other securities) shall be entitled to exchange their shares of Common
other securities) for securities or other property deliverable upon such Acquisition,
reclassification, transfer, consolidation, merger, Asset Transfer, dissolution,
winding up.

L. Automatic Conversion.

(i) Each share of Series A Preferred shall automatically be
into shares of Voting Common Stock, based on the then-effective Series A Conversion
any time upon the affirmative election of the holders of at least a majority of the
shares of the Series A Preferred, or (B) immediately upon the closing of a firmly
public offering pursuant to an effective registration statement under the Securities
as amended, covering the offer and sale of Common Stock for the account of the
which (i) the public offering price per share (before underwriting discounts,
and fees) values the Company at at least \$50,000,000, and (ii) the gross cash
the Company (before underwriting discounts, commissions and fees) are at least
Upon such automatic conversion, any declared and unpaid dividends shall be paid
with the provisions of Section 4d.

(ii) Upon the occurrence of the event specified in paragraph (A)
outstanding shares of Series A Preferred shall be converted automatically without any
by the holders of such shares and whether or not the certificates representing such
surrendered to the Company or its transfer agent; *provided, however,* that the
shall not be obligated to issue certificates evidencing the shares of Voting Common
upon such conversion unless the certificates evidencing such shares of Series A
are either delivered to the Company or its transfer agent as provided below, or the
notifies the Company or its transfer agent that such certificates have been lost, stolen or
and executes an agreement satisfactory to the Company to indemnify the Company
loss incurred by it in connection with such certificates. Upon the occurrence of such
conversion of the Series A Preferred, the holders of Series A Preferred shall surrender
certificates representing such shares at the office of the Company or any transfer agent for the
Preferred. Thereupon, there shall be issued and delivered to such holder promptly at
office and in its name as shown on such surrendered certificate or certificates, a certificate
certificates for the number of shares of Voting Common Stock into which the shares of Series
Preferred surrendered were convertible on the date on which such automatic conversion

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occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4d.

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

n. Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Voting Common Stock, solely for the purpose of effecting the conversion of the shares of the 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 the 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 the Series A Preferred, the Company 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.

o. Notices. Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours to 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 Company.

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

q. No Dilution or Impairment. Without the consent of the holders of then outstanding Series A Preferred as required under Section 2b, the Company shall not amend its Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take 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 Company, but shall at all times in good faith

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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 Series A Preferred against dilution or other impairment.

5. REDEMPTION.

The Series A Preferred shall not be redeemable by the Company.

6. NO REISSUANCE OF SERIES A PREFERRED.

No share or shares of Series A Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

7. NO PREEMPTIVE RIGHTS.

Stockholders shall have no preemptive rights except as granted by the Company pursuant to written agreements.

III.

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

B. Any repeal or modification of this Article IV shall only be prospective and shall not affect the rights under this Article IV in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

IV.

For the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.

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B. The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; *provided, however,* that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of holders of capital stock as provided therein; and, provided further, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

C. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

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