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06-18-2002



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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

06-03-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #26



Please record the attached original documents

102125714

1. Name of Conveying Party(ies):
DP Applications, Inc.

6-3-02

- Individual(s)
- General partnership
- Corporation- Oregon
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? YES NO

3. Nature of Conveyance:

- Assignment
- Security Agreement
- Other Articles of Restatement
- Merger
- Change of Name

Execution Date: December 11, 2000

2. Name and address of receiving party(ies):

Name: DecisionPoint Applications, Inc.

Internal Address:

Street Address: 9590 S.W. Gemini Drive

City Beaverton State Oregon ZIP 97008

Individual(s) Citizenship

Association

General Partnership

Limited Partnership

Corporation-State Oregon

Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)
75711334; 75723537; 75934769

B. Trademark Registration No.(s)
1,975,130

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: David P. Petersen
Klarquist Sparkman, LLP

Internal Address:
One World Trade Center, Suite 1600

Street Address:
121 S.W. Salmon Street
Portland, Oregon 97204-2988

6. Total number of applications and registrations involved: 4

7. Total fee (37 C.F.R. § 3.41): \$115.00

Enclosed

Any deficiency/overpayment is authorized to be charged to deposit account. A copy of this sheet is enclosed.

8. Deposit account number: 02-4550

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.

David P. Petersen

May 31, 2002

Name of Person Signing

Signature

Date

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

06/17/2002 LIMELLER 00000225 75711334

01 FC:481 40.00 OP
02 FC:482 75.00 OP

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CERTIFICATE

State of Oregon

OFFICE OF THE SECRETARY OF STATE
Corporation Division

I, **BILL BRADBURY**, Secretary of State of Oregon, and Custodian of the Seal of said State, do hereby certify:

That the attached copy of the
**Articles of
Restatement**
filed on
December 11, 2000
for
DP APPLICATIONS, INC.
changing the name to
DECISIONPOINT APPLICATIONS, INC.
is a true copy of the original
document
that has been filed with this office.

In Testimony Whereof, I have hereunto set
my hand and affixed hereto the Seal of the
State of Oregon.

BILL BRADBURY, Secretary of State



By Debra L. Virag
Debra L. Virag
December 31, 2001

Filing Fee: \$10.00

10-

ARTICLES OF RESTATEMENT
OF
DECISIONPOINT APPLICATIONS, INC.

FILED

DEC 11 2000

OREGON

SECRETARY OF STATE

Registry No. 526190-88

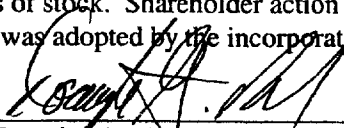
1. The name of the corporation prior to amendment is DP Applications, Inc.
2. The new name of the corporation is DecisionPoint Applications, Inc.
3. The Fifth Restated Articles of Incorporation shall be replaced in their entirety by the Sixth Restated Articles of Incorporation attached hereto as Exhibit A.
4. The amendment was adopted on December 5, 2000.
5. Check the Appropriate Statement

Shareholder action was required to adopt the amendment. The shareholder vote was as follows:

Class or Series of Shares	Number of Shares Outstanding	Number of Votes Entitled to be Cast	Number of Votes Cast For	Number of Votes Cast Against
Series A Preferred Stock	2,000,000	2,000,000	2,000,000	-0-
Series B Preferred Stock	1,955,351	1,066,796	1,066,796	-0-
Series C Preferred Stock	4,242,753	4,191,319	4,191,319	-0-
Common Stock	976,958	500,278	481,528	18,750

Shareholder action was not required to adopt the amendment(s). The amendment(s) was adopted by the board of directors without shareholder action.

The corporation has not issued any shares of stock. Shareholder action was not required to adopt the amendment(s). The amendment(s) was adopted by the incorporators or by the board of directors.



 Douglas G. Nash, Secretary

Person to contact about this filing:

Douglas G. Nash
Telephone: (503) 768-3644

F:\bacad\rustica\articles amendment

12-11-00
MNH

VOID WITHOUT WATERMARK OR IF ALTERED OR ERASED TRADEMARK

ARTICLES OF RESTATEMENT OF DECISIONPOINT APPLICATIONS, INC.

**SIXTH RESTATED
ARTICLES OF INCORPORATION**

Pursuant to ORS 60.451, DecisionPoint Applications, Inc. adopts the following Sixth Restated Articles of Incorporation, which shall supersede its heretofore existing Fifth Restated Articles of Incorporation and all amendments thereto.

ARTICLE I

Name

The name of the Corporation is DecisionPoint Applications, Inc.

ARTICLE II

Capital Stock

A. **Authorized Capital.** The Corporation is authorized to issue two classes of stock: 30,000,000 shares of Common Stock, no par value, and 15,000,000 shares of Preferred Stock, no par value.

B. **Common Stock.** Holders of Common Stock (including Common Stock issued upon conversion of any Preferred Stock that is convertible to Common Stock) are entitled to one vote per share. On dissolution of the Corporation, after any preferential amount with respect to the Preferred Stock has been paid or set aside, the holders of Common Stock and the holders of any series of Preferred Stock entitled to participate in the distribution of assets are entitled to receive the net assets of the Corporation.

C. **Preferred Stock.** The Board of Directors is authorized, subject to limitations prescribed by the Oregon Business Corporation Act, as amended from time to time (the "Act"), and by the provisions of this Article, to provide for the issuance of shares of Preferred Stock in series, to establish from time to time the number of shares to be included in each series and to determine the designations, relative rights, preferences and limitations of the shares of each series. The authority of the Board of Directors with respect to each series includes determination of the following:

1. The number of shares in and the distinguishing designation of that series;
2. Whether shares of that series shall have full, special, conditional, limited or no voting rights, except to the extent otherwise provided by the Act;

VOID IF ALTERED OR ERASED

3. Whether shares of that series shall be convertible and the terms and conditions of the conversion, including provision for adjustment of the conversion rate in circumstances determined by the Board of Directors;

4. Whether shares of that series shall be redeemable and the terms and conditions of redemption, including the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions or at different redemption dates;

5. The dividend rate, if any, on shares of that series, the manner of calculating any dividends and the preferences of any dividends;

6. The rights of shares of that series in the event of voluntary or involuntary dissolution of the Corporation and the rights of priority of that series relative to the Common Stock and any other series of Preferred Stock on the distribution of assets on dissolution; and

7. Any other rights, preferences and limitations of that series that are permitted by law to vary.

D. Series A Preferred Stock. This Paragraph D of Article II sets forth the designation, preferences, limitations and relative rights of a series of Preferred Stock of **DecisionPoint Applications, Inc.** (the "Corporation"). The shares of such series shall be designated Series A Preferred Stock ("Series A Preferred") and the number of shares constituting such series shall be 2,100,000.

1. Dividends. No dividend (including a dividend payable in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock or other securities of this Corporation) shall be paid to holders of Common Stock or Preferred Stock unless at the same time there shall be paid an equal dividend on each share of Series A Preferred based on the number of shares of Common Stock into which it is then convertible. The Corporation shall not make any payments to purchase, redeem or retire any shares of its Common Stock or Preferred Stock.

2. Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, distributions to the shareholders of the Corporation shall be made in the following manner:

(a) The holders of Series A Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share of Series A Preferred equal to \$2 10. plus all declared and unpaid dividends thereon to the date fixed for distribution. If upon liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the holders of Series A Preferred, the Series B Preferred and the Series C Preferred the full amounts to which they shall be entitled, then the entire assets of the Corporation legally available for distribution shall be distributed among the holders of Series A Preferred, Series B Preferred and Series C Preferred

then outstanding ratably per share in proportion to the full preferential amounts to which they are respectively entitled. After the satisfaction of the Series A Preferred, Series B Preferred and Series C Preferred liquidation preferences, any remaining assets shall be distributed pro rata among the holders of Common Stock, Series A Preferred, Series B Preferred and Series C Preferred (based on the number of shares of Common Stock into which the Series A Preferred, Series B Preferred and Series C Preferred are then convertible).

(b) A consolidation or merger of the Corporation with or into any entity or entities (other than a consolidation or merger solely to effect the reincorporation of the Corporation in another state), as a result of which the holders of equity securities of the Corporation immediately prior to such merger or consolidation hold less than 50% of the equity securities of the surviving entity or its parent, or a sale, conveyance, or disposition of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution, or winding up within the meaning of this Section 2.

(c) Whenever a distribution of assets provided for in this Section 2 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

3. Redemption. The Corporation shall not have the right to call or redeem all or any part of the Series A Preferred.

4. Voting Rights. Except as otherwise required by law, the holders of Series A Preferred shall be entitled to notice of shareholder meetings and to vote upon the election of directors or upon any matter submitted to shareholders for a vote, on the following basis: each share of the Series A Preferred shall have that number of votes equal to the number of shares of Common Stock into which it is convertible pursuant to Section 5 below immediately after the close of business on the record date fixed for the shareholder meeting or the effective date of the written consent of the shareholders, as applicable. Except as otherwise required by law, the holders of shares of Series A Preferred shall vote together with the Common Stock, Series B Preferred and Series C Preferred, and not as a separate class, with the following exceptions:

(a) The Series A Preferred shall be entitled to vote as a separate class, and approval by holders of a majority of the Series A Preferred, voting as a separate class, shall be necessary for the Corporation to:

- (i) Effect a merger, consolidation, plan of exchange or reorganization or sale or transfer of all or substantially all of the assets of the Corporation;
- (ii) Amend these Articles of Incorporation;
- (iii) Create, authorize or issue any stock with rights or preferences that are equal or senior to those of the Series A Preferred; or

(iv) Amend the rights and preferences of the Series A Preferred Stock.

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

(a) Right to Convert.

(i) Subject to adjustments as provided in subsection c, each share of Series A Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock calculated to the nearest one-hundredth of a share, as is determined by dividing the Original Series A Issue Price by the Series A Conversion Price then in effect. The Original Series A Issue Price per share shall be \$1.55 per share. The initial Series A Conversion Price per share shall be \$1.55 per share; provided that the Series A Conversion Price shall be subject to adjustment as set forth in subsection (c) below.

(ii) Each share of Series A Preferred shall automatically be converted into shares of Common Stock as provided in paragraph (i) above immediately upon the consummation of the Corporation's sale of its Common Stock in a bona fide, firm commitment underwriting, pursuant to a registration statement under the Securities Act of 1933, as amended, at a price in excess of \$6.50 per share and resulting in proceeds to the Corporation of at least \$10,000,000.

(b) Mechanics of Conversion. Before any holder of Series A Preferred shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice by mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately before the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, 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 as of such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act of 1933, the conversion shall be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(c) Series A Conversion Price Adjustments. The Series A Conversion Price shall be subject to adjustment from time to time as follows:

(i) Stock Split, Dividend or Combination. If the Corporation shall fix a record date for (A) a split or subdivision of its outstanding shares of Common Stock, (B) a combination of its outstanding shares of Common Stock into a smaller number of shares, or (C) a dividend to holders of its Common Stock payable in Common Stock (including Common Stock that is deemed to be issued pursuant to subsection 5(c)(iii) and can be acquired without payment of any consideration) then, as of such record date (or the effective date of such split, combination or dividend if no record date is fixed), the Series A Conversion Price shall be proportionally adjusted so that thereafter a holder of Series A Preferred will be entitled to receive upon conversion of the Series A Preferred into Common Stock the number of shares of Common Stock that the holder would have held after the occurrence of such event (including any shares the holder would have been deemed to receive pursuant to subsection 5(c)(iii) and could acquire without payment of any consideration) if the holder had converted the Series A Preferred immediately before, the applicable, split, combination, or dividend.

(ii) Share Issuance Below Series A Conversion Price.

(A) If the Corporation shall issue any Additional Stock (as defined below) without consideration or for a consideration per share less than the Series A Conversion Price in effect immediately prior to the issuance of such Additional Stock (which issuance shall be called a "Diluting Event"), the Series A Conversion Price in effect immediately prior to each such issuance shall forthwith be reduced to a price (calculated to the nearest cent) determined by dividing (1) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such Diluting Event multiplied by the then existing Series A Conversion Price and (b) an amount equal to the value of the consideration received by the Corporation upon the consummation of the Diluting Event, by (2) the total number of shares of Common Stock outstanding immediately after the consummation of the Diluting Event, provided that for the purposes of this subsection 5(c)(ii)(A), all shares of Common Stock issuable upon conversion of all outstanding shares of preferred stock, all outstanding options to purchase or rights to subscribe for Common Stock and all outstanding securities by their terms convertible or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities shall be deemed to be outstanding, and immediately after any shares of Additional Stock are deemed to be issued pursuant to subsection 5(c)(iii), such shares of Additional Stock shall be deemed to be outstanding.

(B) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 5(c)(iii)) by the Corporation after the date of the first issuance of Series A Preferred (the "Series A Issue Date"), other than

- (1) Common Stock issued pursuant to a transaction described in subsection 5(c)(i) hereof,
- (2) an aggregate total of 4,127,744 shares of Common Stock issuable or issued to directors, employees or consultants of the Corporation or its

...issued directly or pursuant to one or more stock plans approved by the Board of Directors of the Corporation,

(3) Common Stock issued as a dividend or distribution on the Series A Preferred, Series B Preferred or Series C Preferred or pursuant to any event for which adjustment is made pursuant to Sections 5(d) or 5(e) hereof, or

(4) Common Stock issued upon conversion of the Series A Preferred, Series B Preferred or Series C Preferred.

(iii) Shares Deemed Issued (Fully Diluted). In the case of the issuance (after the Series A Issue Date) of options, warrants or other rights to purchase or otherwise acquire Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 5(c):

(A) The number of shares of Common Stock outstanding at any time shall include the maximum number of shares obtainable upon the exercise, conversion or exchange (assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of all such options, rights and convertible securities outstanding at such time.

(B) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsection 5(c)(iv)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(C) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related

options or rights (the consideration in each case to be determined in the manner provided in subsection 5(c)(iv).

(D) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities including, but not limited to, a change resulting from the antidilution provisions thereof, the Series A Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(E) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Series A Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(F) In the case of any options that by their terms expire not more than 30 days after the date of issue thereof, no adjustment of the Series A Conversion Price shall be made until the expiration or exercise of all such options, whereupon such adjustments shall be made in the manner provided for in Paragraph (E) above.

(iv) Amount of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as reasonably determined by the Board of Directors irrespective of any accounting treatment.

(v) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Series A Conversion Price shall be made in respect of the issuance of Additional Stock unless the consideration per share (determined pursuant to subsection 5(c)(iv) hereof) for a share of Additional Stock issued or deemed to be issued by the Corporation is less than the Series A Conversion Price in effect on the date of, and immediately prior to, such issuance.

(d) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred

to in subsection 5(c)(iii), then, in each such case for the purpose of this subsection 5(d), the holders of the Series A Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(e) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision or combination provided for in subsection 5(c)(i)), provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon conversion of the Series A Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Series A Preferred after the recapitalization to the end that the provisions of this Section 5 (including adjustment of the Series A Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred) shall be applicable after that event as nearly equivalent as may be practicable.

(f) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or 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 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Series A conversion rights against impairment.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of the Series A Preferred, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 5, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred a certificate setting forth such adjustment 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 (A) such adjustment and readjustment, (B) the Series A Conversion Price at the time in

effect, and (C) 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 a share of Series A Preferred.

(h) 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 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; and 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, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(i) Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of Series A Preferred shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at the holder's address appearing on the books of the Corporation.

E. Series B Preferred Stock. This Paragraph E of Article H sets forth the designation, preferences, limitations and relative rights of a series of Preferred Stock of the Corporation. The shares of such series shall be designated Series B Preferred Stock ("Series B Preferred") and the number of shares constituting such series shall be 1,955,351.

1. Dividends. No dividend (including a dividend payable in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock or other securities of this Corporation) shall be paid to holders of Common Stock or Preferred Stock unless at the same time there shall be paid an equal dividend on each share of Series B Preferred based on the number of shares of Common Stock into which it is then convertible. The Corporation shall not make any payments to purchase, redeem or retire any shares of its Common Stock or Preferred Stock.

2. Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, distributions to the shareholders of the Corporation shall be made in the following manner:

(a) The holders of Series B Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share of Series B Preferred equal to \$1.55, plus all declared and unpaid dividends thereon to the date fixed for distribution. If upon liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the holders of Series A Preferred, the Series B Preferred and the Series C Preferred the full amounts to which they shall be entitled, then the entire assets of the Corporation legally available for distribution shall be distributed among the holders of Series A Preferred, Series B Preferred and Series C Preferred then outstanding ratably per share in proportion to the full preferential amounts to which they are

respectively entitled. After the satisfaction of the Series A Preferred, Series B Preferred and Series C Preferred liquidation preferences, any remaining assets shall be distributed pro rata among the holders of Common Stock, Series A Preferred, Series B Preferred and Series C Preferred (based on the number of shares of Common Stock into which the Series A Preferred, Series B Preferred and Series C Preferred are then convertible).

(b) A consolidation or merger of the Corporation with or into any entity or entities (other than a consolidation or merger solely to effect the reincorporation of the Corporation in another state), as a result of which the holders of equity securities of the Corporation immediately prior to such merger or consolidation hold less than 50% of the equity securities of the surviving entity or its parent, or a sale, conveyance, or disposition of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution, or winding up within the meaning of this Section 2.

(c) Whenever a distribution of assets provided for in this Section 2 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

3. Redemption. The Corporation shall not have the right to call or redeem all or any part of the Series B Preferred.

4. Voting Rights. Except as otherwise required by law, the holders of Series B Preferred shall be entitled to notice of shareholder meetings and to vote upon the election of directors or upon any matter submitted to shareholders for a vote, on the following basis: each share of the Series B Preferred shall have that number of votes equal to the number of shares of Common Stock into which it is convertible pursuant to Section 5 below immediately after the close of business on the record date fixed for the shareholder meeting or the effective date of the written consent of the shareholders, as applicable. Except as otherwise required by law, the holders of shares of Series B Preferred shall vote together with the Common Stock, Series A Preferred and Series C Preferred, and not as a separate class, with the following exceptions:

(a) The Series B Preferred shall be entitled to vote as a separate class, and approval by holders of a majority of the Series B Preferred, voting as a separate class, shall be necessary for the Corporation to:

- (i) Effect a merger, consolidation, plan of exchange or reorganization or sale of all or substantially all of the assets of the Corporation;
- (ii) Amend these Articles of Incorporation;
- (iii) Create, authorize or issue any stock with rights or preferences that are equal or senior to those of the Series B Preferred; or
- (iv) Amend the rights and preferences of the Series B Preferred Stock.

5. Conversion Rights. The holders of the Series B Preferred shall have conversion rights as follows (the "Series B Conversion Rights"):

(a) Right to Convert.

(i) Subject to adjustments as provided in subsection c, each share of Series B Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock calculated to the nearest one-hundredth of a share, as is determined by dividing the Original Series B Issue Price by the Series B Conversion Price then in effect. The Original Series B Issue Price per share shall be \$1.55 per share. The initial Series B Conversion Price per share shall be \$1.55 per share; provided that the Series B Conversion Price shall be subject to adjustment as set forth in subsection (c) below.

(ii) Each share of Series B Preferred shall automatically be converted into shares of Common Stock as provided in paragraph (i) above immediately upon the consummation of the Corporation's sale of its Common Stock in a bona fide, firm commitment underwriting, pursuant to a registration statement under the Securities Act of 1933, as amended, at a price in excess of \$6.50 per share and resulting in proceeds to the Corporation of at least \$10,000,000.

(b) Mechanics of Conversion. Before any holder of Series B Preferred shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice by mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately before the close of business on the date of such surrender of the shares of Series B Preferred Stock to be converted, 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 as of such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act of 1933, the conversion shall be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of Series B Preferred Stock shall not be deemed to have converted such Series B Preferred Stock until immediately prior to the closing of such sale of securities.

(c) Series B Conversion Price Adjustments. The Series B Conversion Price shall be subject to adjustment from time to time as follows:

(i) Stock Split, Dividend or Combination. If the Corporation shall fix a record date for (A) a split or subdivision of its outstanding shares of Common Stock, (B) a combination of its outstanding shares of Common Stock into a smaller number of shares, or (C) a dividend to holders of its Common Stock payable in Common Stock (including Common Stock that is deemed to be issued pursuant to subsection 5(c)(iii) and can be acquired without payment of any consideration) then, as of such record date (or the effective date of such split, combination or dividend if no record date is fixed), the Series B Conversion Price shall be proportionally adjusted so that thereafter a holder of Series B Preferred will be entitled to receive upon conversion of the Series B Preferred into Common Stock the number of shares of Common Stock that the holder would have held after the occurrence of such event (including any shares the holder would have been deemed to receive pursuant to subsection 5(c)(iii) and could acquire without payment of any consideration) if the holder had converted the Series B Preferred immediately before, the applicable, split, combination, or dividend.

(ii) Share Issuance Below Series B Conversion Price.

(A) If the Corporation shall issue any Additional Stock (as defined below) without consideration or for a consideration per share less than the Series B Conversion Price in effect immediately prior to the issuance of such Additional Stock (which issuance shall be called a "Diluting Event"), the Series B Conversion Price in effect immediately prior to each such issuance shall forthwith be reduced to a price (calculated to the nearest cent) determined by dividing (1) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such Diluting Event multiplied by the then existing Series B Conversion Price and (b) an amount equal to the value of the consideration received by the Corporation upon the consummation of the Diluting Event, by (2) the total number of shares of Common Stock outstanding immediately after the consummation of the Diluting Event, provided that for the purposes of this subsection 5(c)(ii)(A), all shares of Common Stock issuable upon conversion of all outstanding shares of preferred stock, all outstanding options to purchase or rights to subscribe for Common Stock and all outstanding securities by their terms convertible or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities shall be deemed to be outstanding, and immediately after any shares of Additional Stock are deemed to be issued pursuant to subsection 5(c)(iii), such shares of Additional Stock shall be deemed to be outstanding.

(B) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 5(c)(iii)) by the Corporation after the date of the first issuance of Series B Preferred (the "Series B Issue Date"), other than

(1) Common Stock issued pursuant to a transaction described in subsection 5(c)(i) hereof,

(2) an aggregate total of 4,127,744 shares of Common Stock issuable or issued to directors, employees or consultants of the Corporation or its subsidiaries directly or pursuant to one or more stock plans approved by the Board of Directors of the Corporation,

(3) Common Stock issued as a dividend or distribution on the Series A Preferred, Series B Preferred or Series C Preferred or pursuant to any event for which adjustment is made pursuant to Sections 5(d) or 5(e) hereof, or

(4) Common Stock issued upon conversion of the Series A Preferred, Series B Preferred or Series C Preferred.

(iii) Shares Deemed Issued (Fully Diluted). In the case of the issuance (after the Series B Issue Date) of options, warrants or other rights to purchase or otherwise acquire Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 5(c):

(A) The number of shares of Common Stock outstanding at any time shall include the maximum number of shares obtainable upon the exercise, conversion or exchange (assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of all such options, rights and convertible securities outstanding at such time.

(B) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsection 5(c)(iv)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(C) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsection 5(c)(iv)).

(D) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities including, but not limited to, a change resulting from the antidilution provisions thereof, the Series B Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(E) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Series B Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(F) In the case of any options that by their terms expire not more than 30 days after the date of issue thereof, no adjustment of the Series B Conversion Price shall be made until the expiration or exercise of all such options, whereupon such adjustments shall be made in the manner provided for in Paragraph (E) above.

(iv) Amount of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as reasonably determined by the Board of Directors irrespective of any accounting treatment.

(v) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Series B Conversion Price shall be made in respect of the issuance of Additional Stock unless the consideration per share (determined pursuant to subsection 5(c)(iv) hereof) for a share of Additional Stock issued or deemed to be issued by the Corporation is less than the Series B Conversion Price in effect on the date of, and immediately prior to, such issuance.

(d) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 5(c)(iii), then, in each such case for the purpose of this subsection 5(d), the holders of the Series B Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the

Corporation into which their shares of Series B Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(e) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision or combination provided for in subsection 5(c)(i)), provision shall be made so that the holders of the Series B Preferred shall thereafter be entitled to receive upon conversion of the Series B Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Series B Preferred after the recapitalization to the end that the provisions of this Section 5 (including adjustment of the Series B Conversion Price then in effect and the number of shares purchasable upon conversion of the Series B Preferred) shall be applicable after that event as nearly equivalent as may be practicable.

(f) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or 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 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Series B conversion rights against impairment.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of the Series B Preferred, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Series B Conversion Price pursuant to this Section 5, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B 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 B Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (A) the adjustment and readjustment, (B) the Series B Conversion Price at the time in effect, and (C) 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 a share of Series B Preferred.

(h) **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 the Series B 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 B Preferred; and 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 B Preferred, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(i) **Notices.** Any notice required by the provisions of this Section 5 to be given to the holders of shares of Series B Preferred shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at the holder's address appearing on the books of the Corporation.

F. **Series C Preferred Stock.** This Paragraph F of Article II sets forth the designation, preferences, limitations and relative rights of a series of Preferred Stock of the Corporation. The shares of such series shall be designated Series C Preferred Stock ("Series C Preferred") and the number of shares constituting such series shall be 6,340,460.

1. **Dividends.** No dividend (including a dividend payable in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock or other securities of this Corporation) shall be paid to holders of Common Stock or Preferred Stock unless at the same time there shall be paid an equal dividend on each share of Series C Preferred (based on the number of shares of Common Stock into which it is then convertible). The Corporation shall not make any payment to purchase, redeem or retire any shares of its Common Stock or Preferred Stock.

2. **Liquidation Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, distributions to the shareholders of the Corporation shall be made in the following manner:

(a) The holders of Series C Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share of Series C Preferred equal to \$6.50, plus all declared and unpaid dividends thereon to the date fixed for distribution. If upon liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the holders of Series A Preferred, the Series B Preferred and the Series C Preferred the full amounts to which they shall be entitled, then the entire assets of the Corporation legally available for distribution shall be distributed among the holders of Series A Preferred, Series B Preferred and Series C Preferred then outstanding ratably per share in proportion to the full preferential amounts to which they are respectively entitled. After the satisfaction of the Series A Preferred, Series B Preferred and Series C Preferred liquidation preferences, any remaining assets shall be distributed pro rata among the holders of Common Stock, Series A Preferred, Series B Preferred and Series C

Preferred (based on the number of shares of Common Stock into which the Series A Preferred, Series B Preferred and Series C Preferred are then convertible).

(b) A consolidation or merger of the Corporation with or into any entity or entities (other than a consolidation or merger solely to effect the reincorporation of the Corporation in another state), as a result of which the holders of equity securities of the Corporation immediately prior to such merger or consolidation hold less than 50% of the equity securities of the surviving entity or its parent, or a sale, conveyance, or disposition of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution, or winding up within the meaning of this Section 2.

(c) Whenever a distribution of assets provided for in this Section 2 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

3. Redemption. The Corporation shall not have the right to call or redeem all or any part of the Series C Preferred.

4. Voting Rights. Except as otherwise required by law, the holders of Series C Preferred shall be entitled to notice of shareholder meetings and to vote upon the election of directors or upon any matter submitted to shareholders for a vote, on the following basis: each share of the Series C Preferred shall have that number of votes equal to the number of shares of Common Stock into which it is convertible pursuant to Section 5 below immediately after the close of business on the record date fixed for the shareholder meeting or the effective date of the written consent of the shareholders, as applicable. Except as otherwise required by law, the holders of shares of Series C Preferred shall vote together with the Common Stock, Series A Preferred and Series B Preferred, and not as separate class, with the following exceptions:

(a) The Series C Preferred shall be entitled to vote as a separate class, and approval by holders of a majority of the Series C Preferred, voting as a separate class, shall be necessary for the Corporation to:

- (i) Effect a merger, consolidation, plan of exchange or reorganization or sale or transfer of all or substantially all of the assets of the Corporation;
 - (ii) Amend these Articles of Incorporation;
 - (iii) Create, authorize or issue any stock with rights or preferences that are equal or senior to those of the Series C Preferred;
 - (iv) Amend the rights and preferences of the Series C Preferred;
- or
- (v) Increase or decrease the size of the Corporation's board of directors to greater or less than seven (7) directors.

(b) The holders of the Series C Preferred, voting as a class, shall be entitled to elect one (1) director of the Corporation, and to remove any director so elected by them. The holders of the Common Stock, Series A Preferred and Series B Preferred, voting together and not as separate classes, shall be entitled to elect the remaining members of the Corporation's board of directors.

(c) The above provisions shall be in addition to any voting rights set forth in any agreement between the Corporation and the holder(s) of Series C Preferred.

5. Conversion Rights. The holders of the Series C Preferred shall have conversion rights as follows (the "Series C Conversion Rights"):

(a) Right to Convert.

(i) Subject to adjustments as provided in subsection c, each share of Series C Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock calculated to the nearest one-hundredth of a share, as is determined by dividing the Original Series C Issue Price by the Series C Conversion Price then in effect. The Original Series C Issue Price per share shall be \$6.50 per share. The initial Series C Conversion Price per share shall be \$6.50 per share; provided that the Series C Conversion Price shall be subject to adjustment as set forth in subsection (c) below.

(ii) Each share of Series C Preferred shall automatically be converted into shares of Common Stock as provided in paragraph (i) above immediately upon the consummation of the Corporation's sale of its Common Stock in a bona fide, firm commitment underwriting, pursuant to a registration statement under the Securities Act of 1933, as amended, at a price in excess of \$6.50 per share and resulting in proceeds to the Corporation of at least \$10,000,000.

(b) Mechanics of Conversion. Before any holder of Series C Preferred shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice by mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled aforesaid. Such conversion shall be deemed to have been made immediately before the close of business on the date of such surrender of the shares of Series C Preferred Stock to be converted, 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 as of such date. If the conversion is in connection with an

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underwritten offer of securities registered pursuant to the Securities Act of 1933, the conversion shall be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of Series C Preferred Stock shall not be deemed to have converted such Series C Preferred Stock until immediately prior to the closing of such sale of securities.

(c) Series C Conversion Price Adjustments. The Series C Conversion Price shall be subject to adjustment from time to time as follows:

(i) Stock Split, Dividend or Combination. If the Corporation shall fix a record date for (A) a split or subdivision of its outstanding shares of Common Stock, (B) a combination of its outstanding shares of Common Stock into a smaller number of shares, or (C) a dividend to holders of its Common Stock payable in Common Stock (including Common Stock that is deemed to be issued pursuant to subsection 5(c)(iii) and can be acquired without payment of any consideration) then, as of such record date (or the effective date of such split, combination or dividend if no record date is fixed), the Series C Conversion Price shall be proportionally adjusted so that thereafter a holder of Series C Preferred will be entitled to receive upon conversion of the Series C Preferred into Common Stock the number of shares of Common Stock that the holder would have held after the occurrence of such event (including any shares the holder would have been deemed to receive pursuant to subsection 5(c)(iii) and could acquire without payment of any consideration) if the holder had converted the Series C Preferred immediately before, the applicable, split, combination, or dividend.

(ii) Share Issuance Below Series C Conversion Price.

(A) If the Corporation shall issue any Additional Stock (as defined below) without consideration or for a consideration per share less than the Series C Conversion Price in effect immediately prior to the issuance of such Additional Stock (which issuance shall be called a "Diluting Event"), the Series C Conversion Price in effect immediately prior to each such issuance shall forthwith be reduced to a price (calculated to the nearest cent) determined by dividing (1) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such Diluting Event multiplied by the then existing Series C Conversion Price and (b) an amount equal to the value of the consideration received by the Corporation upon the consummation of the Diluting Event, by (2) the total number of shares of Common Stock outstanding immediately after the consummation of the Diluting Event, provided that for the purposes of this subsection 5(c)(ii)(A), all shares of Common Stock issuable upon conversion of all outstanding shares of preferred stock, all outstanding options to purchase or rights to subscribe for Common Stock and all outstanding securities by their terms convertible or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities shall be deemed to be outstanding, and immediately after any shares of Additional Stock are deemed to be issued pursuant to subsection 5(c)(iii), such shares of Additional Stock shall be deemed to be outstanding.

(B) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 5(c)(iii)) by the

Corporation after the date of the first issuance of Series C Preferred (the "Series C Issue Date"), other than

- (1) Common Stock issued pursuant to a transaction described in subsection 5(c)(i) hereof,
- (2) an aggregate total of 4,127,744 shares of Common Stock issuable or issued to directors, employees or consultants of the Corporation or its subsidiaries directly or pursuant to one or more stock plans approved by the Board of Directors of the Corporation,
- (3) Common Stock issued as a dividend or distribution on the Series A Preferred, Series B Preferred or Series C Preferred or pursuant to any event for which adjustment is made pursuant to Sections 5(d) or 5(e) hereof, or
- (4) Common Stock issued upon conversion of the Series A Preferred, Series B Preferred or Series C Preferred.

(iii) Shares Deemed Issued (Fully Diluted). In the case of the issuance (after the Series C Issue Date) of options, warrants or other rights to subscribe for, purchase or otherwise acquire Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 5(c):

(A) The number of shares of Common Stock outstanding at any time shall include the maximum number of shares obtainable upon the exercise, conversion or exchange (assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of all such options, rights and convertible securities outstanding at such time.

(B) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsection 5(c)(iv)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(C) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for

such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsection 5(c)(iv).

(D) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities including, but not limited to, a change resulting from the antidilution provisions thereof, the Series C Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(E) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Series C Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(F) In the case of any options that by their terms expire not more than 30 days after the date of issue thereof, no adjustment of the Series C Conversion Price shall be made until the expiration or exercise of all such options, whereupon such adjustments shall be made in the manner provided for in Paragraph (E) above.

(iv) Amount of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as reasonably determined by the Board of Directors irrespective of any accounting treatment.

(v) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Series C Conversion Price shall be made in respect of the issuance of Additional Stock unless the consideration per share (determined

pursuant to subsection 5(c)(iv) hereof) for a share of Additional Stock issued or deemed to be issued by the Corporation is less than the Series C Conversion Price in effect on the date of, and immediately prior to, such issuance.

(d) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 5(c)(iii), then, in each such case for the purpose of this subsection 5(d), the holders of the Series C Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series C Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(e) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision or combination provided for in subsection 5(c)(i)), provision shall be made so that the holders of the Series C Preferred shall thereafter be entitled to receive upon conversion of the Series C Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Series C Preferred after the recapitalization to the end that the provisions of this Section 5 (including adjustment of the Series C Conversion Price then in effect and the number of shares purchasable upon conversion of the Series C Preferred) shall be applicable after that event as nearly equivalent as may be practicable.

(f) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or 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 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Series C Preferred conversion rights against impairment.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon conversion of the Series C Preferred, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Series C Conversion Price pursuant to this Section 5, the Corporation, at its expense, shall

promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series C 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 C Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Series C Conversion Price at the time in effect, and (C) 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 a share of Series C Preferred.

(h) 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 the Series C 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 C Preferred; and 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 C Preferred, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(i) Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of Series C Preferred shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at the holder's address appearing on the books of the Corporation.

ARTICLE III

Limitation on Director Liabilities

No director of the Corporation shall be personally liable to the Corporation or its shareholders for monetary damages for conduct as a director, provided that this Article shall not eliminate the liability of a director for any act or omission for which such elimination of liability is not permitted under the Oregon Business Corporation Act. No amendment to the Oregon Business Corporation Act that further limits the acts or omissions for which elimination of liability is permitted shall affect the liability of a director for any act or omission that occurs before the effective date of the amendment.

ARTICLE IV

Indemnification

7 Corporation shall indemnify to the fullest extent not prohibited by law any current or former director of the Corporation, and may indemnify, to the fullest extent not prohibited by law, any current or former officer of the Corporation, who is made, or threatened to be made, a party to an action, suit or proceeding, whether civil, criminal, administrative, investigative or other (including an action, suit or proceeding by or in the right of the Corporation), by reason of

the fact that such person is or was a director, officer, employee or agent of the Corporation or a fiduciary within the meaning of the Employee Retirement Income Security Act of 1974 with respect to any employee benefit plan of the Corporation, or serves or served at the request of the Corporation as a director, officer, employee or agent, or as a fiduciary of an employee benefit plan, of another corporation, partnership, joint venture, trust or other enterprise, against all expenses, liabilities and losses (including attorneys' fees, judgments, fines and amounts paid in settlement) incurred or suffered by such person in connection therewith. The Corporation shall pay for or reimburse the reasonable expenses incurred by any such current or former director, and may pay for or reimburse the reasonable expenses incurred by any such current or former officer, in any such proceeding in advance of the final disposition of the proceeding if the person sets forth in writing (i) the person's good faith belief that the person is entitled to indemnification under this Article and (ii) the person's agreement to repay all advances if it is ultimately determined that the person is not entitled to indemnification under this Article. No amendment to this Article that limits the Corporation's obligation to indemnify any person shall have any effect on such obligation for any act or omission that occurs before the later of the effective date of the amendment or the date notice of the amendment is given to the person. This Article shall not be deemed exclusive of any other provisions for indemnification or advancement of expenses of directors, officers, employees, agents and fiduciaries that may be included in any statute, bylaw, agreement, general or specific action of the Board of Directors, vote of shareholders or other document or arrangement.

DECISIONPOINT APPLICATIONS, INC.

By: _____

Charles R. Burrows, President