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Form PTO-1594

(Rev. 03/01)

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

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

1. Name of conveying party(ies): FINANCE PARTNER
Saleshound.com, Inc.

- Individual(s)
 - General Partnership
 - Corporation-State
 - Other _____
 - Association
 - Limited Partnership
- 07/22/02*

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other _____
- Merger
- Change of Name

Execution Date: 03/02/2001

2. Name and address of receiving party(ies)

Name: Saleshound, Inc.

Internal Address: _____
Address: _____

Street Address: 350 West Erie

City: Chicago State: IL Zip: 60610

- 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

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

A. Trademark Application No. (s) 75/733077

B. Trademark Registration No. (s) _____

Additional number(s) attached Yes No

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

Name: Carol R. Kirchick, Esq.

Internal Address: _____

Street Address: Rich May, a Professional

Corporation

176 Federal Street

6th Floor

City: Boston, State: MA Zip: 02110-2223

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: _____

DO NOT USE THIS SPACE

9. Signature.

Carol R. Kirchick
Name of Person Signing

Carol R. Kirchick
Signature

July 18, 2002
Date

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

TRADEMARK
REEL: 002550 FRAME: 0393

07/25/2002 TDIAZ1 00000197 75733077

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40.00 DP

Office of the Secretary of State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SALESHOUND.COM, INC.", CHANGING ITS NAME FROM "SALESHOUND.COM, INC." TO "SALESHOUND, INC.", FILED IN THIS OFFICE ON THE SECOND DAY OF MARCH, A.D. 2001, AT 10:30 O'CLOCK A.M.

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



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1002864

DATE: 03-05-01

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TRADEMARK
REEL: 002550 FRAME: 0394

**FIFTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
SalesHound, Inc.
a Delaware Corporation**

(Originally incorporated on June 22, 1999)

ARTICLE I

The name of this Corporation is SalesHound, Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 1220 N. Market Street, Suite 606, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Registered Agents, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. Classes of Stock. 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 Ninety-five Million Three Hundred Eighty-four Thousand Eight Hundred Seven (95,384,807) shares. Sixty-five Million (65,000,000) shares shall be Common Stock, par value \$0.001 per share, and Thirty Million Three Hundred Eighty-four Thousand Eight Hundred Seven (30,384,807) shares shall be Preferred Stock, par value \$0.001 per share. One Million, Four Hundred Sixty-six Thousand, Six Hundred Sixty-seven (1,466,667) shares of Preferred Stock shall be designated Series A Preferred Stock ("**Series A Preferred**"), Eight Million (8,000,000) shares of Preferred Stock shall be designated Series B Preferred Stock ("**Series B Preferred**"), Nine Million Seven Hundred Eighty Thousand Nine Hundred Two (9,780,902) shares of Preferred Stock shall be designated Series C Preferred Stock ("**Series C Preferred**") and Eleven Million One Hundred Thirty-seven Thousand Two Hundred Thirty-eight (11,137,238) shares of Preferred Stock shall be designated Series D Preferred Stock ("**Series D Preferred**").

B. Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B).

I. Dividend Provisions.

a. The holders of shares of Series D Preferred shall be entitled to receive, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock) on the Common Stock, Series A Preferred, Series B Preferred or Series C Preferred, dividends at the rate of four and thirty-one one hundredths cents (\$0.0431) per share per annum for each share of Series D Preferred held by them (as adjusted for any stock dividends, combinations or splits with respect to such shares).

After such dividends are declared and paid upon the Series D Preferred, the holders of shares of Series C Preferred shall be entitled to receive, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock) on the Common Stock, Series A Preferred or Series B Preferred, dividends at the rate of three and twenty-two one hundredths cents (\$0.0322) per share per annum for each share of Series C Preferred held by them (as adjusted for any stock dividends, combinations or splits with respect to such shares).

After such dividends are declared and paid upon the Series D Preferred and Series C Preferred, the holders of shares of Series B Preferred shall be entitled to receive, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock) on the Common Stock or Series A Preferred, dividends at the rate of one and one-half cents (\$0.015) per share per annum for each share of Series B Preferred held by them (as adjusted for any stock dividends, combinations or splits with respect to such shares).

After such dividends are declared and paid upon the Series D Preferred, Series C Preferred and the Series B Preferred, the holders of shares of Series A Preferred shall be entitled to receive, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock) on the Common Stock of this Corporation, dividends at the rate of nine-tenths of a cent (\$0.009) per share per annum for each share of Series A Preferred held by them (as adjusted for any stock dividends, combinations or splits with respect to such shares).

After such dividends are declared and paid upon the Series D Preferred, Series C Preferred, Series B Preferred and Series A Preferred, dividends may be declared and paid on the Common Stock in such amounts as may be declared by the Board of Directors if at the same time equivalent dividends are declared and paid to holders of Series A Preferred (as determined on an as converted basis for the Series A Preferred).

b. The dividend preference of the Series D Preferred, Series C Preferred, Series B Preferred and Series A Preferred shall not be compounded.

2. Liquidation Preference.

a. Primary Distribution. In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, the holders of Series D Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets and funds of this Corporation to the holders of Series C Preferred, Series B Preferred, Series A Preferred or Common Stock by reason of their ownership thereof, the amount of Seventy-one and Eight Hundred Thirty-one Thousandths Cents (\$0.71831) (the "**Original Series D Issue Price**") for each outstanding share of Series D Preferred then held of record by such holder, plus an amount equal to accrued or declared but unpaid dividends on such respective shares. If upon the occurrence of such event, the assets and funds of the Corporation legally available for distribution to the holders of Series D Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of Series D Preferred in a manner such that each holder of Series D Preferred shall receive the amount obtained by multiplying the entire assets and funds of the Corporation legally available for distribution to the holders of Series D Preferred by a fraction, (i) the numerator of which shall be the product obtained by multiplying the number of shares of Series D Preferred then held by the holder by the liquidation preference amount per share of the Series D Preferred, and (ii) the denominator of which shall be the product obtained by multiplying the total then outstanding number of shares of Series D Preferred by the liquidation preference amount per share of the Series D Preferred.

b. Secondary Distribution. Upon the completion of the distribution required by subparagraph (a) of this Section 2, the holders of Series C Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets and funds of this Corporation to the holders of Series B Preferred, Series A Preferred or Common Stock by reason of their ownership thereof, the amount of Fifty-three and Six Hundred Seventy-six One Thousandths Cents (\$0.53676) (the "**Original Series C Issue Price**") for each outstanding share of Series C Preferred then held of record by such holder, plus an amount equal to accrued or declared but unpaid dividends on such respective shares. If upon the occurrence of such event, the assets and funds of the Corporation legally available for distribution to the holders of Series C Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of Series C Preferred in a manner such that each holder of Series C Preferred shall receive the amount obtained by multiplying the entire assets and funds of the Corporation legally available for distribution to the holders of Series C Preferred by a fraction, (i) the numerator of which shall be the product obtained by multiplying the number of shares of Series C Preferred then held by the holder by the liquidation preference amount per share of the Series C Preferred, and (ii) the denominator of which shall be the product obtained by multiplying the total then outstanding number of shares of Series C Preferred by the liquidation preference amount per share of the Series C Preferred.

c. Tertiary Distribution. Upon the completion of the distribution required by subparagraphs (a) and (b) of this Section 2, the holders of Series B Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets and funds of this Corporation to the holders of Series A Preferred or Common Stock by reason of their ownership thereof, the amount of Twenty-Five Cents (\$0.25) (the "**Original Series B Issue Price**") for each outstanding share of Series B Preferred then held of record by such holder, plus an amount equal to accrued or declared but unpaid dividends on such respective shares. If upon the occurrence of such event, the assets and funds of the Corporation legally available for distribution to the holders of Series B Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of Series B Preferred in a manner such that each holder of Series B Preferred shall receive the amount obtained by multiplying the entire assets and funds of the Corporation legally available for distribution to the holders of Series B Preferred by a fraction, (i) the numerator of which shall be the product obtained by multiplying the number of shares of Series B Preferred then held by the holder by the liquidation preference amount per share of the Series B Preferred, and (ii) the denominator of which shall be the product obtained by multiplying the total then outstanding number of shares of Series B Preferred by the liquidation preference amount per share of the Series B Preferred.

d. Quaternary Distribution. Upon the completion of the distribution required by subparagraphs (a), (b) and (c) of this Section 2, the holders of Series A Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets and funds of this Corporation to the holders of Common Stock by reason of their ownership thereof, the amount of Fifteen Cents (\$0.15) (the "**Original Series A Issue Price**") for each outstanding share of Series A Preferred then held of record by such holder, plus an amount equal to accrued or declared but unpaid dividends on such respective shares. If upon the occurrence of such event, the assets and funds of the Corporation legally available for distribution to the holders of Series A Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution to the holders of the Series A Preferred shall be distributed among such holders in a manner such that each holder of Series A Preferred shall receive the amount obtained by multiplying the entire assets and funds of the Corporation legally available for distribution to the holders of Series A Preferred by a fraction, (i) the numerator of which shall be the product obtained by multiplying the number of shares of Series A Preferred then held by the holder by the liquidation preference amount per share of the Series A Preferred, and (ii) the denominator of which shall be the product obtained by multiplying the total then outstanding number of shares of Series A Preferred by the liquidation preference amount per share of the Series A Preferred.

e. Quintenary Distribution. Upon the completion of the distribution required by subparagraphs (a), (b), (c) and (d) of this Section 2, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Series D Preferred, Series C Preferred, Series B Preferred, Series A Preferred and Common Stock pro rata in proportion to the number of

shares of Common Stock held by each (assuming conversion of all such Preferred Stock) until holders of Series D Preferred shall have received an aggregate of Two Dollars and Fifty-one and Forty-one Hundredths Cents (\$2.5141) per share of Series D Preferred held by them (including, and not in addition to, amounts paid pursuant to subparagraph (a) of this Section 2), holders of Series C Preferred shall have received an aggregate of Two Dollars and Sixty-eight and Thirty-eight One Hundredths Cents (\$2.6838) per share of Series C Preferred held by them (including, and not in addition to, amounts paid pursuant to subparagraph (b) of this Section 2), holders of Series B Preferred shall have received an aggregate of One Dollar and Twenty-Five Cents (\$1.25) per share of Series B Preferred held by them (including, and not in addition to, amounts paid pursuant to subparagraph (c) of this Section 2) and holders of Series A Preferred shall have received an aggregate of Seventy-five Cents (\$0.75) per share of Series A Preferred held by them (including, and not in addition to, amounts paid pursuant to subparagraph (d) of this Section 2) (in each case as adjusted for any stock splits, dividends, combinations or recapitalizations with respect to such shares). Thereafter, any remaining assets and funds legally available for distribution to stockholders shall be distributed solely to the holders of Common Stock pro rata in proportion to the number of shares of Common Stock held by each.

f. Definition of Liquidity Event; Notice.

(i) For purposes of this Section 2, a liquidation, dissolution or winding up of this Corporation shall be deemed to be occasioned by, and to include, (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation); or (B) a sale of all or substantially all of the assets of the Corporation (including, for purposes of this section, intellectual property rights which, in the aggregate, constitute substantially all of the Corporation's material assets); unless in each case, the Corporation's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold in the aggregate at least fifty percent (50%) of the voting power of the surviving or acquiring entity. The provisions of this Section 2(f) shall not apply to an issuance of equity securities by the Corporation solely in a dilutive financing which causes failure of the fifty percent (50%) test set forth in this Section 2(f)(i), if such issuance of equity securities has been duly approved by the holders of at least sixty percent (60%) of each series of Preferred Stock then outstanding.

(ii) The Corporation shall give each holder of record of Preferred Stock written notice of any such impending transaction not later than ten (10) days prior to the date of any stockholder meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever notice date is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, the provisions of this Section 2, and the amounts anticipated to be distributed to holders of each outstanding series and class of capital stock of the Corporation pursuant to this Section 2, and the Corporation shall thereafter give such

holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least sixty-five percent (65%) of the voting power of all then outstanding shares of such Preferred Stock (on an as-converted into Common Stock basis).

g. Valuation. In any of such events specified in Section 2(f)(i) above, if the consideration received by the Corporation is other than cash or securities, its value will be deemed to be its fair market value, as determined in good faith by the Corporation's Board of Directors. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability shall be valued as follows: (A) 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 exchange over the thirty (30) day period ending three (3) days prior to the closing; (B) 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 (C) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(ii) Securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be valued in such a manner as to make an appropriate discount from the market value determined as above in (i) (A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

3. Redemption of Series D Preferred, Series C Preferred and Series B Preferred.

a. Series D Right to Redemption. Upon the written request of the holders of at least sixty percent (60%) of the then outstanding Series D Preferred (on an as-converted into Common Stock basis) at any time on or after November 1, 2004 and prior to October 31, 2005 (the "**Series D Mandatory Redemption Notice**"), the Corporation shall redeem up to all of the Series D Preferred outstanding as of the date of the redemption notice (the "**Series D Redemption Notice Date**").

b. Series C Right to Redemption. Upon the written request of the holders of at least sixty percent (60%) of the then outstanding Series C Preferred (on an as-converted into Common Stock basis) at any time on or after November 1, 2004 and prior to October 31, 2005 (the "**Series C Mandatory Redemption Notice**"), the Corporation shall redeem up to all of the Series C Preferred outstanding as of the date of the redemption notice (the "**Series C Redemption Notice Date**").

c. **Series B Right to Redemption.** Upon the written request of the holders of at least sixty percent (60%) of the then outstanding Series B Preferred (on an as-converted into Common Stock basis) at any time on or after November 1, 2004 and prior to October 31, 2005 (the "**Series B Mandatory Redemption Notice**") (each of the Series D Mandatory Redemption Notice, Series C Mandatory Redemption Notice and Series B Mandatory Redemption Notice is referred to herein as a "**Mandatory Redemption Notice**"), the Corporation shall redeem up to all of the Series B Preferred outstanding as of the date of the redemption notice (the "**Series B Redemption Notice Date**") (each of the Series D Redemption Notice Date, Series C Redemption Notice Date and Series B Redemption Notice Date is referred to herein as a "**Redemption Notice Date**").

d. **Company Notice.** Within twenty (20) days of the receipt of a Mandatory Redemption Notice, the Corporation shall provide to the holders of outstanding shares of Preferred Stock written notice (the "**Company Notice**") of the receipt of the Mandatory Redemption Notice. The Company Notice shall state (i) the Initial Redemption Date (as defined in Section 3(e) below), (ii) the Mandatory Redemption Price (as defined in Section 3(f) below) and (iii) that the holder may redeem any or all of its shares of Preferred Stock by surrendering to the Corporation the certificate or certificates representing such shares. If any holder of Preferred Stock wishes to exercise its option pursuant to this Section 3(d), it shall give the Corporation written notice of its election, stating the number of shares it elects to be redeemed, no later than ninety (90) days prior to the Initial Redemption Date.

e. **Redemption Dates.** One third of the Preferred Stock so requested for redemption shall be redeemed by the Corporation on a date determined by the Corporation not less than four (4) months nor more than six (6) months following the date of the Mandatory Redemption Notice (the "**Initial Redemption Date**") at the applicable Mandatory Redemption Price (as defined in Section 3(f) below). One third of the Preferred Stock so requested for redemption shall be redeemed by the Corporation on a date determined by the Corporation not later than the first anniversary of the Initial Redemption Date (the "**Intermediate Redemption Date**") at the Intermediate Redemption Price (as defined in Section 3(f) below). The remainder of the Preferred Stock so requested for redemption shall be redeemed by the Corporation on a date determined by the Corporation not later than the second anniversary of the Initial Redemption Date (the "**Final Redemption Date**") at the Final Redemption Price (as defined in Section 3(f) below). Each of the Initial Redemption Date, the Intermediate Redemption Date and the Final Redemption Date is referred to herein as a "**Mandatory Redemption Date.**"

f. **Redemption Price.** The mandatory redemption price for each share of Series D Preferred (the "**Series D Mandatory Redemption Price**") shall be an amount in cash equal to (i) the Original Series D Issue Price plus a redemption premium which shall accumulate at a rate of 6% per year (based on the Original Series D Issue Price), compounded annually from the date of original issuance of Series D Preferred through the applicable Mandatory Redemption Date, less (ii) the amount of any cash dividends actually paid on each share of Series D Preferred through the applicable

Mandatory Redemption Date; the mandatory redemption price for each share of Series C Preferred (the "Series C Mandatory Redemption Price") shall be an amount in cash equal to (i) the Original Series C Issue Price plus a redemption premium which shall accumulate at a rate of 6% per year (based on the Original Series C Issue Price), compounded annually from the date of original issuance of Series C Preferred through the applicable Mandatory Redemption Date, less (ii) the amount of any cash dividends actually paid on each share of Series C Preferred through the applicable Mandatory Redemption Date; the mandatory redemption price for each share of Series B Preferred (the "Series B Mandatory Redemption Price") shall be an amount in cash equal to (i) the Original Series B Issue Price plus a redemption premium which shall accumulate at a rate of 6% per year (based on the Original Series B Issue Price), compounded annually from the date of original issuance of Series B Preferred through the applicable Mandatory Redemption Date, less (ii) the amount of any cash dividends actually paid on each share of Series B Preferred through the applicable Mandatory Redemption Date; and the mandatory redemption price for each share of Series A Preferred (the "Series A Mandatory Redemption Price") (each of the Series A Redemption Price, Series B Redemption Price, Series C Redemption Price and Series C Redemption Price is referred to herein as a "Redemption Price") shall be an amount in cash equal to (i) the Original Series A Issue Price plus a redemption premium which shall accumulate at a rate of 6% per year (based on the Original Series A Issue Price), compounded annually from the date of original issuance of Series B Preferred (not the date of original issuance of Series A Preferred) through the applicable Mandatory Redemption Date, less (ii) the amount of any cash dividends actually paid on each share of Series A Preferred through the applicable Mandatory Redemption Date; provided, however, that in the event any Preferred Stock for which redemption has been elected in accordance with Section 3(c) and 3(d) is not redeemed on any applicable Mandatory Redemption Date, in accordance with Section 3(e), then from and after such Mandatory Redemption Date the redemption premium on such shares that were not timely redeemed shall increase to 10% per annum, compounded annually until such shares are actually redeemed (less the amount of cash dividends actually paid during such period).

g. Pro Rata Redemption. In the event the Corporation is lawfully permitted to redeem only a part of the outstanding shares of Preferred Stock to be redeemed on any Mandatory Redemption Date, the Corporation shall first redeem the maximum possible number of Series D Preferred to be so redeemed. Thereafter, the Corporation shall next redeem the maximum possible number of Series C Preferred to be so redeemed. Thereafter the Corporation shall redeem the maximum possible number of Series A Preferred and Series B Preferred to be so redeemed ratably, so that the Corporation shall redeem an equal proportion of the total number of shares of Series A Preferred and Series B Preferred then outstanding. Among the holders of any individual Series D Preferred, Series C Preferred, Series B Preferred and Series A Preferred to be so redeemed, the Corporation shall redeem from each holder of shares of such Series that number of shares equal to the product obtained by multiplying the total number of shares of such Series of Preferred Stock to be redeemed by the Corporation by a fraction, the numerator of which is the number of shares of such Series of Preferred Stock then held by such holder for which redemption has been elected in accordance with Section 3(c) and 3(d) and the denominator of which is the total number of shares of such Series of

Preferred Stock then outstanding for which redemption has been elected in accordance with Section 3(c) and 3(d). The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Preferred Stock, such funds will immediately be used first to redeem the balance of the Series D Preferred, thereafter to redeem the balance of the Series C Preferred and, thereafter, the Series A Preferred and Series B Preferred, in each case which the Corporation has become obliged to redeem on any Mandatory Redemption Date but which it has not redeemed.

h. Reply Notice. No later than thirty (30) days before the applicable Mandatory Redemption Date, the Corporation shall provide to the holders of outstanding shares of Preferred Stock written notice of the intended redemption (the "Reply Notice"). The Reply Notice shall state:

(i) Whether all or less than all of the outstanding shares of Preferred Stock are proposed to be redeemed and the total number of shares of each series of Preferred Stock proposed to be redeemed;

(ii) The number of shares of each series of Preferred Stock held by each holder that the Corporation shall redeem;

(iii) The proposed applicable Mandatory Redemption Date and the applicable Mandatory Redemption Price or Prices; and

(iv) That the holder's rights to convert the Preferred Stock shall terminate on the fifth day prior the applicable Mandatory Redemption Date.

i. Mechanics of Redemption.

(i) On or before the applicable Mandatory Redemption Date, each holder of Preferred Stock to be redeemed, unless such holder has exercised his right to convert the shares as provided in Section 4 hereof, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Reply Notice, and thereupon the applicable Mandatory Redemption Price for such shares shall be payable on the applicable Mandatory Redemption Date to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event that less than all of the shares represented by such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(ii) If the Mandatory Redemption Notice and the Reply Notice shall have been duly given, and if on the applicable Mandatory Redemption Date the applicable Mandatory Redemption Price is either paid or made available for payment through the deposit arrangements specified in Section 3(i)(iii) below, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, any dividends with respect to such shares, and only those shares, to be redeemed on such Mandatory Redemption Date shall

cease to accrue after the Mandatory Redemption Date, such shares shall cease to be outstanding and all rights with respect to such shares shall forthwith after the Mandatory Redemption Date terminate, except only the right of the holders to receive the Mandatory Redemption Price without interest upon surrender of their certificate or certificates therefor.

(iii) On or prior to each Mandatory Redemption Date, the Corporation may deposit with any bank or trust corporation having a capital and surplus of at least twenty million dollars (\$20,000,000), as a trust fund, a sum equal to the aggregate Mandatory Redemption Price of all shares of Preferred Stock called for redemption on such Mandatory Redemption Date and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay, on or after such Mandatory Redemption Date, the applicable Mandatory Redemption Price to the respective holders upon the surrender of their share certificates. From and after the date of such deposit, such shares of Preferred Stock so called for payment shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights as stockholders with respect thereto, except for the right to receive from the bank or trust corporation payment of the applicable Mandatory Redemption Price of the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any funds so deposited and unclaimed at the end of one year from the applicable Mandatory Redemption Date shall be released or repaid to the Corporation, after which the holders of shares called for redemption shall be entitled to receive payment of the applicable Mandatory Redemption Price only from the Corporation. Shares of Preferred Stock which are unredeemed following each Mandatory Redemption Date, if any, shall remain outstanding and shall be entitled to all rights applicable thereto.

4. Conversion. The holders of Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**"):

a. Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share (and on or prior to the fifth day prior to any Mandatory Redemption Date) at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined (i) in the case of Series A Preferred, by dividing the Original Series A Issue Price by the Series A Conversion Price, determined as hereinafter provided, (ii) in the case of the Series B Preferred, by dividing the Original Series B Issue Price by the Series B Conversion Price, determined as hereinafter provided, (iii) in the case of the Series C Preferred, by dividing the Original Series C Issue Price by the Series C Conversion Price, determined as hereinafter provided and (iv) in the case of the Series D Preferred, by dividing the Original Series D Issue Price by the Series D Conversion Price, determined as hereinafter provided, in each case as in effect on the date the certificate is surrendered for conversion. The initial Series A Conversion Price for each share of Series A Preferred shall be the Original Series A Issue Price; the initial Series B Conversion Price for each share of Series B Preferred shall be the Original Series B Issue Price; the initial Series C Conversion Price for each share of Series C Preferred shall be the Original Series C Issue

Price; and the initial Series D Conversion Price for each share of Series D Preferred shall be the Original Series D Issue Price, provided, however, that in each case such respective Conversion Price shall be subject to adjustment as set forth in this Section 4. Each of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price and Series D Conversion Price is referred to herein as a "Conversion Price." Upon any conversion, all accumulated and declared but unpaid dividends shall be paid in cash.

b. Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock in the manner set forth in Section 4(a), immediately prior to, except as provided below in the last sentence of Section 4(c), (i) the Corporation's sale of its Common Stock in an underwritten public offering on Form S-1 or SB-2 (or successor forms) under the Securities Act of 1933, as amended (the "Act"), the public offering price of which is not less than Two Dollars and Fifty-one and Forty-one Hundredths Cents (\$2.5141) per share (adjusted to reflect subsequent stock dividends, stock splits, combinations or recapitalizations) and having total gross proceeds to the Corporation in excess of fifteen million dollars (\$15,000,000) or (ii) the affirmative written consent of at least sixty-five percent (65%) of the then outstanding Series D Preferred.

c. Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of this Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to this 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. This 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 prior to the close of business on the date of such surrender of the shares of 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 offering of securities registered pursuant to the Act, the conversion will be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of Preferred Stock shall be deemed to have converted such Preferred Stock immediately prior to the effectiveness of the registration statement covering such sale of securities.

d. Conversion Price Adjustments of Preferred Stock for Certain Splits and Combinations. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) In the event the Corporation should at any time or from time to time after the effective date of this Fifth Amended and Restated Certificate of Incorporation (the "Amendment Date") fix a record date for the effectuation of a split

or subdivision of the outstanding shares of Common Stock or for the determination of the outstanding shares of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock without payment of any consideration by such holder for the additional shares of Common Stock, then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of the Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding.

(ii) If the number of shares of Common Stock outstanding at any time after the Amendment Date is decreased by a combination of the outstanding shares of Common Stock or reverse stock split, then, following the record date of such combination or reverse stock split, the Conversion Price for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

e. Other Distributions. In the event this Corporation shall after the Amendment Date declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(i), then, in each such case for the purpose of this Section 4(e), the holders of Preferred Stock 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 Preferred Stock 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.

f. Recapitalizations. If at any time or from time to time after the Amendment Date there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that each holder of Preferred Stock shall thereafter be entitled to receive upon conversion of the shares of Preferred Stock held by such holder the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of the number of shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible immediately prior to such recapitalization would have been entitled upon such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of Preferred Stock) shall be applicable after that event as nearly equivalently as may be practicable.

g. Adjustments to Conversion Price for Dilutive Issues.

(i) Special Definitions. For purposes of this Section 4(g), the following definitions shall apply:

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

(2) **"Original Issue Date"** shall mean the date on which the first share of Series D Preferred Stock was issued.

(3) **"Convertible Securities"** shall mean any evidences of indebtedness, preferred stock or other securities convertible into or exchangeable for Common Stock.

(4) **"Additional Shares of Common Stock"** shall mean all shares of Common Stock issued (or, pursuant to Section 4(g)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued, issuable or, pursuant to Section 4(g)(iii) herein, deemed to be issued:

(A) upon conversion of shares of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred;

(B) to officers, directors or employees of, or consultants to, the Corporation pursuant to a stock grant, option plan or agreement or purchase plan or agreement or other stock incentive program or arrangement approved by the Board of Directors for employees, officers, directors or consultants of the Corporation, but not to exceed an aggregate of ten million (10,000,000) shares of Common Stock (net of cancellations of unexercised options and repurchases of shares at cost upon termination of any relationship with the Corporation, subsequent to the Original Issue Date, and subject to appropriate adjustment for all stock splits, dividends, subdivisions, combinations, recapitalizations and the like);

(C) as a dividend or distribution on the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred;

(D) upon exercise of that certain option held by MPI Investors, LLC, an Illinois limited liability company, to purchase a total of 1,678,049 shares of Common Stock of the Corporation;

(E) in connection with any transaction for which adjustment is made pursuant to Section 4(d), Section 4(e) or Section 4(f) hereof;

(F) to third parties that the Board of Directors determines qualify as strategic partners of the Corporation, pursuant to stock or option agreements approved by the Board of Directors, but not to exceed an aggregate of two million (2,000,000) shares of Common Stock (net of cancellations of unexercised options subsequent to the Original Issue Date, and subject to appropriate adjustment for all stock splits, dividends, subdivisions, combinations, recapitalizations and the like);

(G) upon conversion of promissory notes issued to certain holders of Preferred Stock in February 2001 in an aggregate principal amount not to exceed one million five hundred ninety thousand dollars (\$1,590,000) (the "Notes") or upon conversion of shares of Preferred Stock issued upon conversion of the Notes; and

(H) upon exercise of warrants issued to certain holders of Preferred Stock in February 2001, but not to exceed an aggregate of six hundred thirty six thousand (636,000) shares of Common Stock.

(ii) No Adjustment of Conversion Price. No adjustment in any applicable Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4(g)(v) hereof) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than such applicable Conversion Price in effect on the date of, and immediately prior to such issue.

(iii) Options and Convertible Securities. In the event that the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date; provided, however, that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 4(g)(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustment in the applicable Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities, in each case, pursuant to their respective terms;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the

consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(A) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to clauses (2) or (3) above shall have the effect of increasing the applicable Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price on the original adjustment date immediately prior to such adjustment, or (ii) the applicable Conversion Price that would have resulted from other issuances of Additional Shares of Common Stock between the Original Issue Date and such readjustment date without giving effect to such original adjustment.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event that this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(g)(iii)) without consideration or for a consideration per share less than any applicable Conversion Price in effect on the date of and immediately prior to such issue, then and in such event such Conversion Price shall

be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price theretofore in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price in effect immediately prior to such issue, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; provided that, immediately after any Additional Shares of Common Stock are deemed issued pursuant to Section 4(g)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding. For the purposes of calculating any adjustment to the Conversion Price under this Section 4(g)(iv), all shares of Common Stock issuable upon exercise, conversion or exchange of outstanding Options or Convertible Securities, as the case may be, shall be deemed to be outstanding.

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

(1) Cash and Property. Such consideration shall:

(A) insofar as it consists of cash, be computed as the aggregate amount of cash received by the Corporation;

(B) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(g)(iii)(1), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible

Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, as determined in Section 4(g)(iii) hereof.

h. No Impairment. This Corporation will not, by amendment of its Certificate 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 this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

i. No Fractional Shares and Certificate as to Adjustment.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock, 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 Conversion Price of any series of Preferred Stock pursuant to this Section 4, this 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 such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the reasonable written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for each series of Preferred Stock 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 such series of Preferred Stock.

j. Notices of Record Date. In the event of any taking by this Corporation of a record date for determining the holders of any class of securities who are entitled to receive (A) any dividend (other than a cash dividend) or other distribution, (B) any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or (C) any other right, this Corporation shall mail to each holder of Preferred Stock, at least ten (10) days prior to the record date specified therein, a notice specifying the record date to be taken for the purpose of such

dividend, distribution or right, and the amount and character of such dividend, distribution or right.

k. Reservation of Stock Issuable Upon Conversion. This 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 then outstanding shares of Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; 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 Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this 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, including, without limitation, engaging in best efforts to obtain the requisite Board of Directors and stockholder approval of any necessary amendment to its certificate of incorporation.

l. Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be effective when received and shall in any event be deemed received and effective five (5) days after deposit in the United States mail, postage prepaid, or one (1) business day after the business day of deposit with Federal Express or similar overnight carrier, freight prepaid, or upon personal delivery, in each case addressed to each holder of record at his address appearing on the books of this Corporation.

5. Voting Rights.

a. General Voting Rights. Each holder of shares of Preferred Stock shall be entitled to notice of any stockholder meeting in accordance with the By-laws of the Corporation, shall be entitled to a number of votes equal to a number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted, shall have voting rights and powers equal to the voting rights and powers of the holders of Common Stock and shall vote together as a single class with holders of Common Stock and all series of Preferred Stock on all matters except as provided in this Section 5 or in Section 6 hereof or as expressly required by law. Fractional votes shall not be permitted and any fractional voting rights resulting from the right of any holder of Preferred Stock to vote on an as-converted basis (after aggregating the shares into which all shares of Preferred Stock held by such holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). The holders of Preferred Stock shall have no separate class or series vote on any matter except as provided in this Section 5 or in Section 6 hereof or as expressly required by law.

b. Election of Directors. Notwithstanding the provisions of subsection 5(a) above, (i) for so long as at least an aggregate of Two Million Four Hundred Forty-five Thousand Two Hundred Twenty-six (2,445,226) shares of Series C

Preferred remain outstanding (subject to appropriate adjustments for stock splits, dividends, combinations, recapitalizations and the like), the holders of Series C Preferred, voting as a single class, shall be entitled to elect one (1) director of the Corporation (the "**Series C Director**"); (ii) for so long as at least an aggregate of Two Million (2,000,000) shares of Series B Preferred remain outstanding (subject to appropriate adjustments for stock splits, dividends, combinations, recapitalizations and the like), the holders of Series B Preferred, voting as a single class, shall be entitled to elect one (1) director of the Corporation (the "**Series B Director**"); (iii) for so long as at least an aggregate of Two Million Five Hundred Thousand (2,500,000) shares of Common Stock remain outstanding (subject to appropriate adjustments for stock splits, dividends, combinations, recapitalizations and the like), the holders of Common Stock, voting as a single class, shall be entitled to elect two (2) directors of the Corporation (the "**Common Director(s)**"); and (iv) the remaining directors of the Corporation shall be elected by the holders of Common Stock and Preferred Stock voting together on an as converted basis. At any meeting held for the purpose of electing or nominating directors, the presence in person or by proxy of the holders of a majority of the Series C Preferred then outstanding shall constitute a quorum for the election or nomination of the Series C Director, the presence in person or by proxy of the holders of a majority of the Series B Preferred then outstanding shall constitute a quorum for the election or nomination of the Series B Director and the presence in person or by proxy of the holders of a majority of the Common Stock then outstanding shall constitute a quorum for the election or nomination of the Common Director(s). A vacancy in the directorship elected solely by the holders of Series C Preferred shall be filled only by vote of the holders of the Series C Preferred, voting as a single class. A vacancy in the directorship elected solely by the holders of Series B Preferred shall be filled only by vote of the holders of the Series B Preferred, voting as a single class. A vacancy in any directorship elected solely by the holders of Common Stock shall be filled only by vote of the holders of the Common Stock, voting as a single class.

6. Protective Provisions.

(i) Series D Preferred. So long as at least Two Million Seven Hundred Eighty-four Thousand Three Hundred Ten (2,784,310) shares of Series D Preferred remain outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of at least a majority of the then outstanding shares of Series D Preferred, voting as a separate class:

(a) take any action which materially and adversely alters or changes the rights, preferences or privileges of the Series D Preferred;

(b) increase the authorized number of shares of Preferred Stock;

(c) authorize or issue any new class or series of capital stock having any dividend right, right upon liquidation or dissolution, redemption right or other right, preference or privilege senior to or on parity with any of the rights, preferences or privileges of the Series D Preferred;

(d) reclassify any shares of Common Stock, Series A Preferred, Series B Preferred or Series C Preferred into shares having any right, preference or privilege senior to or on parity with any of the rights, preferences or privileges of the Series D Preferred (except to the extent such seniority or parity is already expressly provided in this Fifth Amended and Restated Certificate of Incorporation on the date hereof);

(e) amend this Corporation's certificate of incorporation or By-laws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series D Preferred;

(f) authorize a liquidation, dissolution, winding up, recapitalization or reorganization of the Corporation, or a sale, transfer or encumbrance of all or substantially all of the assets of the Corporation or a merger or consolidation of the Corporation if, as a result of such merger or consolidation, the stockholders of the Corporation shall own (by virtue of shares held in the Corporation) less than fifty percent (50%) of the voting securities of the surviving corporation;

(g) pay or declare any cash dividend on any class or series of capital stock, or redeem, repurchase or acquire any share of its Common Stock (except for (A) dividends payable in Common Stock, (B) shares repurchased at cost in accordance with restricted stock purchase agreements with employees, officers, directors and consultants and (C) redemptions of Preferred Stock contemplated by this Fifth Amended and Restated Certificate of Incorporation);

(h) enter into any transaction which results or reasonably could result in the transfer or license of material assets of the Corporation to any person other than a wholly-owned subsidiary of the Corporation; or

(i) appoint a new chief executive officer or other individual serving in a similar capacity.

(ii) Series C Preferred. So long as at least Two Million Four Hundred Forty-five Thousand Two Hundred Twenty-six (2,445,226) shares of Series C Preferred remain outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of at least a majority of the then outstanding shares of Series C Preferred, voting as a separate class:

(a) take any action which materially and adversely alters or changes the rights, preferences or privileges of the Series C Preferred;

(b) increase the authorized number of shares of Preferred Stock;

(c) authorize or issue any new class or series of capital stock having any dividend right, right upon liquidation or dissolution, redemption right or other

right, preference or privilege senior to or on parity with any of the rights, preferences or privileges of the Series C Preferred;

(d) reclassify any shares of Common Stock, Series A Preferred or Series B Preferred into shares having any right, preference or privilege senior to or on parity with any of the rights, preferences or privileges of the Series C Preferred (except to the extent such seniority or parity is already expressly provided in this Fifth Amended and Restated Certificate of Incorporation on the date hereof);

(e) amend this Corporation's certificate of incorporation or By-laws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series C Preferred;

(f) authorize a liquidation, dissolution, winding up, recapitalization or reorganization of the Corporation, or a sale, transfer or encumbrance of all or substantially all of the assets of the Corporation or a merger or consolidation of the Corporation if, as a result of such merger or consolidation, the stockholders of the Corporation shall own (by virtue of shares held in the Corporation) less than fifty percent (50%) of the voting securities of the surviving corporation;

(g) pay or declare any cash dividend on any class or series of capital stock, or redeem, repurchase or acquire any share of its Common Stock (except for (A) dividends payable in Common Stock, (B) shares repurchased at cost in accordance with restricted stock purchase agreements with employees, officers, directors and consultants and (C) redemptions of Preferred Stock contemplated by this Fifth Amended and Restated Certificate of Incorporation);

(h) enter into any transaction which results or reasonably could result in the transfer or license of material assets of the Corporation to any person other than a wholly-owned subsidiary of the Corporation; or

(i) appoint a new chief executive officer or other individual serving in a similar capacity.

(iii) Series B Preferred. So long as at least Two Million (2,000,000) shares of Series B Preferred remain outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of at least a majority of the then outstanding shares of Series B Preferred, voting as a separate series:

(a) take any action which materially and adversely alters or changes the rights, preferences or privileges of the Series B Preferred;

(b) increase the authorized number of shares of Preferred Stock;

(c) authorize or issue any new class or series of capital stock having any dividend right, right upon liquidation or dissolution, redemption right or other

right, preference or privilege senior to or on parity with any of the rights, preferences or privileges of the Series B Preferred;

(d) reclassify any shares of Common Stock or Series A Preferred into shares having any right, preference or privilege senior to or on parity with any of the rights, preferences or privileges of the Series B Preferred (except to the extent such seniority or parity is already expressly provided in this Fifth Amended and Restated Certificate of Incorporation on the date hereof);

(e) amend this Corporation's certificate of incorporation or By-laws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series B Preferred; or

(f) pay or declare any cash dividend on any class or series of capital stock, or redeem, repurchase or acquire any share of its Common Stock (except for (A) dividends payable in Common Stock, (B) shares repurchased at cost in accordance with restricted stock purchase agreements with employees, officers, directors and consultants and (C) redemptions of Preferred Stock contemplated by this Fifth Amended and Restated Certificate of Incorporation).

7. Status of Non-Issued/Converted/Redeemed Preferred. In the event any outstanding shares of Preferred Stock shall be redeemed or converted pursuant to Section 3 or 4, respectively, such unissued, redeemed or converted shares shall be canceled and shall not thereafter be issuable by the Corporation. The certificate of incorporation of this Corporation may, from time to time, be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

C. Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B) hereof.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holders of Common Stock shall have the right to one (1) vote for each share held, shall be entitled to notice of any stockholder meeting in accordance with the By-laws of this Corporation, and shall be entitled to vote upon such matters and in such manner as is otherwise provided herein or as may be provided by law.

ARTICLE V

Except as otherwise provided in this Fifth Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the By-laws of the Corporation.

ARTICLE VI

The number of directors of the Corporation shall be fixed at seven (7) or as may be determined from time to time by, or in the manner provided in, the By-laws or amendment thereof duly adopted by the Board of Directors or by the stockholders.

ARTICLE VII

Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware as the By-laws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation.

ARTICLE IX

To the fullest extent permitted by the General Corporation Law of Delaware (the "Law"), as the same may be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided that the foregoing shall not eliminate the liability of a director (i) for any breach of such 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 Title 8 of the Delaware Code, or (iv) for any transaction from which such director derived an improper personal benefit. If the Law is hereafter amended to authorize, with or without the approval of a corporation's stockholders, further reductions in the liability of the corporation's directors for breach of fiduciary duty, then a director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the Law, as so amended.

Any repeal or modification of the foregoing provisions of this Article IX, by amendment of this Article IX or by operation of law, shall not adversely affect any right or protection of a director of the Corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

ARTICLE X

a. Indemnification and Advancements. The Corporation shall indemnify, in accordance with and to the fullest extent now or hereafter permitted by law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, an action by or in the right of the Corporation), by reason of his or her acting as a director of the Corporation (or his or her service at the request of the Corporation in any other capacity for or on behalf of the Corporation) against any expenses (including attorneys' fees, judgments, fines, ERISA or other excise taxes, penalties and amounts paid in settlement) actually and reasonably incurred by such person in respect thereof; provided, however, that, the Corporation shall not be obligated to indemnify any such person with respect to proceedings, claims or actions initiated or brought voluntarily by such person and not by way of defense. Expenses that may be subject to indemnification hereunder shall be paid in advance of the final disposition of the action, suit or proceeding, promptly following any request for reimbursement of any such expenses that shall have been incurred, to the fullest extent permitted by the Law, subject to the Corporation's receipt of any undertaking required thereby.

b. Contract with the Corporation. The provisions of Article IX and this Article X shall be deemed to constitute a contract between the Corporation and each director who serves in such capacity at any time while Article IX and this Article X and the relevant provisions of the Law are in effect, and each such director shall be deemed to be serving as such in reliance on the provisions of Article IX and this Article X, and any repeal of any such provisions or of such Articles shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

c. Right of Claimant to Bring Suit. If a claim under paragraph (a) of this Article X is not paid in full within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant also shall be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been provided to the Corporation) that the claimant has not met the standards of conduct that make it permissible under the Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification of the claimant is proper under the circumstances because the claimant has met the applicable standard of conduct set forth in the Law, nor an actual determination by the Corporation that the claimant has not met such standard of conduct,

shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

d. Other Indemnification Rights. The rights of indemnification and advancement provided by this Article X are not exclusive of any other right to indemnification or advancement provided by law, agreement or otherwise, and shall apply to actions, suits or proceedings commenced after the date hereof, whether or not arising from acts or omissions occurring before or after the adoption hereof, and shall continue as to a person who has ceased to be a director of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such a person.

e. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Law.

ARTICLE XI

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

ARTICLE XII


The Corporation shall have perpetual existence.

* * *

The foregoing Fifth Amended and Restated Certificate of Incorporation has been duly adopted by the Corporation's Board of Directors and Stockholders in accordance with the applicable provisions of Section 228, Section 242 and Section 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has executed this certificate on March 1, 2000.

SalesHound, Inc.

By: 

Brian Hand
Chairman and Chief Executive Officer

Carol R. Kirchick
Direct Dial (617) 556-3807
email: ckirchick@richmaylaw.com

July 18, 2002

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Commissioner of Patent & Trademarks
Box Assignments
Washington, D.C. 20231

Re: Shoppinglist.com
Serial No.: 75/733077
Change of Name: Saleshound.com, Inc. to Saleshound, Inc.

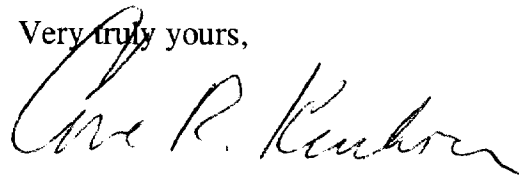
Gentlemen:

Enclosed for filing and recordation with the United States Patent and Trademark Office, please find Recordation Form Cover Sheet and Restated Certificate of Saleshound.com, Inc. changing the name to "Saleshound, Inc.", relating to application serial number 75/733077 for the mark "SHOPPINGLIST.COM". I have also enclosed the filing fee of \$40.00.

Kindly acknowledge your receipt of the enclosed by date stamping the enclosed duplicate copy of this letter and returning the same to the undersigned in the enclosed, self-addressed, stamped envelope.

Please contact the undersigned if you have any questions concerning this matter.

Very truly yours,



Carol R. Kirchick

Enclosures

k:\corpg\crk\PTO Letter (shoppinglist) SLS

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www.richmaylaw.com

RECORDED: 07/22/2002

TRADEMARK
REEL: 002550 FRAME: 0420