

07-14-2003



Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

RE 102494662

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

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

1. Name of conveying party(ies): LoneSource.com, Inc.

7.9.03

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other incorporated in Delaware

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 08/07/2002

2. Name and address of receiving party(ies)

Name: Lonesource, Inc. Internal Address:

Street Address: 115 MacKenan Drive

City: Cary State: NC Zip: 27511

- 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) 76/114925 76/114926, 76/114927

B. Trademark Registration No.(s) 2,715,322

Additional number(s) attached Yes No

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

Name: Neal B. Wolgin

Internal Address: Hutchison & Mason PLLC

Street Address: 3110 Edwards Mill Road

Suite 100

City: Raleigh State: NC Zip: 27612

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41) \$ 115.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Neal B. Wolgin Name of Person Signing

Signature

July 9, 2003 Date

Total number of pages including cover sheet, attachments, and document: 25

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

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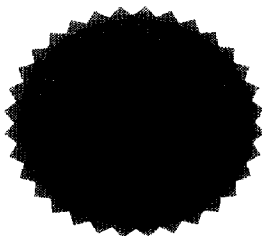
Delaware

PAGE 1

The First 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 "LONESOURCE.COM, INC.", CHANGING ITS NAME FROM "LONESOURCE.COM, INC." TO "LONESOURCE, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF AUGUST, A.D. 2002, AT 9 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

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AUTHENTICATION: 1925713

DATE: 08-07-02

TRADEMARK

REEL: 002776 FRAME: 0311

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
LONESOURCE.COM, INC.
Pursuant to Sections 242 and 245
of the General Corporation Law of
the State of Delaware**

LoneSource.com, Inc., a corporation duly organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. The name of the Corporation is LoneSource.com, Inc.
2. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 20, 2000.
3. The following Amended and Restated Certificate of Incorporation restates, integrates and amends the provisions of the Certificate of Incorporation, as amended, of this corporation and has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

* * * * *

ARTICLE I

The name of the corporation is LoneSource, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office is 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware, 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

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

ARTICLE IV

The total number of shares of stock which the Corporation shall have authority to issue is Fifteen Million (15,000,000) shares, of which Ten Million (10,000,000) shares shall be Common Stock, \$0.001 par value per share (the "Common"), and Five Million (5,000,000) shares shall be Preferred Stock, \$0.001 par value per share (the "Preferred"). The Preferred may be issued from time to time in one or more series. The Board of Directors of the Corporation is authorized from time to time to designate by resolution (a "Series Resolution", such term being also used to denote the provisions of the Series A Preferred Stock and the provisions of the Series B Preferred Stock, as designated herein) one or more series of preferred stock in addition to the Series A Preferred Stock and the Series B Preferred Stock, and the powers, preferences and rights, and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof as shall be permitted by Delaware law and this Certificate of Incorporation, and, subject to any requirements of this Certificate of Incorporation, to fix or alter the number of shares comprising any such series and the designation thereof.

Subject to the foregoing powers, a statement of the designations of the authorized classes of stock, and the powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, is as follows:

A. Dividends.

The holders of the Preferred and the Common shall be entitled, when and if declared by the Board of Directors of the Corporation, consistent with Delaware law, to cash dividends and distributions out of funds of the Corporation legally available for that purpose. The Preferred shall have such dividend rights as designated in a Series Resolution or as hereinafter provided for the Series A Preferred Stock or Series B Preferred Stock.

B. Voting.

(1) **Voting Rights.** Except as otherwise required by the laws of Delaware or as hereinafter provided, the Common shall have one vote per share, and the Preferred shall have such voting rights as designated in the Series Resolution or as hereinafter provided for the Series A Preferred or Series B Preferred (as both are hereafter defined).

(2) **Board Membership.** The holders of the Common Stock voting together as a separate class shall be entitled to elect three (3) directors (the "Common Directors").

C. Terms of Series A Preferred Stock.

There is hereby created a series of Nine Hundred Thousand (900,000) shares of Preferred Stock designated "Series A Convertible Preferred Stock" (the "Series A Preferred"), having the following powers, preferences and relative participating, optional or other special

rights, and qualifications, limitations or restrictions thereof in addition to those otherwise specified in this Certificate of Incorporation.

(1) **Voting Rights.** Holders of Series A Preferred shall have the number of votes equal to the number of shares of Common into which their shares of Series A Preferred is convertible, as adjusted pursuant to subparagraph D(3) hereof, except that holders of Series A Preferred shall not participate in the election of Common Directors pursuant to Section B(2) above.

(2) **Dividends.** No dividend or distribution (other than by purchase of Common from employees, officers and directors on terms approved by the Board of Directors in good faith) shall be declared or paid on the Common in any year unless equivalent dividends or distributions, as the case may be (based upon the amount of Common issuable, at the time of such dividend or distribution, upon conversion of Series A Preferred) for such year have been declared and paid on the Series A Preferred.

(3) **Liquidation Preference.**

(a) In the event of a liquidation, dissolution or winding up of the Corporation (collectively, a "Series A Liquidating Event"), after the holders of any series of Preferred having priority on liquidation superior to that of the Series A Preferred shall have received their respective liquidation preference, the holders of Series A Preferred shall be entitled to receive, out of the assets of the Corporation available for distribution to its stockholders (whether from capital or surplus), prior to any payment to the holders of the Common or any series of Preferred having priority on liquidation junior to that of Series A Preferred, a sum equal to the consideration paid per share of Series A Preferred, subject to equitable adjustment for any stock splits, combinations, consolidations, recapitalizations, reorganizations, reclassifications, stock distributions, stock dividends or other similar events with respect to such shares, multiplied by the number of shares of Series A Preferred (the "Series A Liquidation Preference"), plus all dividends which have been declared on such shares and have theretofore accrued but not been paid. After payment in full of the Series A Liquidation Preference, any assets available for distribution shall be distributed to the holders of the Common, and the holders of Series A Preferred shall not be entitled to any further participation in the remaining assets of the Corporation. If, upon any such Series A Liquidating Event, the net assets of the Corporation are not sufficient to pay in full the amounts so payable to the holders of Series A Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Series A Preferred, the holders of all shares of Series A Preferred and any other series of Preferred having priority on liquidation *pari passu* to that of Series A Preferred shall participate in the distribution of such assets in proportion to their respective liquidation preferences.

(b) For the purposes of this Section (3), any merger or consolidation of the Corporation into or with any other corporation or entity, or a sale, conveyance, mortgage, transfer, license, pledge, lease or other disposition of all or substantially all of the assets of the Corporation, shall be deemed to be a Series A Liquidating Event, unless the stockholders of the Corporation immediately prior thereto shall, immediately thereafter, hold as a group the right to

cast at least a majority of the votes of all holders of voting securities of the resulting or surviving corporation or entity on any matter on which any such holders of voting securities shall be entitled to vote.

(c) For purposes of this Section (3), if any assets distributed to stockholders upon liquidation of the Corporation consist of property other than cash, the amount of such distribution shall be deemed to be the fair market value thereof at the time of such distribution, as determined in good faith by the Board of Directors of the Corporation.

(4) Conversion. The holders of Series A Preferred shall have conversion rights as follows:

(a) Right to Convert. Each share of Series A Preferred shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common as is determined by dividing the amount of consideration received by the Corporation for the purchase of each such share by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "Series A Conversion Price" shall initially be \$1.39. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred may be converted into shares of Common, shall be subject to adjustment as provided below.

(b) Mechanics of Conversion. Before any holder of Series A Preferred shall be entitled to convert the same into full shares of Common, the holder shall surrender the certificate or certificates therefor, duly endorsed for transfer, at the office of the Corporation or any transfer agent of the Corporation and shall give written notice to the Corporation at such office that such holder elects to convert the same, such notice to state the name or names and addresses to which certificates for Common will be issued. No fractional shares of Common shall be issued upon conversion of Series A Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of Common as determined by the Board of Directors in good faith. The Corporation shall, as soon as practicable thereafter, issue and deliver to such holder of Series A Preferred, or to a third party such holder may designate in writing, a certificate or certificates for the number of shares of Common to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of conversion into fractional shares of Common plus unpaid dividends, and if less than all the shares of the Series A Preferred represented by such certificates are converted, a certificate representing the shares of Series A Preferred not converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred to be converted, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder surrendering Series A Preferred for conversion, 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 or other property issuable upon such conversion of the Series A Preferred shall not be deemed to have converted such Series A Preferred until immediately prior to the closing of such sale of securities. Notice of such conversion in connection with an underwritten public offering of securities shall be given by the Corporation by mail, postage pre-paid, to the holders of the Series A Preferred, at their addresses shown in the Corporation's records, at least ten (10) days prior to the closing date of the sale of such securities. On or after the closing date as specified in such notice, each holder of Series A Preferred shall surrender such holder's certificate or certificates representing such shares of Series A Preferred for the number of shares of Common to which such holder is entitled at the office of the Corporation or any transfer agent for the Common. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred a certificate or certificates for the number of shares of Common to which such holder shall be entitled as aforesaid, and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common and any declared but unpaid dividends. The conversion shall be deemed to have occurred as of the close of business on the actual closing date with respect to the sale of such securities, and, notwithstanding that any certificate representing the Series A Preferred to be converted shall not have been surrendered, each holder of such shares of Series A Preferred shall thereafter be treated for all purposes as the record holder of the number of shares of Common issuable to such holder upon such conversion.

(c) Adjustments to Series A Conversion Price.

(i) Adjustments for Subdivisions, Common Dividends, Combinations or Consolidations of Common. In the event the outstanding shares of Common shall be subdivided or increased, by stock split or stock dividend, into a greater number of shares of Common, the Series A Conversion Price then in effect shall concurrently with the effectiveness of such subdivision or payment of such stock dividend, be proportionately decreased. In the event the outstanding shares of Common shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common, the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(ii) Adjustments for Reclassification, Exchange and Substitution. If the Common issuable upon conversion of the Series A Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series A Preferred shall be convertible into, in lieu of the number of shares of Common which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares thereof that would have been subject to receipt by the holders upon conversion of the Series A Preferred immediately before that change.

(iii) Adjustments for Merger, Sale, Lease or Conveyance. In the event of any consolidation with or merger of the Corporation with or into another corporation, or in case of any sale, lease or conveyance to another corporation of the assets of the Corporation as an entirety or substantially as an entirety, the Series A Preferred shall after the date of such consolidation, merger, sale, lease or conveyance be convertible into the number of shares of stock or other securities or property (including cash) to which the Common issuable (at the time of such consolidation, merger, sale, lease or conveyance) upon conversion of the Series A Preferred would have been entitled upon such consolidation, merger, sale, lease or conveyance; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the holders of the Series A Preferred shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to any shares of stock or other securities or property thereafter deliverable on the conversion of the Series A Preferred.

(d) Mandatory Conversion. Each share of Series A Preferred shall automatically be converted into such number of fully paid and nonassessable shares of Common as is determined by dividing \$1.39 by the Series A Conversion Price in effect at the time of conversion upon the occurrence of the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common of the Corporation to the public. All holders of record of shares of Series A Preferred will be given at least twenty (20) days' prior written notice of the date fixed and place designated for mandatory conversion of the Series A Preferred and the event which resulted in the mandatory conversion of the Series A Preferred into Common. Such notice shall be sent by first class mail, postage prepaid, to each holder of record of the Series A Preferred at each such holder's address as shown in the records of the Corporation. On or before the date so fixed for conversion, each holder of shares of Series A Preferred shall surrender his/her/its certificate or certificates for all such shares to the Corporation at the place designated in such notice and shall thereafter receive certificates for the number of shares of Common to which such holder is entitled. The mechanics for conversion and other provisions relating to conversion of the Series A Preferred into Common set forth elsewhere in this Certificate of Incorporation shall apply to the mandatory conversion of the Series A Preferred.

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

(f) Notices of Record Date. In the event that the Corporation shall propose at any time:

(i) to declare any dividend or distribution (other than by purchase of Common by employees, officers and directors pursuant to the termination of such persons or pursuant to the Corporation's exercise of rights of first refusal with respect to the Common held by such persons) upon its Common, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common outstanding involving a change in the Common; or

(iii) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up;

then, in connection with each such event, the Corporation shall send to the holders of the Series A Preferred:

(1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend or distribution (and specifying the date on which the holders of shares of Common shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (i) above; and

(2) in the case of the matters referred to in (ii) and (iii) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of shares of Common shall be entitled to exchange their shares of Common for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of Series A Preferred at the address for each such holder as shown in the records of the Corporation.

(g) No Impairment. The Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action (other than actions taken in good faith), avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in carrying out all the provisions of this subparagraph C(4) and in taking all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred against impairment.

(h) Reservation of Common. The Corporation shall, at all times when the Series A Preferred shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series A Preferred, such

number of its duly authorized shares of Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred. Before taking any action which would cause an adjustment reducing the conversion price below the then par value of the shares of Common issuable upon conversion of the Series A Preferred or which would cause the effective purchase price for the Series A Preferred to be less than the par value of the shares of Series A Preferred, the Corporation shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of such Common at such adjusted Series A Conversion Price or effective purchase price, as the case may be.

(i) No Adjustment. Upon any voluntary conversion of the Series A Preferred, no adjustment to the conversion rights shall be made for declared but unpaid dividends on the Series A Preferred surrendered for conversion or on the Common delivered.

(j) Cancellation of Series A Preferred. All shares of Series A Preferred which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate except only the right of the holders thereof to receive shares of Common in exchange therefor and to receive payment of any declared but unpaid dividends thereon. Any shares of Series A Preferred so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized number of Series A Preferred accordingly.

(5) Preemptive Rights. Holders of shares of Series A Preferred shall not be entitled on account of holding such shares to preemptive rights or other rights to acquire or subscribe for additional shares or securities of the corporation authorized to be issued.

D. Terms of Series B Preferred Stock.

There is hereby created a series of One Million Seven Hundred Twenty-Six Thousand Six Hundred Nineteen (1,726,619) shares of Preferred Stock designated "Series B Convertible Preferred Stock" (the "Series B Preferred"), having the following powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof in addition to those specified in this Certificate of Incorporation, as amended.

(1) Voting Rights.

(a) Holders of Series B Preferred shall have the number of votes equal to the number of shares of Common into which their Series B Preferred is convertible, as adjusted pursuant to subparagraph (4) hereof; provided, however, that as long as holders of Series B Preferred shall have the right to nominate and elect directors pursuant to paragraph D(1)(c) below, the holders of Series B Preferred shall not also be entitled to vote with the holders of Common Stock in the election of directors pursuant to Section B(2) above.

(b) Until the effectiveness of a Qualified Public Offering (as defined herein), for so long as at least Three Hundred Fifty-Nine Thousand Seven Hundred Twelve (359,712) shares of Series B Preferred (as adjusted for any stock dividends, combinations or splits with respect to such shares) remains outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of not less than a majority of the then outstanding shares of Series B Preferred, take any action which: (i) alters or affects adversely the rights, preferences, or privileges of the Series B Preferred; (ii) increases the authorized number of shares of Series B Preferred; (iii) results in the sale, conveyance, or other disposition of all or substantially all of the Corporation's assets or a merger or other similar transaction in which 50% or more of the voting power of the Corporation is transferred; (iv) creates or issues any series or class of shares having a preference or priority senior to the Series B Preferred as to the payment of dividends or liquidation preferences, or having redemption rights, registration rights, or anti-dilution protection senior to the Series B Preferred; or (v) declares or pays any dividend on Common Stock, Series A Preferred or Series B Preferred (other than stock dividends) or repurchases shares of Common Stock, Series A Preferred, or Series B Preferred other than repurchases from employees or consultants at the original purchase price in connection with their termination or other than a redemption pursuant to the request of then holders of a majority of the Series B Preferred.

(c) Until the effectiveness of a Qualified Public Offering (as hereafter defined), for as long as the holders of Series B Preferred (as hereafter defined) own at least fifteen percent (15%) of the issued and outstanding capital stock of the Corporation, on a fully diluted basis, the holders of a majority of the Series B Preferred shall have the right to elect two (2) members of the Board of Directors of the Corporation (the "Series B Directors").

(2) Dividends. No dividend or distribution (other than by purchase of Common from employees, officers and directors on terms approved by the Board of Directors in good faith) shall be declared or paid on the Series A Preferred or Common in any year unless equivalent dividends or distributions, as the case may be (based upon the amount of Common issuable, at the time of such dividend or distribution, upon conversion of Series B Preferred) for such year have been declared and paid on the Series B Preferred.

(3) Series B Liquidation Preference. The holders of Series B Preferred shall have the following rights upon liquidation:

(a) In the event of a liquidation, dissolution, or winding up of the Corporation (a "Series B Liquidating Event"), either voluntary or involuntary, after the holders of any series of Preferred having priority on liquidation superior to that of the Series B Preferred shall have received their liquidation preference, the holders of the Series B Preferred shall be entitled to receive, out of the assets of the Corporation available for distribution to its stockholders (whether from capital or surplus), prior to any payment to the holders of the Series A Preferred or the Common or any other series of Preferred having priority on liquidation junior to that of the Series B Preferred, an amount equal to One Dollar and 39/100 (\$1.39) per share of Series B Preferred (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) plus all declared and unpaid dividends on such shares, if any (the "Series B Liquidation Preference"). After payment in full of the Series

B Liquidation Preference, any assets available for distribution shall be distributed to the holders of the Series A Preferred and the Common, and the holders of Series B Preferred shall not be entitled to any further participation in the remaining assets of the Corporation. If, upon any such Series B Liquidating Event, the net assets of the Corporation are not sufficient to pay in full the amounts so payable to the holders of Series B Preferred, the holders of all shares of Series B Preferred shall participate ratably in the distribution of such assets.

(b) For the purposes of this subparagraph (3), any merger or consolidation of the Corporation into or with any other corporation or entity, or a sale, conveyance, mortgage, transfer, license, pledge, lease or other disposition of all or substantially all of the assets of the Corporation, shall be deemed to be a Series B Liquidating Event, unless the stockholders of the Corporation immediately prior thereto shall, immediately thereafter, hold as a group the right to cast at least a majority of the votes of all holders of voting securities of the resulting or surviving corporation or entity on any matter on which any such holders of voting securities shall be entitled to vote, or unless the holders of a majority of the then outstanding Series B Preferred vote otherwise.

(c) For purposes of this subparagraph (3), if any assets distributed to stockholders upon liquidation of the Corporation consist of property other than cash, the amount of such distribution shall be deemed to be the fair market value thereof at the time of such distribution, as determined in good faith by the Board of Directors of the Corporation.

(4) **Conversion.** The holders of Series B Preferred shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Series B Preferred shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common as is determined by dividing One Dollar and 39/100 (\$1.39) by the Series B Conversion Price (as defined below) in effect at the time of conversion. The "Series B Conversion Price" shall initially be One Dollar and 39/100 (\$1.39). Such initial Series B Conversion Price, and the rate at which shares of Series B Preferred may be converted into shares of Common, shall be subject to adjustment as provided below.

(b) **Mechanics of Conversion.** Before any holder of Series B Preferred shall be entitled to convert the same into full shares of Common, the holder shall surrender the certificate or certificates therefor, duly endorsed for transfer, at the office of the Corporation or any transfer agent of the Corporation and shall give written notice to the Corporation at such office that such holder elects to convert the same, such notice to state the name or names and addresses to which certificates for Common will be issued. No fractional shares of Common shall be issued upon conversion of Series B Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Series B Conversion Price. The Corporation shall, as soon as practicable thereafter, issue and deliver to such holder of Series B Preferred, or to a third party

such holder may designate in writing, a certificate or certificates for the number of shares of Common to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of conversion into fractional shares of Common plus declared and unpaid dividends, and if less than all the shares of the Series B Preferred represented by such certificates are converted, a certificate representing the shares of Series B Preferred not converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series B Preferred to be converted, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder surrendering Series B Preferred for conversion, 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 or other property issuable upon such conversion of the Series B Preferred shall not be deemed to have converted such Series B Preferred until immediately prior to the closing of such sale of securities. Notice of such conversion in connection with an underwritten public offering of securities shall be given by the Corporation by mail, postage pre-paid, to the holders of the Series B Preferred at their addresses shown in the Corporation's records, at least ten (10) days prior to the closing date of the sale of such securities. On or after the closing date as specified in such notice, each holder of Series B Preferred shall surrender such holder's certificate or certificates representing such shares of Series B Preferred for the number of shares of Common to which such holder is entitled at the office of the Corporation or any transfer agent for the Common. The Corporation shall, as soon as practicable thereafter, issue and deliver to such holder of Series B Preferred, a certificate or certificates for the number of shares of Common to which such holder shall be entitled as aforesaid, and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common and any declared and unpaid dividends. The conversion shall be deemed to have occurred as of the close of business on the actual closing date with respect to the sale of such securities, and, notwithstanding that any certificate representing the Series B Preferred to be converted shall not have been surrendered, each holder of such shares of Series B Preferred shall thereafter be treated for all purposes as the record holder of the number of shares of Common issuable to such holder upon such conversion.

(c) Adjustments to Series B Conversion Price.

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

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

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

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

(4) "Additional Shares of Common" shall mean all shares of Common issued (or, pursuant to this subparagraph (4)(c)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common issued or issuable at any time:

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

(B) to employees or directors of, or consultants to, the Corporation pursuant to a stock grant, stock option plan or stock purchase plan or other stock agreement or arrangement approved by the Board of Directors of the Corporation;

(C) as a dividend or distribution to all holders of Common, Series A Preferred and Series B Preferred authorized herein or a dividend or distribution on the Series B Preferred;

(D) in connection with any equipment leases or borrowings approved by the Board of Directors of the Corporation, direct or indirect, from financial or other institutions regularly engaged in such business;

(E) in connection with any performance-based equity issued in connection with strategic relationships approved by the Board of Directors;

(F) in connection with an acquisition by the Corporation of a controlling interest in any other entity or all or substantially all of the assets of any other entity; and

(G) pursuant to clause (vi), (vii) or (viii) of this subparagraph (4)(c); and

(H) upon exercise of any warrants issued by the Corporation and outstanding on the Original Issue Date.

(ii) No Adjustment of Series B Conversion Price. No adjustment in the Series B Conversion Price of a particular share of Series B Preferred shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Share of Common 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 issue, for such share of Series B Preferred.

(iii) Deemed Issue of Additional Shares of Common; Options and Convertible Securities. In the event 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 (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common 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 issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common shall not be deemed to have been issued unless the consideration per share (determined pursuant to subparagraph (4)(c)(v) hereof) of such Additional Shares of Common would be less than the Series B 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 are deemed to be issued:

(1) no further adjustment in the Series B Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the amount of consideration payable to the Corporation, or change in the number of shares of Common issuable, upon the exercise, conversion or exchange thereof, the Series B 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 change becoming effective, be recomputed to reflect an appropriate increase or decrease reflecting such change 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 Series B 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, the only Additional Shares of Common issued were shares of Common, 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 deemed to have been issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, and the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to such Options were actually exercised;

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

(5) in the case of any Options which expire by their terms not more than thirty (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 adjustment shall be made in the same manner provided in clause (3) above.

(iv) Adjustment of Series B Conversion Price Upon Issuance of Additional Shares of Common. In the event the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to subparagraph (4)(c)(iii) without consideration or for a consideration per share less than the Series B Conversion Price, in effect on the date of, and immediately prior to such issue, then and in such event, the Series B Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Series B Conversion Price by a fraction, the numerator of which shall be the number of shares of Common outstanding immediately prior to such issue plus the number of shares of Common which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at the Series B Conversion Price; and the denominator of which shall be the number of shares of Common outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued. For the purpose of the above calculation, the number of shares of Common outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Preferred outstanding immediately prior to such issuance and all Convertible Securities outstanding immediately prior to such issuance had been fully converted into shares of Common immediately prior to such issuance and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common, if so convertible) as of such date, but not including in such calculation any additional shares of Common issuable with respect to shares of Preferred, Convertible Securities, or outstanding options, warrants or other rights for the purchase of shares of stock or convertible securities, solely as a result of the adjustment of the respective conversion

prices (or other conversion ratios) resulting from the issuance of Additional Shares of Common causing such adjustment.

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

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation (before commission or expenses) excluding amounts paid or payable for accrued interest or accrued dividends;

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

(C) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, at 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 of the Corporation.

(2) Options and Convertible Securities: The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to subparagraph (4)(c)(iii) 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 (as set forth in the instruments relating thereto, without regard to any provisions contained thereof for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

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

(vi) Adjustments for Subdivisions, Common Dividends, Combinations or Consolidations of Common. In the event the outstanding shares of Common shall be subdivided or increased, by stock split or stock dividend, into a greater number of shares of Common, the Series B Conversion Price then in effect shall concurrently with the effectiveness of such subdivision or payment of such stock dividend, be proportionately decreased. In the

event the outstanding shares of Common shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common, the Series B Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(vii) Adjustments for Reclassification, Exchange and Substitution. If the Common issuable upon conversion of the Series B Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the Series B Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series B Preferred shall be convertible into, in lieu of the number of shares of Common which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common that would have been subject to receipt by the holders upon conversion of the Series B Preferred immediately before that change.

(viii) Adjustments for Merger, Sale, Lease or Conveyance. In the event of any consolidation with or merger of the Corporation with or into another corporation, or in case of any sale, lease or conveyance to another corporation of the assets of the Corporation as an entirety or substantially as an entirety, the Series B Preferred shall after the date of such consolidation, merger, sale, lease or conveyance be convertible into the number of shares of stock or other securities or property (including cash) to which the Common issuable (at the time of such consolidation, merger, sale, lease or conveyance) upon conversion of the Series B Preferred would have been entitled upon such consolidation, merger, sale, lease or conveyance; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the holders of the Series B Preferred shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to any shares of stock or other securities or property thereafter deliverable on the conversion of the Series B Preferred.

(d) Mandatory Conversion. Each share of Series B Preferred shall automatically be converted into such number of fully paid and nonassessable shares of Common as is determined by dividing One Dollar and 39/100 (\$1.39) by the Series B Conversion Price in effect at the time of conversion upon the effectiveness of a registration statement for the sale of the Company's shares of Common Stock in a firm commitment underwritten public offering registered under the Securities Act of 1933, as amended, at a price per share to the public of not less than Four Dollars and 17/100 (\$4.17) per share (a "Qualified Public Offering"). All holders of record of shares of Series B Preferred will be given at least twenty (20) days' prior written notice of the date fixed and place designated for mandatory conversion of the Series B Preferred and the event which resulted in the mandatory conversion of the Series B Preferred into Common. Such notice shall be sent by first class mail, postage prepaid, to each holder of record of the Series B Preferred at such holder's address as shown in the records of the Corporation. On or before the date so fixed for conversion, each holder of shares of Series B Preferred shall surrender such holder's certificate or certificates for all such shares to the Corporation at the place designated in such notice and shall thereafter receive certificates for the number of shares

of Common to which such holder is entitled. The mechanics for conversion and other provisions relating to conversion of the Series B Preferred into Common set forth elsewhere in this Certificate of Incorporation shall apply to the mandatory conversion of the Series B Preferred.

(e) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series B Conversion Price pursuant to this subparagraph (4), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series B Preferred a certificate setting forth such adjustment or readjustment in accordance with the terms hereof 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 (i) such adjustments and readjustments, (ii) the Series B Conversion Price at the time in effect, and (iii) the number of shares of Common and the amount, if any, of other property which at the time would be received upon the conversion of the Series B Preferred.

(f) Notices of Record Date. In the event that the Corporation shall propose at any time:

(i) to declare any dividend or distribution (other than by purchase of Common from employees, officers and directors pursuant to the termination of such persons or pursuant to the Corporation's exercise of rights of first refusal with respect to the Common held by such persons) upon its Common, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common outstanding involving a change in the Common; or

(iii) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up;

(1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend or distribution (and specifying the date on which the holders of shares of Common shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (i) above; and

(2) in the case of the matters referred to in (ii) and (iii) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of shares of Common shall be entitled to exchange their shares of Common for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of Series B Preferred at the address for each such holder as shown in the records of the Corporation.

(g) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action (other than actions taken in good faith), 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 carrying out all the provisions of this subparagraph 4(D) and in taking all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series B Preferred against impairment.

(h) Reservation of Common. The Corporation shall, at all times when the Series B Preferred shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series B Preferred, such number of its duly authorized shares of Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series B Preferred. Before taking any action which would cause an adjustment reducing the conversion price below the then par value of the shares of Common issuable upon conversion of the Series B Preferred or which would cause the effective purchase price for the Series B Preferred to be less than the par value of the shares of Series B Preferred, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of such Common at such adjusted Series B Conversion Price or effective purchase price, as the case may be.

(i) No Adjustment. Upon any voluntary conversion of the Series B Preferred, no adjustment to the conversion rights shall be made for accrued and unpaid dividends on the Series B Preferred surrendered for conversion or on the Common delivered.

(j) Cancellation of Series B Preferred. All shares of Series B Preferred which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate except only the right of the holders thereof to received shares of Common in exchange therefor and to receive payment of any accrued and unpaid dividends thereon. Any shares of Series B Preferred so converted shall be retired and cancelled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized number of Series B Preferred accordingly.

(k) Pay to Play Provisions.

(i) If (A) the Corporation issues Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection (4)(o)(iii), but excluding shares issued as a subdivision, common dividend, combination or consolidation as provided in Subsection (4)(c)(vi), upon a reclassification,

exchange or substitution as provided in Subsection (4)(c)(vii), or in connection with a merger, sale, lease or conveyance as provided in Subsection (4)(c)(viii)), without consideration or for a consideration per share less than the applicable Series B Conversion Price in effect immediately prior to such issuance (such issuance being referred to herein as a "Dilutive Issuance"), and (B) a holder of Series B Preferred (a "Series B Holder") either (i) has the right, pursuant to Section (5) below, to purchase its pro rata share (calculated pursuant to Section (5) below) of such Dilutive Issuance (without giving effect to any rights to purchase the pro rata shares of other Series B Holders who do not subscribe for their full pro rata shares) or (ii) is given the opportunity, upon substantially the terms set forth in Section (5) below, to purchase its pro rata share (calculated as described in clause (i) above) of such Dilutive Issuance, and (C) such Series B Holder does not purchase such pro rata share of such Dilutive Issuance (such holder being referred to herein as a "Non-Participating Holder"), then:

(1) No later than 15 days following the closing of such Dilutive Issuance, the Corporation shall designate, by the filing of a Certificate of Designations pursuant to Section 151(g) of the Delaware General Corporation Law, an additional series of Preferred Stock, to be designated "Series B-1 Convertible Preferred Stock" (the "Series B-1 Preferred"), which shall consist of such number of shares as is equal to the number of shares of Series B Preferred being converted pursuant to the terms of this Subsection (4)(k) and shall have terms substantially identical to those of the Series B Preferred except that (a) Subsection (4)(c)(iv) (entitled "Adjustments of Series B Conversion Price Upon Issuance of Additional Shares of Common") and this Subsection (4)(k) shall be omitted from the terms of the Series B-1 Preferred and (b) the initial Series B-1 Conversion Price shall be the Series B Conversion Price in effect immediately prior to the closing of such Dilutive Issuance;

(2) No Series B Holder may convert any shares of Series B Preferred into Common Stock until the earlier of the filing by the Corporation of such Certificate of Designations or the expiration of such 15-day period; and

(3) Effective upon the filing by the Corporation of such Certificate of Designations, all shares of Series B Preferred held by such Non-Participating Holder shall automatically be converted into an equal number of shares of Series B-1 Preferred (such conversion shall be referred to herein as a "Special Mandatory Conversion").

Notwithstanding the foregoing, the terms of this Subsection (4)(k) shall not apply to a Dilutive Issuance if: (i) the closing of such Dilutive Issuance occurs less than six months after the closing of a prior Dilutive Issuance by the Corporation; or (ii) the right of first refusal of the Series B Holders under Section (5) below with respect to such Dilutive Issuance is waived, at the written request of the Corporation. In determining whether a Series B Holder has purchased its pro rata share of a Dilutive Issuance for purposes of this Subsection (4)(k), any portion of a Dilutive Issuance purchased by an affiliate of a Series B Holder shall be deemed to have been purchased by such Series B Holder.

(ii) All Non-Participating Holders shall be given written notice of the Special Mandatory Conversion and the place designated for mandatory conversion of all their shares of Series B Preferred pursuant to this Subsection (4)(k). Such notice need not be given in

advance of the occurrence of the Special Mandatory Conversion. Such notice shall be sent by first class or registered mail, postage prepaid, to each Non-Participating Holder, at such holder's address last shown on the records of the transfer agent for the Series B Preferred (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each Non-Participating Holder shall surrender his or its certificate or certificates for all such shares of Series B Preferred to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Series B-1 Preferred to which such holder is entitled pursuant to this Subsection (4)(k). On the effective date of the Special Mandatory Conversion, all rights with respect to the Series B Preferred so converted, will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Series B-1 Preferred into which such Series B Preferred has been converted; provided that the right of any Non-Participating Holder to receive any declared but unpaid dividends on their shares of Series B Preferred shall accrue to the benefit of the shares of Series B-1 Preferred issued upon conversion of such shares of Series B Preferred. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the effective date of the Special Mandatory Conversion and the surrender of the certificate or certificates for Series B Preferred, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Series B-1 Preferred issuable on such conversion in accordance with the provisions hereof. All certificates evidencing shares of Series B Preferred which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the effective date of the Special Mandatory Conversion, be deemed to have been retired and cancelled and the shares of Series B Preferred represented thereby converted into Series B-1 Preferred for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Series B Preferred may not be reissued, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series B Preferred accordingly.

(li) If, after the occurrence of a Special Mandatory Conversion, the Corporation effects an additional Dilutive Issuance and there are Non-Participating Holders with respect to such Dilutive Issuance, then the provisions of Subsections (4)(k)(i) and (4)(k)(ii) above shall apply to such Dilutive Issuance, except that the series of Preferred Stock designated by the Corporation shall be Series B-2 Convertible Preferred Stock (or, for subsequent Dilutive Issuances, Series B-3 Convertible Preferred Stock, Series B-4 Convertible Preferred Stock, etc.), the Series B Preferred held by the Non-Participating Holders with respect to such Dilutive Issuance shall convert into Series B-2 Preferred (or, for subsequent Dilutive Issuances, Series B-3 Convertible Preferred Stock, Series B-4 Convertible Preferred Stock, etc.), and, for purposes of such Dilutive Issuance, all references in Subsections 4(k)(i) and 4(k)(ii) above to Series B-1 Preferred shall be deemed to refer to Series B-2 Convertible Preferred Stock (or, for subsequent Dilutive Issuances, Series B-3 Convertible Preferred Stock, Series B-4 Convertible Preferred Stock, etc.).

(5) Preemptive Rights.

(a) Certain Definitions. As used in this Section (5):

(i) The term "New Securities" shall mean any capital stock of the Corporation, whether now authorized or not, and rights, options or warrants to purchase capital stock, and securities of any type whatsoever that are, or may become, convertible into capital stock; provided that the term "New Securities" does not include: (i) Series B Preferred; (ii) securities issuable upon conversion of or with respect to Series A Preferred or to Series B Preferred; (iii) Common, and options, warrants or rights convertible into such Common, issued to employees, consultants or directors of the Corporation; (iv) securities issued in connection with any equipment leases or borrowings approved by the Board of Directors of the Corporation, direct or indirect, from financial or other institutions regularly engaged in such business; (v) securities issued in connection with any performance-based equity issued in connection with strategic relationships approved by the Board of Directors; (vi) securities issued in connection with an acquisition by the Corporation of a controlling interest in any other entity or all or substantially all of the assets of any other entity; or (v) securities issued pursuant to any stock dividend, stock split, combination or other reclassification by the Corporation of any of its capital stock.

(ii) The term "Pro Rata Share" means the ratio (A) the numerator of which is the number of shares of Common held by a stockholder, or issuable to such stockholder upon the conversion of shares of Series B Preferred held by such stockholder, and (B) the denominator of which is the number of shares of Common outstanding, assuming for this purpose conversion or exercise of all securities convertible into or exercisable for Common of the Corporation.

(b) Preemptive Right. The Corporation hereby grants to each holder of Series B Preferred, subject to the terms and conditions specified in this Section (5), the preemptive right to purchase up to its Pro Rata Share of all New Securities that the Corporation may, from time to time, propose to sell and issue.

(c) Required Notices. In the event the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of Series B Preferred written notice of its intention, describing the type of New Securities, the price and the general terms upon which the Corporation proposes to issue the same. Each such holder shall have ten (10) days from the date of any such notice to exercise its preemptive right under subsection (b) above for the price and upon the general terms specified in the notice by giving written notice to the Corporation and stating therein the quantity of New Securities to be purchased.

(d) Corporation's Right to Sell. The Corporation shall have ninety (90) days after the ten (10) day period described in subsection (c) above to sell all such New Securities respecting which any holders' preemptive rights were not exercised, at a price and upon terms no more favorable in any respect to the purchasers thereof than specified in the Corporation's notice. In the event the Corporation has not sold all such New Securities within such ninety (90) day

period, the Corporation shall not thereafter issue or sell any New Securities without first notifying such holders in the manner provided herein.

(e) Expiration of Right. The preemptive rights granted under this Section (5) shall not apply to, and shall expire upon, the effectiveness of a Qualified Public Offering.

ARTICLE V

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors shall have the power, both before and after receipt of any payment for any of the Corporation's capital stock, to adopt, amend, repeal or otherwise alter the Bylaws of the Corporation without any action on the part of the shareholders; provided, however, that the grant of such power to the Board of Directors shall not divest the shareholders of nor limit their power to adopt, amend, repeal or otherwise alter the Bylaws.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, 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.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

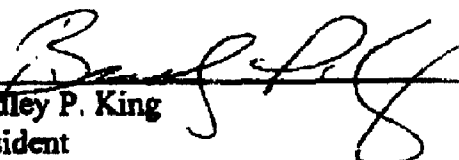
(C) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

IN WITNESS WHEREOF, the Corporation has caused its corporate seal to be hereunto affixed and this certificate to be signed by Bradley P. King, its President, who hereby acknowledges under penalties of perjury that the facts herein stated are true and that this certificate is his act and deed, and attested by Christopher S. King, its Secretary, on August 7, 2002.

LONESOURCE.COM, INC..

[CORPORATE SEAL]

By:


Bradley P. King
President

ATTEST:

By:


Christopher S. King
Secretary