

FORM PTO-1594 1-31-92	RECORDATION FORM COVER SHEET TRADEMARKS ONLY	U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office Atty. Docket No. A4209-001 (1.4)
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To the Commissioner for Trademarks: Please record the attached original documents or copy thereof.

<p>1. Name of conveying party(ies): JBA Consulting, Inc.</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-North Carolina <input type="checkbox"/> Other :</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies): Name: APEX Analytix, Inc. Internal Address: Street Address: 1501 Highwoods Boulevard, Suite 200-A City: Greensboro State: North Carolina Zip: 27410</p>
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<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input checked="" type="checkbox"/> Change of Name <input type="checkbox"/> Other:</p> <p>Execution Date: June 30, 2003</p>	<p><input type="checkbox"/> Individual citizenship <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-North Carolina <input type="checkbox"/> Other</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Designations must be a separate document from Assignment) Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
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<p>4. Application number(s) or registration numbers(s): A. Trademark Application No.(s) 76/250,763 (A/PEX); 78/101,688 (APEX ANALYTIX); 78/169,209 (IAPEX); 78/257,022 (IREMIT)</p>	<p>B. Trademark Registration No.(s) 2,190,732 (A/PEX); 2,756,658 (IIQUIRE)</p>
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Additional numbers attached? Yes No

<p>5. Name and address of party to whom correspondence concerning document should be mailed: Name: Jeffrey R. McFadden</p>	<p>6. Total number of applications and registrations involved: 6</p>
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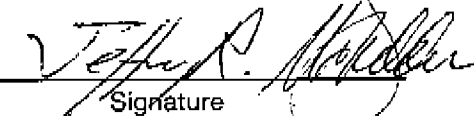
<p>Internal Address: Womble Carlyle Sandridge & Rice, PLLC</p>	<p>7. Total fee (37 CFR 3.41): \$165.00 <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account</p>
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<p>Street Address: P.O. Box 7037 City: Atlanta State: GA Zip: 30357-0037</p>	<p>8. Deposit account number: 50-0517 (Attach duplicate of this page if paying by deposit account)</p>
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DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Jeffrey R. McFadden		24 Aug 2004
Name of Person Signing	Signature	Date

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

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

CH \$165.00 500517 76250763



State of North Carolina

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF RESTATEMENT
OF
APEX ANALYTIX, INC.

the original of which is now on file and a matter of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 24th day of June, 2004.

Elaine F. Marshall

Secretary of State



SOSID: 0327096
 Date Filed: 7/1/2003 2:49:00 PM
 Elaine F. Marshall
 North Carolina Secretary of State
 C200318200182

**ARTICLES OF RESTATEMENT TO
 ARTICLES OF INCORPORATION
 OF
 JBA CONSULTING, INC.**

JBA CONSULTING, INC., a corporation organized and existing under the laws of the State of North Carolina, hereby certifies as follows:

1. The name of the corporation is JBA Consulting, Inc.
2. Pursuant to the North Carolina Business Corporation Act, these Articles of Restatement amend and restate the Articles of Incorporation of JBA Consulting, Inc. These Articles of Restatement were duly adopted by the shareholders of JBA Consulting, Inc. in accordance with the provisions of the North Carolina Business Corporation Act on June 27, 2003.
3. The Articles of Incorporation of JBA Consulting, Inc. are hereby amended and restated to read in their entirety as follows:

**"AMENDED AND RESTATED
 ARTICLES OF INCORPORATION
 OF
 APEX ANALYTIX, INC.**

ARTICLE I.

The name of the Corporation is APEX Analytix, Inc.

ARTICLE II.

A. **Classes of Stock.** The Corporation is authorized to issue two classes of shares to be designated, respectively, as "Preferred Stock" and "Common Stock." The total number of shares of capital stock that the Corporation is authorized to issue is 5,000,000, no par value. The total number of shares of Preferred Stock the Corporation shall have authority to issue is 1,000,000, no par value. The total number of shares of Common Stock the Corporation shall have authority to issue is 4,000,000, no par value.

B. **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of 742,446 shares. The rights, preferences, privileges and restrictions granted to and imposed on Series A Preferred Stock are as set forth below in this Section B of this Article II.

1. **Dividend Provisions.**

a. The holder of each share of Series A Preferred Stock shall be entitled to receive cumulative annual dividends, 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 or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Common Stock other than

ATL-L001 1501190.8

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OF
APEX ANALYTIX, INC.**

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B. **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of 742,446 shares. The rights, preferences, privileges and restrictions granted to and imposed on Series A Preferred Stock are as set forth below in this Section B of this Article II.

1. **Dividend Provisions.**

a. The holder of each share of Series A Preferred Stock shall be entitled to receive cumulative annual dividends, 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 or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Common Stock other than

dividends declared but not paid on the Common Stock prior to the date hereof, at the rate of \$0.7656 on each outstanding share of Series A Preferred Stock. For purposes of these Articles of Incorporation, the "Series A Original Purchase Price" shall mean the per share original purchase price paid by holders of the Series A Preferred Stock, which purchase price shall be deemed to be \$9.563 (subject to adjustment for stock splits, stock dividends, reclassifications and the like). Such dividends shall accrue on each share of Series A Preferred Stock from its date of issuance on a daily basis, regardless of whether earned or declared. Dividends shall be cumulative so that if such dividend in respect of any previous or current annual dividend period, at the annual rate specified above, shall not have been paid the deficiency shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Common Stock other than dividends declared but not paid on the Common Stock prior to the date hereof. Cumulative dividends with respect to a share of Series A Preferred Stock which are accrued, payable or in arrears shall, upon conversion of any such share, be paid in cash or, at the election of the Corporation, in additional shares of Common Stock at the then-current Conversion Price, to the extent assets are legally available therefor and any amounts for which assets are not legally available shall be paid promptly as assets become legally available therefor; any partial payment will be made pro rata among the holders of such shares.

b. Limitations on Distributions. Unless full dividends on Series A Preferred Stock for all past dividend periods and the then current dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart: (i) no dividends whatsoever (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) shall be declared or paid, and no distribution shall be made, on any shares of Common Stock other than dividends declared but not paid on the Common Stock prior to the date hereof, and (ii) no shares of Common Stock shall be purchased, redeemed, or acquired by the Corporation and no funds shall be paid into or set aside or made available for a sinking fund for the purchase, redemption, or acquisition thereof.

2. Liquidation.

a. Preference. In the event of any liquidation, dissolution or winding up of the Corporation, or any other distribution of the assets of the Corporation amongst the shareholders for the purpose of winding up its affairs, whether voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, an amount per share equal to (i) the Series A Original Purchase Price per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series A Preferred Stock then held by such holders of Series A Preferred Stock, plus all declared but unpaid dividends thereon, plus (ii) twelve percent (12%) per annum of the Series A Original Issue Price for each share of Series A Preferred Stock then held by such holders of Series A Preferred Stock compounded annually from the date of original purchase of each such share (the "Liquidation Amount").

b. Remaining Assets. In the event of any such liquidation, dissolution or winding up of the Corporation, and subject to the payment in full of the liquidation preferences with respect to Series A Preferred Stock as provided in subparagraph (a) of this

Section 2, the remaining assets or funds shall be distributed to the holders Common Stock on a pro rata basis, based on the number of shares of Common Stock then held by each holder.

c. Certain Acquisitions.

(i) **Deemed Liquidation.** For purposes of this Section 2, unless the holders of a majority of the then outstanding Series A Preferred Stock otherwise elect in writing, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur if the Corporation shall sell, convey, or otherwise dispose of all or substantially all of its property, assets or business or effect any merger, consolidation, share exchange or other transaction or series of related transactions in which the shareholders of the Corporation immediately prior to such transaction or series of transactions do not own securities representing a majority of the voting power of the surviving entity immediately after such transaction or series of transactions; provided that this Section 2(c)(i) shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Corporation or a transaction between the Corporation and an entity wholly owned by the Corporation.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) above (a "Deemed Liquidation"), the respective holders of Series A Preferred Stock shall have the right to receive, in connection with the closing of the Deemed Liquidation and upon surrender of such holder's Series A Preferred Stock certificate(s), duly endorsed, at the office of the Corporation or of any transfer agent therefor, payment of the Liquidation Amount (such payment to be in the form of the securities or other consideration issued or paid in the Deemed Liquidation). Upon payment of the Liquidation Amount, each share of such Series A Preferred Stock shall thereafter be deemed retired and no longer outstanding. If the consideration received by the Corporation or its shareholders is other than cash, its value will be deemed to be its fair market value as of the closing of the Deemed Liquidation as determined in good faith by the Board of Directors of the Corporation. Any securities shall be valued as follows:

(A) Securities that are part of a class of securities that is registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended:

(1) If traded on a national securities exchange or listed on NASDAQ, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing of the Deemed Liquidation;

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

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the then outstanding Series A Preferred Stock.

(B) The fair market value of securities that are not part of a class of securities that is registered pursuant to Section 12 of the Securities

Exchange Act of 1934, as amended, shall be as mutually determined by the Corporation and the holders of at least a majority of the then outstanding Series A Preferred Stock, taking into account the lack of marketability of such securities, minority ownership (if applicable), and such other factors as the Corporation and such holders shall jointly determine to be appropriate.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Series A Preferred Stock written notice of any prospective Deemed Liquidation not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such Deemed Liquidation. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of 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 twenty (20) days after the Corporation has given the first notice provided for herein or sooner than twenty (20) 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 the Series A Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the then outstanding shares of such Series A Preferred Stock.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or, in the sole or absolute discretion of the Board of Directors, cancel such transaction, in which event the rights, preferences and privileges of the holders of Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

3. **Redemption.**

a. **At the Option of Holders.** If the Corporation shall not have consummated a Qualifying IPO (as defined in Section 4(b)) or a Deemed Liquidation prior to July 1, 2008, the Corporation shall, upon the receipt of a written request (the "**Redemption Request**") delivered to the Corporation by the holders of a majority of the then-outstanding Series A Preferred Stock (the "**Electing Holders**"), redeem all of the outstanding Series A Preferred Stock in two (2) equal installments, with the first such installment due and payable on the initial redemption date set forth in the Redemption Request, and the second such installment due and payable no later than the date that is one (1) year after such initial redemption date (each such redemption date being sometimes referred to herein as a "**Redemption Date**"); *provided, however*, that the initial Redemption Date shall be the later of the date that is set forth as the initial redemption date in the Redemption Request and the date that is thirty (30) days after the "Fair Market Value" is finally determined in accordance with Section 3(b). The Redemption Price (as defined below) for the Series A Preferred Stock to be redeemed shall be paid in cash on the applicable Redemption Date.

b. Redemption Price.

(i) The "Redemption Price" shall be an amount for each share of Series A Preferred Stock equal to the greater of (A) the "Fair Market Value" (as defined below) of such share of Series A Preferred Stock as of the date of the Redemption Request (adjusted to reflect any stock dividend, stock split or combination of the Series A Preferred Stock occurring prior to the applicable Redemption Date), or (B) the Liquidation Amount as of the date of the Redemption Request.

(ii) "Fair Market Value" shall be the fair market value of such shares, as established by the vote of a majority of the members of the Board of Directors in good faith following such request for redemption (which Fair Market Value shall not include a discount for minority ownership interest or illiquidity), and each holder of Series A Preferred Stock shall be notified in writing of such value upon receipt by the Corporation of a request for redemption. The Board of Directors shall make such fair market value determination and notify the holders of the Series A Preferred Stock within thirty (30) days of the Board of Directors' receipt of the Redemption Request. If, however, the holders of a majority of the then-outstanding Series A Preferred Stock shall give the Corporation written notice prior to the scheduled redemption that he, it or they disagree with the value placed upon Series A Preferred Stock, then the holders of a majority of the Series A Preferred Stock and the Corporation shall attempt to agree upon a Fair Market Value. Should such holders of Series A Preferred Stock and the Corporation be unable to agree during the twenty (20) day period immediately following the giving of the written notice of such disagreement as to the Fair Market Value without the employment of appraisers, then they shall each select an appraiser experienced in the business of evaluating or appraising the market value of stock. The two (2) appraisers so selected (the "Initial Appraisers") shall, on or prior to the scheduled Redemption Date, appraise such shares to be redeemed as of the date of the scheduled redemption. The appraisers making an appraisal pursuant to this Section 3 shall base such determination upon all considerations that such appraisers determine to be relevant but shall assume: (x) no discounts for minority ownership interest or illiquidity, and (y) that any contractual or applicable federal or state securities law restrictions on transferability are not applicable. If the difference between the resulting appraisals is not greater than twenty percent (20%), then the average of the appraisals shall be deemed the Fair Market Value; otherwise, the Initial Appraisers shall select an additional appraiser (the "Additional Appraiser"), who shall be experienced in a manner similar to the Initial Appraisers. If they fail to select such Additional Appraiser as provided above, then the Corporation shall immediately apply, after written notice to the holders of the Series A Preferred Stock, to any judge of any court of general jurisdiction for the appointment of such Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of Series A Preferred Stock, and such value shall be the Fair Market Value. The Additional Appraiser shall forthwith give written notice of such Additional Appraiser's determination to the Corporation and the holders of Series A Preferred Stock. Each party shall pay the expenses and fees of the appraiser selected by him or it, and, if an Additional Appraiser is employed, the party who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

c. **Notice of Redemption.** Within ten days following determination of the Fair Market Value and at least twenty (20) days prior to each Redemption Date, written notice shall be mailed, postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Series A Preferred Stock at the address last shown on the records of the Corporation for such holder (or at the address given by the holder to the Corporation for the purpose of notice or if no such address appears or is given at the place where the principal executive office of the Corporation is located), notifying such holder of the redemption to be effected, specifying the Redemption Date, the number of shares to be redeemed, the applicable Redemption Price and the place at which payment may be obtained upon surrender of their share certificates (the "Redemption Notice"). The Redemption Notice shall call upon such holder to surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed. Except as provided in Section 3(d), on or after the close of business on the Redemption Date, each holder of Series A Preferred Stock shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice. Thereupon, the Corporation shall, in accordance with Section 3(a), tender the applicable Redemption Price of such shares to the order of the person or entity whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled.

d. **Cessation of Rights.** From and after each Redemption Date, unless there has been a default in payment of the Redemption Price, all rights of the holders of the Series A Preferred Stock to be redeemed as holders of such Series A Preferred Stock (except the right to receive the applicable Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of Series A Preferred Stock on the applicable Redemption Date are insufficient to redeem the shares of Series A Preferred Stock to be redeemed on such date, then those funds that are legally available shall be used to redeem the maximum possible number of shares of Series A Preferred Stock ratably among such holders in proportion to the amount each such holder otherwise would be entitled to receive with respect to such shares. Any Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the privileges, rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Series A Preferred Stock, such funds shall immediately be set aside for the redemption of the balance of the shares that the Corporation has become obligated to redeem on the applicable Redemption Date pursuant to this Section 3 but has not redeemed, payable in accordance with the terms of this Section 3(d), with interest at the per annum rate announced by Wachovia Bank, N.A. in Atlanta, Georgia, or any successor thereto, as its prime lending rate plus two percent (2%) per annum for the period of each delay.

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

a. **Right to Convert.** Subject to Section 4(c), each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such

stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Purchase Price for such share by the Conversion Price for such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price for each share of Series A Preferred Stock shall be \$9.563. The Conversion Price for the Series A Preferred Stock shall be subject to adjustment as set forth in Section 4(d).

b. Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into such number of shares of Common Stock as is determined by dividing an amount equal to the Series A Original Purchase Price by the Conversion Price at the time in effect for such share immediately upon the earlier of (A) the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act") at a total public offering price per share (prior to underwriters' commissions and expenses) of not less than three (3) times the Series A Original Purchase Price (appropriately adjusted for any stock split, dividend, combination or other recapitalization) and which results in aggregate gross cash proceeds to the Corporation (prior to underwriters' commissions and expenses) of not less than \$25,000,000 (the "Qualifying IPO") or (B) the date specified by written consent or agreement of the holders of at least 80% of the outstanding shares of Series A Preferred Stock.

c. Mechanics of Conversion. Except as provided in Section 4(b), before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of the transfer agent for such Series A Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A 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 Series A Preferred Stock to be converted, and the person(s) or entity(ies) 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 Securities Act the conversion may, at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) or entity(ies) entitled to receive Common Stock upon conversion of Series A Preferred Stock shall not be deemed to have converted Series A Preferred Stock until immediately prior to the closing of such sale of securities. In addition, any conversion pursuant to Section 4(a) hereof may be conditioned by the holder of the Series A Preferred Stock upon the happening of a specific event, in which event the person(s) or entity(ies) entitled to receive Common Stock issuable upon such conversion of Series A Preferred Stock shall not be deemed to have converted Series A Preferred Stock until immediately prior to the happening of such event. Upon the conversion of Series A Preferred Stock, the Corporation shall pay all declared but unpaid dividends in cash.

d. Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances.

(i) **Special Definitions.** For purposes of this Section 4 of Article II(B), the following definitions apply:

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

(B) **"Original Issue Date"** shall mean July 1, 2003.

(C) **"Convertible Securities"** shall mean any evidences of indebtedness, shares (other than Common Stock and Series A Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(D) **"Additional Shares of Common Stock"** shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than the following (which shall be referred to as **"Excluded Securities"**):

(1) Common Stock issued or issuable upon conversion of Series A Preferred Stock;

(2) up to 83,935 shares of Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends or recapitalizations, and any increases approved by the Board of Directors (including all the directors elected by the holders of Series A Preferred Stock serving on the Board of Directors)) issued or issuable since the Original Issue Date to employees or directors of, or consultants or advisors to, the Corporation pursuant to the Corporation's 2003 Equity Incentive Plan or any other stock option plan, stock purchase plan, management incentive plan, consulting agreement or similar plan, program, contract or arrangement approved by the Board of Directors (including all of the directors elected by the holders of Series A Preferred Stock serving on the Board of Directors) (collectively, the "Plans");

(3) shares of capital stock issued or issuable as a dividend or distribution on the Series A Preferred Stock or in a stock split, subdivision, combination, reclassification or the like of the Series A Preferred Stock;

(4) shares of capital stock issued or issuable for which adjustment of the Conversion Price is made pursuant to Section 4(e); and

(5) shares of Common Stock issued or issuable in an underwritten initial public offering registered under the Securities Act in which all outstanding Series A Preferred Stock will be converted into Common Stock.

(ii) **No Adjustment of Conversion Price.** Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price for Series A Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for Series A Preferred Stock in effect on the date of, and immediately prior to such issue.

(iii) **Deemed Issue of Additional Shares of Common Stock.** If 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 then 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 designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities or for Series A Preferred Stock, the conversion or exchange of such Convertible Securities or Series A Preferred Stock, 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 further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustments in the Conversion Price shall be made upon the subsequent issue of Convertible Securities, Series A Preferred Stock or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities or Series A Preferred Stock;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any decrease in the consideration payable to the Corporation, or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, of if any such decrease or increase shall otherwise be made, the Conversion Price of each share of Series A Preferred Stock upon and following 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 decrease or increase becoming effective, be recomputed to reflect such decrease or increase as if such Options or Convertible Securities had initially been issued upon such revised terms or, if no adjustment to such Conversion Price has previously been made to reflect the issuance of such Options or Convertible Securities, as if such Options or Convertible Securities were then being issued on such revised terms, (provided, however, that no such adjustment of the Conversion Price of Series A Preferred Stock shall affect Common Stock previously issued upon conversion of Series A Preferred Stock);

(C) upon the expiration of any such Options or rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each share of Series A Preferred Stock, shall, upon such expiration, be recomputed as if:

(1) 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 expired Options or the conversion or exchange of such expired Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such expired Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such expired Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange;

(2) in the case of expired Options for Convertible Securities or Series A Preferred Stock, only the Convertible Securities or Series A Preferred Stock, if any, actually issued upon the exercise thereof were issued at the time of issue of such expired 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 expired Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(iv)) upon the issue of the Convertible Securities or Series A Preferred Stock with respect to which such expired Options were actually exercised; and

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

(iv) Adjustment of Conversion Price.

(A) Upon Issuance of Additional Shares of Common Stock. In the event the Corporation at any time after the Original Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the Conversion Price with respect to the then-outstanding Series A Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price of the Series A Preferred Stock then having a Conversion Price which exceeds the consideration per share so received by the Corporation upon such other issuance, shall be reduced, concurrently with such issuance, to a price (calculated to the nearest \$0.0001 cent) equal to the consideration per share received by the Corporation upon such issuance of Additional Shares of Common Stock.

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

(A) Cash and Property. Such consideration shall:

(1) insofar as it consists of cash, be the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(2) 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; provided, however, that no value shall be attributable to any service performed by any employee, officer or director of the Corporation or other person for the benefit of the Corporation; and

(3) 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 with respect to such Additional Shares of Common Stock, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

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

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) 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 or Series A Preferred Stock, the exercise of such Options for Convertible Securities or Series A Preferred Stock and the conversion or exchange of such Convertible Securities, by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(C) Expenses. In the event the Corporation pays or incurs expenses, commissions or compensation, or allows concessions or discounts to underwriters, dealers or others performing similar services in connection with such issue of Additional Shares of Common Stock, in an aggregate amount in excess of 15% of the aggregate consideration received by the Corporation for such issue, as determined in clause (1) above, the consideration received by the Corporation shall be computed as provided in clause (1) above after deducting the aggregate amount of such expenses in excess of 15% of the aggregate consideration received by the Corporation for such issue.

e. Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. If the Corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any

dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for the Series A Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

f. **Adjustments for Other Distributions.** If the Corporation at any time or from time to time makes, or files a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities or assets of the Corporation other than shares of Common Stock and other than dividends declared prior to and paid after the Original Issue Date, then and, in each such event, provision shall be made so that the holders of Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities or assets of the Corporation which they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities or assets receivable by them as aforesaid during such period, subject to all other adjustment called for during such period under this Section 4 with respect to the rights of the holders of Series A Preferred Stock.

g. **Adjustments for Reclassification and Reorganization.** If the Common Stock issuable upon conversion of Series A Preferred Stock 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 in Section 4(e) above or a merger or other reorganization referred to in Section 2(c)(i), above), the Conversion Price of each share of Series A Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, the kind and number of shares of such other class or classes of stock resulting from that reorganization or reclassification to which a holder of the number of shares of Common Stock deliverable upon conversion of Series A Preferred Stock would have been entitled upon that reorganization or reclassification. The provisions of this Section 4(g) shall apply to successive reorganizations or reclassifications.

h. **No Impairment.** The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder

by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series A Preferred Stock against impairment.

i. Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price for Series A Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Series A Preferred Stock.

j. Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, 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 offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation or other entity, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Series A Preferred Stock:

(A) at least twenty (20) days prior written notice of the date on which a record shall be taken for such dividend or distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and

(B) in the case of the matters referred to in (iii) and (iv) 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 Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

k. Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

l. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares

of Common Stock, solely for the purpose of effecting the conversion of the Series A 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 Series A 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 Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Articles of Incorporation.

m. **Fractional Shares.** No fractional share shall be issued upon the conversion of any Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

n. **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of Series A Preferred Stock shall be deemed given five (5) days after such notice is deposited in the United States mail, postage prepaid, or upon receipt if sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at such holder's address or facsimile number appearing in the records of the Corporation.

o. **Miscellaneous.** No adjustment in any Conversion Price need be made if such adjustment would result in a change in such Conversion Price of less than \$0.0001. Any adjustment of less than \$0.0001 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.0001 or more in such Conversion Price.

5. **Voting Rights.**

a. **Generally.** The holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Series A Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any matter upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

b. **Election of Directors.** The authorized number of directors shall be set forth in the Corporation's Bylaws but in any event shall not be less than five (5) directors. So long as any Series A Preferred Stock is outstanding, of the authorized number of members on the Board of Directors, the holders of a majority of the Series A Preferred Stock shall be entitled to elect two (2) directors (and to fill any vacancy with respect thereto) (the "Series A Directors"). The holders of a majority of the issued and outstanding Common Stock shall be entitled to elect two (2) directors (and to fill any vacancy with respect thereto) (the "Common Directors"). One (1) director who qualifies as an "independent director" (as defined in Section 301 of the Sarbanes-Oxley Act of 2002, and the regulations that are, or hereafter may be, promulgated by the Securities and Exchange Commission thereunder) (the "Outside Director"), shall be elected by the holders of Series A Preferred Stock and the holders of Common Stock, voting together as a single class, provided, that the Outside Director has been approved by both (i) holders of at least a majority of the Series A Preferred Stock and (ii) holders of at least a majority of the Common Stock.

c. Any director who shall have been elected by a specified group of shareholders may be removed during the aforesaid term of office, either for or without cause, by and only by, the affirmative vote of the holders of a majority of the shares of such specified group, given at a special meeting of such shareholders duly called or by an action by written consent for that purpose.

d. **Special Rights Upon an Event of Noncompliance.**

(i) An "Event of Noncompliance" shall have occurred if

(A) the Corporation breaches or otherwise fails to perform in any material respect any of the covenants or any of its obligations to the holders of Series A Preferred Stock in these Articles of Incorporation or the Series A Preferred Stock Purchase Agreement, by and among the Corporation and the purchasers of Series A Preferred Stock that are parties thereto (the "Stock Purchase Agreement"), and fails to cure such breach within ten (10) business days after the holders of at least a majority of the Series A Preferred Stock provide the Corporation with written notice of such breach, or

(B) the Corporation or any subsidiary of the Corporation makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the Corporation or any subsidiary bankrupt or insolvent; or any order for relief with respect to the Corporation or any subsidiary is entered under the Federal Bankruptcy Code; or the Corporation or any subsidiary petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any subsidiary or of any substantial part of the assets of the Corporation or any subsidiary, or commences any proceeding (other than a proceeding for the voluntary liquidation and dissolution of a subsidiary) relating to the Corporation or any subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or any such petition or application is filed, or any such proceeding is commenced, against the Corporation or any subsidiary and either (A) the Corporation or any such subsidiary by any act indicates its approval

thereof, consent thereto or acquiescence therein or (B) such petition, application or proceeding is not dismissed within ninety (90) days.

(ii) If an Event of Noncompliance has occurred and continues uncured for ninety (90) consecutive days, the number of directors constituting the Board of Directors shall, at the request of the holders of a majority of Series A Preferred Stock then outstanding, be increased by such number which shall constitute a minimum majority of the Board of Directors, and the holders of Series A Preferred Stock shall have the special right, and to the exclusion of all other classes of the Corporation's capital stock, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships. The special right of the holders of Series A Preferred Stock to elect a majority of the members of the Board of Directors (the "Board Switch Right") may be exercised at the special meeting called pursuant to this subparagraph (c)(ii), at any annual or other special meeting of shareholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a shareholders meeting. The Board Switch Right shall continue until such time as there is no longer any Event of Noncompliance in existence, at which time the Board Switch Right shall terminate subject to revesting upon the occurrence and continuation of any Event of Noncompliance which gives rise to the Board Switch Right hereunder.

(iii) At any time when the Board Switch Right has vested in the holders of Series A Preferred Stock, a proper officer of the Corporation shall, upon the written request of the holder(s) of at least ten percent (10%) of Series A Preferred Stock then outstanding, addressed to the secretary of the Corporation, call a special meeting of the holders of Series A Preferred Stock for the purpose of electing directors pursuant to this subparagraph. Such meeting shall be held at the earliest legally permissible date at the principal office of the Corporation, or at such other place designated by the holders of at least ten percent (10%) of Series A Preferred Stock then outstanding who first requested the meeting. If such meeting has not been called by a proper officer of the Corporation within ten (10) days after personal service of such written request upon the secretary of the Corporation or within twenty (20) days after mailing the same to the secretary of the Corporation at its principal office, then the holders of at least ten percent (10%) of Series A Preferred Stock then outstanding may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such person or entity so designated upon the notice required for annual meetings of shareholders and shall be held at the Corporation's principal office, or at such other place designated by such person or entity. Any holder of Series A Preferred Stock so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of shareholders to be called pursuant to this subparagraph.

(iv) At any meeting or at any adjournment thereof at which the holders of Series A Preferred Stock have the special right to elect directors, the presence, in person or by proxy, of the holders of a majority of Series A Preferred Stock then outstanding shall be required to constitute a quorum for the election or removal of any director by the holders of Series A Preferred Stock exercising the Board Switch Right. The vote of a majority of such quorum shall be required to elect or remove any such director.

(v) Any director so elected by the holders of Series A Preferred Stock shall continue to serve as a director until the earlier of (A) a period of thirty (30) days following the date on which there is no longer any Event of Noncompliance in existence or (B) the date on which the term for which such director has been elected expires. After the Event of Noncompliance has been cured, the number of directors constituting the Board of Directors shall be decreased, as and when the period(s) of service set forth in the immediately preceding sentence expire, to such number as constituted the whole Board of Directors immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to the Board Switch Right.

(vi) If any Event of Noncompliance exists, each holder of Series A Preferred Stock shall also have any other rights which such holder is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

6. **Restrictions and Limitations.** In addition to any other rights provided by law, so long as any Series A Preferred Stock is then outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles of Incorporation, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the total number of outstanding shares Series A Preferred Stock (voting together as a single class), the Corporation shall not, directly or indirectly:

a. approve, adopt or file any amendment to the Articles of Incorporation of the Corporation designating the preferences, limitations and relative rights of any series of Preferred Stock, or engage in any action that would alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series A Preferred Stock, or amend, repeal or waive any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws; provided, that any amendment to this Section 6 shall be deemed to be a change to the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series A Preferred Stock;

b. create or increase, or authorize the creation or increase of the authorized amount of any additional class or series of shares of stock, or any obligation or security convertible into any additional class or series of shares of stock, regardless of whether any such creation, authorization or increase shall be by means of amendment to the Articles of Incorporation, or by merger, consolidation or otherwise, with rights senior to or on a parity with the rights of the Series A Preferred Stock;

c. increase or decrease the authorized number of shares of Series A Preferred Stock, or issue any Series A Preferred Stock;

d. merge or consolidate into or with any other corporation or other entity or sell, assign, lease, pledge, encumber or otherwise dispose of all or substantially all of its assets or those of any subsidiary;

e. voluntarily liquidate, dissolve or wind up the Corporation or its business;

- f. pay any dividends or other distribution on any capital stock;
- g. acquire any other entity through any merger, stock acquisition, asset purchase or other form of transaction;
- h. authorize, enter into, amend or cancel, or cause or permit any subsidiary of the Corporation to authorize, enter into, amend or cancel, any contract or other agreement (including any license or loan agreement) which involves or could reasonably be expected to involve the payment or receipt of cash or non-cash consideration having a total value of \$50,000 or more;
- i. create, incur, assume or suffer to exist any indebtedness (other than trade payables incurred in the ordinary course of business) which would cause the total indebtedness of the Corporation to exceed \$1,000,000 outstanding at any time or incur, assume or suffer to exist any guarantees of debt or other obligations of any entity;
- j. issue or agree to issue (including by the issuance of any Option or Convertible Securities) any additional shares of capital stock of the Corporation for per share consideration less than the Conversion Price for Series A Preferred Stock other than pursuant to a stock incentive plan which shall have been approved by the holders of a majority of the Series A Preferred Stock outstanding at the time of such approval;
- k. own, or permit any subsidiary of the Corporation to own, any stock or other securities of any corporation, partnership, limited liability company, association, or other form of business entity except the securities of wholly owned subsidiaries of the Corporation or one of its subsidiaries;
- l. purchase, redeem or otherwise acquire for value any shares of any class of its capital stock or cause or permit any employee stock ownership plan, including any Employee Stock Ownership Plan as defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, to purchase shares of any class of its capital stock, except for the redemption of Series A Preferred Stock pursuant to the terms of these Articles of Incorporation; or
- m. create or commit the Corporation to enter into a joint venture, licensing arrangement, distribution agreement or exclusive marketing agreement with respect to the Corporation's products, other than in the ordinary course of business.

7. **Preemptive Rights.** The holders of Series A Preferred Stock shall have the right of first refusal to purchase any New Securities (as defined in this Section 7) that the Corporation may, from time to time, propose to sell and issue. This right shall be subject to the following provisions:

a. **New Securities Defined.** "New Securities" shall mean any shares of the Corporation's capital stock, any other equity security of the Corporation, including, without limitation, any options, warrants or other rights to subscribe for, purchase or otherwise acquire any capital stock or other equity security of the Corporation, or any other security of the Corporation that is, or may become, convertible into or exchangeable for any equity security of

the Corporation; provided, however, that "New Securities" does not include Excluded Securities (as defined in Section B.4.d(i)(D) of this Article II).

b. **Notices.** If the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of Series A Preferred Stock written notice of its intention, describing the type of New Securities, the price, the closing date of the offering thereof, and the general terms upon which the Corporation proposes to issue the same (the "Corporation Notice"). Upon receipt of the Corporation Notice, each holder of Series A Preferred Stock shall have the right to elect to purchase some or all of his or its Pro Rata Share (as defined below) of such New Securities, at the price and on the terms stated in the Corporation Notice. Such election is to be made by each holder of Series A Preferred Stock by giving written notice to the Corporation (the "Preemptive Rights Election Notice") within ten (10) days after receiving the Corporation Notice. Within five (5) days after receiving the Preemptive Rights Election Notices, the Corporation shall give to each holder of Series A Preferred Stock who has elected to purchase his or its Pro Rata Share (a "Fully Participating Holder") written notice indicating the number of remaining New Securities not elected for purchase by the other holders of Series A Preferred Stock (the "Second Corporation Notice"). Each Fully Participating Holder shall have the option, exercisable by so specifying in a subsequent written notice to the Corporation (the "Second Preemptive Rights Election Notice"), given to the Corporation within five (5) days after receiving the Second Corporation Notice, to purchase such Fully Participating Holder's Pro Rata Share of any remaining New Securities not purchased by other holders of Series A Preferred Stock pursuant to this Section 7. The Corporation may offer and sell any remaining New Securities not elected to be purchased as evidenced by Preemptive Rights Election Notices and Second Preemptive Rights Election Notices timely received by the Corporation, at a price and upon terms not more favorable than those stated in the Corporation Notice. For purposes of this Section 7, except with respect to purchases of remaining New Securities pursuant to a Second Corporation Notice, each holder's "Pro Rata Share" of New Securities shall be equal to a fraction, the numerator of which is the sum of (i) the number of shares of Common Stock into which the Series A Preferred Stock held by such holder prior to such issuance have been converted since the Original Issuance Date, and (ii) the number of shares of Common Stock into which such holder's Series A Preferred Stock could be converted if fully converted immediately prior to such issuance, and the denominator of which is the sum of: (x) the number of shares of Common Stock actually outstanding immediately prior to such issuance, (y) the number of shares of Common Stock into which the then outstanding of Series A Preferred Stock could be converted if fully converted immediately prior such issuance, and (z) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options, warrants and convertible securities immediately prior to such issuance that are then currently exercisable or convertible. With respect to purchases of remaining New Securities pursuant to a Second Corporation Notice, each Fully Participating Holder's Pro Rata Share of any New Securities offered in the Second Corporation Notice shall be equal to a fraction, the numerator of which is the sum of (i) and (ii), above, with respect to shares held by such Fully Participating Holder, and the denominator of which is the sum of (i) and (ii), above, with respect to shares held by all Fully Participating Holders. A holder may assign the right of first refusal to purchase New Securities in whole or in part at any time after the Original Issue Date to an Affiliate (as defined in the Stock Purchase Agreement).

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c. **Expansion of Offer.** Any offer by the Corporation of securities in addition to those specified in the Corporation Notice, whether on the same or different terms as are specified therein, shall again require compliance by the Corporation with the terms of this Section 7.

d. **Waiver.** All rights of the holders of the Series A Preferred Stock under this Section 7 may be waived or modified, either generally or in the case of any particular issuance of New Securities, and either prospectively or retroactively, if a written instrument to that effect is executed and delivered by the holders of at least eighty percent (80%) of the then outstanding Series A Preferred Stock.

8. **Common Stock.**

a. **Dividend Rights.** For as long as any Series A Preferred Stock remain outstanding, no dividend or other distribution shall be paid or made on the Common Stock, unless a like dividend or other distribution shall be paid or made on the Series A Preferred Stock, in each case on the basis of the number of shares of Common Stock into which each such share of Series A Preferred Stock shall then be convertible; provided, however, that the foregoing provision shall not apply to dividends declared on the Common Stock prior to the Original Issue Date and payable after the Original Issue Date.

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

c. **Voting Rights.** Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE III

No director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for any action taken, or any failure to take any action as a director, by reason of any act or omission occurring subsequent to the date when this provision first became effective, except liability for (a) any appropriation, in violation of his or her duties, of any business opportunity of the Corporation; (b) acts or omissions which involve intentional misconduct or a knowing violation of law; (c) liabilities of a director imposed by Section 55-8-33 of the North Carolina Business Corporation Act; or (d) any transaction from which the director derived an improper personal benefit.

ARTICLE IV

Any action required or permitted by law or by these Articles of Incorporation or Bylaws of the Corporation to be taken at a meeting of the shareholders of the Corporation or a meeting of any voting group of shareholders of the Corporation, may be taken without a meeting if a written consent setting forth the action so taken shall be signed by persons entitled to vote at such a

meeting those shares having sufficient voting power to cast not less than the minimum number of votes that would be necessary to authorize or take such action at such meeting at which all shares entitled to vote were present and voted. Notice of such action without a meeting by less than unanimous written consent shall be given within ten (10) days of the taking of such action to those shareholders of record on the date when the written consent is first executed and whose shares were not represented on the written consent.

ARTICLE V

The street and mailing address and county of the registered office and principal office of the Corporation in North Carolina is 3859 Battleground Avenue, Suite 300, Greensboro 27410, Guilford County.

ARTICLE VI

The name of the registered agent at the address of the registered office is James B. Arnold.

ARTICLE VII

The provisions of Articles 9 and 9A of Chapter 55 of the North Carolina General Statutes shall not be applicable to the Corporation.

[Signature is on the following page.]

IN WITNESS WHEREOF, the Corporation has caused these Amended and Restated Articles of Incorporation to be executed by its duly authorized officer, this 30th day of June, 2003.

JBA CONSULTING, INC.

By: James B. Arnold
Name: James B. Arnold
Title: President

ATTEST