

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

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| SUBMISSION TYPE: | NEW ASSIGNMENT |
| NATURE OF CONVEYANCE: | MERGER |
| EFFECTIVE DATE: | 03/30/2007 |

CONVEYING PARTY DATA

| Name | Formerly | Execution Date | Entity Type |
|----------------------------|----------|----------------|--------------|
| SME Global Solutions, Inc. | | 03/30/2007 | CORPORATION: |

RECEIVING PARTY DATA

| | |
|-------------------|-----------------------|
| Name: | Webvisible, Inc. |
| Street Address: | 5440 Trabuco Road |
| Internal Address: | Suite 200 |
| City: | Irvine |
| State/Country: | CALIFORNIA |
| Postal Code: | 92620 |
| Entity Type: | CORPORATION: DELAWARE |

PROPERTY NUMBERS Total: 2

| Property Type | Number | Word Mark |
|----------------------|---------|------------|
| Registration Number: | 3218915 | WEBVISIBLE |
| Registration Number: | 3262710 | WEBVISIBLE |

CORRESPONDENCE DATA

Fax Number: (404)365-9532
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 404-233-7000
 Email: trademark@mmmlaw.com
 Correspondent Name: John R. Harris
 Address Line 1: 3343 Peachtree Road, N.E.
 Address Line 2: 1600 Atlanta Financial Center
 Address Line 4: Atlanta, GEORGIA 30326-1044

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|-------------------------|-----------------|
| ATTORNEY DOCKET NUMBER: | 16187-51248 JRH |
|-------------------------|-----------------|

OP \$65.00 3218915

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| NAME OF SUBMITTER: | John R. Harris |
| Signature: | /John R. Harris/ |
| Date: | 12/21/2007 |

Total Attachments: 19

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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 CERTIFICATE OF MERGER, WHICH MERGES:

"SME GLOBAL SOLUTIONS, INC.", A GEORGIA CORPORATION, WITH AND INTO "WEBVISIBLE, INC." UNDER THE NAME OF "WEBVISIBLE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TENTH DAY OF APRIL, A.D. 2007, AT 1:41 O'CLOCK P.M.

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

4290685 8100M

070417412



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5583622

DATE: 04-11-07

TRADEMARK
REEL: 003684 FRAME: 0003

CERTIFICATE OF MERGER OF

**SME GLOBAL SOLUTIONS, INC.,
a Georgia corporation,**

INTO

**WEBVISIBLE, INC.,
a Delaware corporation**

Webvisible, Inc., a corporation organized and existing under and by virtue of the Delaware General Corporation Law, as amended (the "DGCL"), in lieu of filing the Merger Agreement required by Section 252 of the DGCL, does hereby certify that:

FIRST: The name and state of incorporation of each of the constituent corporations participating in the merger herein certified is as follows:

| <u>Name of Corporation</u> | <u>State of Incorporation</u> |
|------------------------------------|-------------------------------|
| SME Global Solutions, Inc. ("SME") | Georgia |
| Webvisible, Inc. ("Webvisible") | Delaware |

SECOND: An Agreement and Plan of Merger, dated as of March 30, 2007 (the "Merger Agreement"), by and between SME and Webvisible, has been approved, adopted, certified, executed and acknowledged by each of the aforementioned constituent corporations in accordance with Section 252 of the DGCL, including the approval of the requisite majority of the stockholders of the aforementioned constituent corporations.

THIRD: The name of the surviving corporation in the merger herein certified is Webvisible, Inc., a Delaware corporation

FOURTH: The Amended and Restated Certificate of Incorporation of Webvisible, as in effect immediately prior to the filing of this Certificate of Merger and in the form attached hereto as Exhibit A, shall continue in full force and effect as the Amended and Restated Certificate of Incorporation of said surviving corporation until it is duly amended in accordance with the provisions thereof and pursuant to the applicable provisions of DGCL.

FIFTH: The merger shall be effective upon filing of this Certificate of Merger.

SIXTH: The executed Merger Agreement is on file at the office of the surviving corporation, located at 5440 Trabuco Road, Suite 200, Irvine, California 92620.

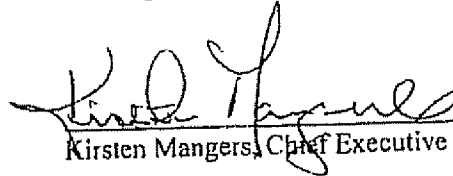
SEVENTH: A copy of the aforementioned Merger Agreement will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation

EIGHTH: The authorized capital stock of SME consists of 20,000,000 shares of Common Stock, \$0.001 par value (the "Common Stock") and 6,200,000 shares of Preferred Stock, \$0.001 par value (the "Preferred Stock"), all 6,200,000 shares of which are designated as "Series A Preferred Stock."

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Certificate of Merger to be duly executed by an authorized officer (within the meaning of the DGCL) this 30th day of March, 2007.

SME GLOBAL SOLUTIONS, INC.,
a Georgia corporation


Kirsten Mangers, Chief Executive Officer

WEBVISIBLE, INC.,
a Delaware corporation

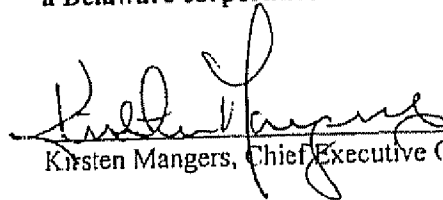

Kirsten Mangers, Chief Executive Officer

EXHIBIT A
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
WEBVISIBLE, INC.

ARTICLE 1

The name of the corporation (hereinafter the "Corporation") is as follows:

WEBVISIBLE, INC.

ARTICLE 2

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

ARTICLE 3

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

ARTICLE 4

A. Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 26,200,000 shares. 20,000,000 shares shall be Common Stock, \$0.001 par value per share, and 6,200,000 shares shall be Preferred Stock, \$0.001 par value per share.

B. Rights, Preferences and Restrictions of Common Stock.

1. Dividends. For so long as any shares of Series A Preferred Stock remain outstanding, no dividends whatsoever shall be declared or paid, and no distribution shall be made, on any shares of Common Stock.

2. Liquidation, Dissolution or Winding-Up. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (C) of this Article 4

3. Redemption. No shares of Common Stock shall be redeemable by the Corporation

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the

Corporation's Bylaws, and shall be entitled to vote upon such manners and in such manner as may be provided by law.

C. Rights, Preferences and Restrictions of Preferred Stock The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation shall be issued in series. The first series shall be designated as "Series A Preferred Stock," and shall consist of Six Million Two Hundred Thousand (6,200,000). The Corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock. The rights, preferences, privileges and restrictions granted to or imposed upon the Series A Preferred Stock are as follows:

1. Dividends

(a) Series A Preferred Stock The holders of shares of Series A Preferred Stock on the applicable record date shall be entitled to receive non-cumulative dividends, out of any assets legally available therefor, at the rate of eight percent (8%) (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series A Preferred Stock, if, when and as declared by the Board of Directors of this Corporation (the "Board"). Any amounts of declared dividends for which assets are not legally available shall be paid promptly as assets become legally available, and partial payment will be made pro rata among the holders of such shares of Series A Preferred Stock.

(b) Limitations on Distributions In the event dividends are paid on any share of Common Stock, the holders of Series A Preferred Stock shall participate in such dividends on the Common Stock on a pro rata basis in proportion to the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock held of record by such holder as of the record date for the determination of the holders of Common Stock of the Corporation entitled to receive such dividend determined in accordance with Section 4 of Division (C) of this Article 4.

2. Liquidation, Dissolution or Winding-Up

(a) In the event of any Deemed Liquidation (as defined below), or any other liquidation, dissolution or winding up of the Corporation, or any other distribution of the assets of the Corporation amongst the stockholders for the purpose of winding up its affairs (each, a "Liquidation Event"), whether voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any assets or funds of the Corporation to the holders of Common Stock, by reason of their ownership thereof, an amount per share equal to the \$0 8095983 (the "Original Series A Purchase Price"), as adjusted for stock dividends, stock splits, reclassification and the like, for each share of Series A Preferred Stock then held by such holders plus any and all declared but unpaid dividends thereon (together with the Original Series A Purchase Price, referred to as the "Series A Liquidation Preference") If, upon the occurrence of any Liquidation Event, the assets and funds thus distributed among the holders of Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full Series A Liquidation Preference preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed pro rata among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive

(b) In the event of any such Liquidation Event, and subject to the payment in full of the liquidation preferences with respect to Series A Preferred Stock, as provided in Section 2(a), the remaining assets or funds of the Corporation legally available for distribution to stockholders shall be distributed among the holders of the Series A Preferred Stock and the Common Stock pro rata based on the number of shares of Common Stock held by each (assuming conversion into Common Stock of all such Series A Preferred Stock), provided, however, that the holders of Series A Preferred Stock shall not receive further distributions once they have received an aggregate of three (3) times the Original Series A Purchase Price, as adjusted for stock dividends, splits, combinations and the like (including amounts paid pursuant to Section 2(a) hereof); thereafter, if assets remain in the Corporation, the holders of the Common Stock shall receive all of the remaining assets of this Corporation pro rata based on the number of shares held by each

(c) For purposes of this Section 2, a "Deemed Liquidation" shall mean, unless waived by the holders of a majority of the outstanding shares of Series A Preferred Stock, any of the following: (i) the merger, share exchange, reorganization or consolidation of the Corporation or such subsidiary or subsidiaries of the Corporation the assets of which constitute all or substantially all the assets of the business of the Corporation and its subsidiaries, taken as a whole, into or with another corporation in which the Corporation's stockholders holding outstanding voting equity securities of the Corporation immediately prior to such merger, share exchange, reorganization or consolidation shall own less than fifty percent (50%) of the outstanding voting equity securities of the surviving corporation; (ii) the sale, transfer, lease or other disposition (but not including a transfer or lease by pledge or mortgage to a bona fide lender) of all or substantially all the assets of the Corporation, or the exclusive license of all or substantially all of the intellectual property of the Corporation, whether pursuant to a single transaction or a series of related transactions or plan (which assets shall include for these purposes the assets of the Corporation's subsidiaries); or (iii) the sale or issuance by the Corporation, whether in a single transaction or pursuant to a series of related transactions, of securities of the Corporation such that the Corporation's stockholders holding outstanding voting equity securities immediately prior to such sale or transfer or series of transfers cease to hold a majority of the Corporation's outstanding voting equity securities immediately after such sale or transfer or series of transfers

(d) In any of a Deemed Liquidation, if the consideration received by the Corporation or its stockholders is other than cash, the value of such consideration will be deemed its fair market value, as determined in good faith by the Board (which determination shall include the approval of a majority of the directors elected to the Board and the holders of at least sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock); provided, however, that any securities thus received shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a national securities exchange or the Nasdaq Global Market System, 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;

(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 determined in good faith by the Board (which determination shall include the approval of a majority of the directors elected to the Board and the holders of at least sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock).

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

(iii) In the event that the Board and the holders of at least sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock are unable to agree on any determination of fair value pursuant to this Section 2(d), such determination of fair value shall be made by an independent appraiser selected jointly by the Board and the holders of the Series A Preferred Stock, the cost of such appraisal to be borne equally by the Corporation and the holders of the Series A Preferred Stock.

(e) The Corporation shall give each holder of record of Series A Preferred Stock written notice of such impending transaction as referred to in Section 2(c) hereof 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 transaction. 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 a majority of the outstanding shares of Series A Preferred Stock that are entitled to such notice rights or similar notice rights.

(f) Notwithstanding Sections 2(a) and (b) above, if the aggregate per share amount that a holder of Series A Preferred Stock would be entitled to receive had such holder's Series A Preferred Stock been converted into Common Stock immediately prior to such liquidation, dissolution or winding up (the "Alternative Amount") exceeds the aggregate that the holder of such Series A Preferred Stock would be entitled to receive under Sections 2(a) and (b), the holder shall receive the Alternative Amount per share of Series A Preferred Stock

3. Redemption

(a) At the Option of Holders of the Series A Preferred Stock If the Corporation shall not have consummated a Qualifying IPO (as defined below) prior to May 2, 2010, then the Corporation shall, upon the receipt of a written request (the "Redemption Request") from holders of a majority of the then outstanding shares of Series A Preferred Stock (the "Electing Holders") that all of the Series A Preferred Stock be redeemed, on the respective Redemption Dates (as defined below), or as soon thereafter as legally permissible, redeem all of the outstanding shares of Series A Preferred Stock by paying in cash to the holders thereof in respect of each such share the

Redemption Price (as defined below), with such shares to be redeemed in three (3) equal installments, with the first such installment on the ninetieth (90th) day following delivery of the Redemption Request (the "Initial Redemption Date"), the second such installment no later than the date that is one (1) year after the Initial Redemption Date, and the third such installment no later than the date that is two (2) years after the Initial Redemption Date (each such redemption date being sometimes referred to herein as a "Redemption Date")

(b) Redemption Price. The "Redemption Price" shall be an amount equal to the Series A Liquidation Preference.

(c) Notice of Redemption. At least forty-five (45) days prior to the applicable 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 the 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 on such Redemption Date, the applicable Redemption Price and the place at which payment may be obtained (the "Redemption Notice"). The Redemption Notice shall call upon such holder to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares to be redeemed on such Redemption Date. 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 whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be cancelled. For purposes of the Corporation's Certificate of Incorporation, "Person" means a natural person, corporation, limited liability company, general or limited partnership, trust, estate, joint venture, governmental entity or any other entity or organization.

(d) Cessation of Rights. From and after each Redemption Date, unless there has been a default in payment of the Redemption Price, all dividends, if any, on the Series A Preferred Stock redeemed on such Redemption Date shall cease to accrue, all rights of the holders of such shares as holders of 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 shares of Series A Preferred Stock on the applicable Redemption Date are insufficient to redeem all of the outstanding 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. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares 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).

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

(a) Right to Convert. Subject to Section 4(c), each share of the Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of the issuance of such share, and on or prior to the Redemption Date at which such shares are redeemed, if any (as may have been fixed in any Redemption Notice with respect to the Series A Preferred Stock pursuant to Section 3), at the office of the Corporation or any transfer agent for the shares of capital stock of the Corporation, into that number of the fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Purchase Price by the conversion price applicable to the Series A Preferred Stock determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial conversion price per share of Series A Preferred Stock shall be \$0.8095983 (the "Series A Conversion Price"). The initial Series A Conversion Price shall be subject to adjustment as set forth in Section 4(d).

(b) Automatic Conversion

(i) Each share of Series A Preferred Stock shall automatically be converted into such number of shares of Common Stock as is determined by dividing the Original Series A Purchase Price by the Series A Conversion Price at the time in effect for such shares immediately upon the earlier of (A) the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to an effective registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 (the "Securities Act"), as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public with respect to which the Corporation receives net proceeds (before deductions of underwriters' commissions and expenses) of at least \$20,000,000 and the price to the public is at least three (3) times the Original Series A Purchase Price (as appropriately adjusted for any stock split, dividend, reclassification and the like) and a listing on NASDAQ or a national securities exchange (the "Qualifying IPO"), or (B) the date specified by written consent or agreement of the holders of at least sixty six and two-thirds percent (66 2/3%) of the then 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 any transfer agent for the 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 shares of such Series A Preferred Stock to be converted, and the Person 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 such 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 entitled to receive

Common Stock upon conversion of such Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities. In addition, any conversion may be conditional upon the happening of a specific event, in which event the Person entitled to receive Common Stock issuable upon such conversion of such Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the happening of such event. Upon the conversion of the Series A Preferred Stock, the Corporation shall pay in cash, all declared but unpaid dividends with respect to such converted Series A Preferred Stock.

(d) Conversion Price Adjustments

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

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

(B) "Original Issue Price" shall mean the date on which the first shares of Series A Preferred Stock are issued pursuant to the Series A Preferred Stock Purchase Agreement.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares 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)(ii), deemed to be issued) by the Corporation after the Original Issue Date, other than:

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

(2) 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), issued or issuable pursuant to Options granted 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 (including, the approval by a Series A Director then serving on the Board of Directors, with respect to any such plan, agreement or arrangement approved by the Board of Directors following the Original Issue Date) (any such stock option plan or agreement described herein being referred to as an "Authorized Option Plan or Agreement");

(3) shares of capital stock issued or issuable as a dividend or distribution on Series A Preferred Stock;

(4) shares of capital stock issued or issuable for which adjustment of the Series A Conversion Price is made pursuant to Section 4(d)(v)(A);

(5) shares of capital stock or Options issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings,

commercial property lease transactions or similar transactions, provided that the respective terms thereof are approved by the Board of Directors (including the approval by a Series A Director then serving on the Board of Directors);

(6) shares of capital stock or Options issued in connection with bona fide acquisitions, mergers or similar transactions, provided that the respective terms thereof are approved by the Board of Directors (including the approval by a Series A Director then serving on the Board of Directors), and;

(7) any securities where the holders of at least sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock have waived the right of all holders of Series A Preferred Stock to have the Series A Conversion Price adjusted with respect to any such issuance.

(ii) 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 Preferred Stock, the conversion or exchange of such Convertible Securities or 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 Series A Conversion Price shall be made upon the subsequent issue of Convertible Securities or Preferred Stock or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities or Preferred Stock;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series A Conversion Price shall affect the Common Stock previously issued upon conversion of the 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 Series A 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:

(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 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

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

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (1) the Series A Conversion Price on the original adjustment date, or (2) the Series A Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(E) in the case of Options (if any) that expire by their terms within thirty (30) days after the date of issue thereof, no adjustment of the Series A Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the manner provided in clause (C) above.

(iii) Adjustment of Series A Conversion Price for Issue of Additional Shares of Common Stock. In the event the Corporation at any time after the Original Issue Date shall issue any Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(ii)) without consideration or for a consideration per share which is less than the Series A Conversion Price in effect on the date of and immediately prior to such issuance, then, and in such event, the Series A Conversion Price in effect immediately prior to each such issuance shall be reduced, concurrently with such issuance, to a price determined by multiplying such Series A Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issuance or sale, plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for the issuance of any such Additional Shares of Common Stock would purchase at the then existing Series A Conversion Price; and the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issuance or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which are

issuable upon the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date.

(iv) Determination of Consideration For purposes of this Section 4(d), the consideration received by the Corporation for the issuance 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 mutual agreement of the Board and the holders of at least sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock; provided, however, that no value shall be attributable to any service performed by any employee, officer or director 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 Section 4(d)(iii) above, as determined in good faith by the mutual agreement of the Board and the holders of at least sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock.

(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)(ii), 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 Preferred Stock, the exercise of such Options for Convertible Securities or 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 other performing similar services in connection with such issue of Additional Shares of Common Stock, in an aggregate amount in excess of ten percent (10%) of the aggregate consideration received

by the Corporation for such issue, as determined in clause (1) above, consideration shall be computed as provided in clause (1) above after deducting the aggregate amount of such expenses in excess of ten percent (10%) of the aggregate consideration received by the Corporation for such issue.

(v) Other Adjustments of Series A Conversion Price

(A) 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 Series A Conversion Price 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.

(B) Adjustments for Other Distributions. If the Corporation at any time for 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, 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 Section 4 with respect to the rights of the holders of the Series A Preferred Stock.

(C) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the 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(d)(v)(A) or a Deemed Liquidation), the Series A Conversion Price 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 the Series A Preferred Stock would have been entitled upon that reorganization or reclassification. The provisions of this Section 4(d)(v)(C) shall apply to successive reorganizations or reclassifications.

(e) No Impairment The Corporation will not, by amendment of the Certificate 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 the Series A Preferred Stock against impairment

(f) Certificates as to Adjustments Upon the occurrence of each adjustment or readjustment of any 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 (A) such adjustment and readjustment, (B) the Series A Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share Series A Preferred Stock.

(g) 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 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 each holder 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 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).

(h) 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 shares 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

(i) Reservation of Stock Issuable upon Conversion The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock,

such number of its shares of Common Stock as shall from time to time be sufficient to effect a conversion of all outstanding shares of the 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 shares of the 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 stockholder approval of any necessary amendment to the Certificate of Incorporation

(j) Fractional Shares. No fractional shares shall be issued upon the conversion of any share or shares of 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)

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, or if sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at his address or facsimile number appearing in the records of the Corporation.

(l) Miscellaneous.

(i) All calculations under this Section 4 shall be made to the nearest one hundredth of one cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(ii) In the event that the Board and the holders of at least sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock are unable to agree on any determination of fair value pursuant to this Section 4, such determination of fair value shall be made by an independent appraiser selected jointly by the Board and the holders of the Series A Preferred Stock, the cost of such appraisal to be borne equally by the Corporation and the holders of the Series A Preferred Stock.

(iii) No adjustment in any Conversion Price need be made if such adjustment would result in a change in such Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 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 \$0.01 or more in such Conversion Price.

5 Voting Rights

(a) Generally. The holder of each share of Series A Preferred Stock shall have one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting shall be entitled,

notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Corporation's Bylaws, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of 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) Board of Directors The Board of Directors shall consist of seven (7) members. The holders of the Common Stock, voting as a separate class, shall be entitled to elect five (5) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director. The holders of the Series A Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director (each, a "Series A Director")

6. Protective Provisions. In addition to any other rights provided by law, so long as any shares of Series A Preferred Stock are 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 Certificate of Incorporation, without first obtaining the affirmative vote or written consent of the holders of at least sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of the Series A Preferred Stock, the Corporation shall not:

(i) purchase or redeem Preferred Stock other than pursuant to the redemption provisions contained in the Certificate of Incorporation;

(ii) repurchase any shares of Common Stock (except for (A) the repurchase of shares of Common Stock from directors, employees and consultants, not to exceed \$25,000 in any twelve (12) month period or (B) any repurchase that is pursuant to the Corporation's right of first refusal that shall be set forth in that certain Stockholders Agreement entered into by and among the Corporation and certain stockholders of the Corporation on or about the date hereof, as amended);

(iii) authorize or issue any security having rights senior to or *pari passu* with the Series A Preferred Stock;

(iv) declare or pay dividends on or make any distribution on account of the Common Stock;

(v) effect any Liquidation Event;

(vi) permit a subsidiary of the Corporation to sell securities to a third party;

(vii) increase or decrease the number of authorized shares of Preferred Stock;

(viii) amend the Certificate of Incorporation to change the rights, preferences, privileges or limitations of the Preferred Stock; or

(ix) incur any indebtedness for borrowed money that would cause the Corporation's aggregate outstanding indebtedness for borrowed money to exceed \$250,000

7. Status of Redeemed or Converted Stock. In the event any shares of Preferred Stock shall be redeemed or converted pursuant to Section 3 or Section 4, the shares so redeemed or converted shall be cancelled and shall not be issuable by the Corporation. The Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock

ARTICLE 5

No holder of any shares of the Corporation's capital stock shall have the preemptive right to purchase, subscribe for, or otherwise acquire any shares of stock of the Corporation of any class now or hereafter authorized, or any securities exchangeable for or convertible into such shares, or any warrants or other instruments evidencing rights or options to subscribe for, purchase or otherwise acquire shares; provided, however, that the Corporation shall be expressly authorized to enter into agreements or instruments granting preemptive or similar rights with respect to the issuance of shares of the Corporation of any class now or hereafter authorized, or any securities exchangeable for or convertible into such shares, or any warrants or other instruments evidencing rights or options to subscribe for purchase or otherwise acquire shares

ARTICLE 6

(a) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors and elections of the directors of the Corporation need not be by written ballot unless otherwise provided in the Bylaws

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

ARTICLE 7

To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) agents of this Company (and any other persons to which Delaware General Corporation Law permits this Company to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this Company, its stockholders, and others

Any amendment, repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the

time of, or increase the liability of any director of this Company with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

ARTICLE 8

A director of this Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this provision shall not eliminate or limit the liability of a director (i) for any breach of his duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derives an improper personal benefit. If the General Corporation Law of the State of Delaware is hereafter amended to authorize corporate action further limiting or eliminating the personal liability of directors, then the liability of the directors of the Corporation shall be limited or eliminated to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended from time to time. Any repeal or modification of this Article 8 by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

In further and not in limitation of the powers conferred by statute: (a) the Corporation may purchase and maintain insurance on behalf of any individual who is or was a director or officer, employee or agent of the Corporation, or is serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify against such liability under the provisions of law; and (b) the Corporation may create a trust fund, grant a security interest and/or use other means (including, without limitation, letters of credit, surety bonds and/or other similar arrangements), as well as enter into contracts providing indemnification to the full extent authorized or permitted by law and including as part thereof provisions with respect to any or all of the foregoing to ensure the payment of such amounts as may be necessary to effect indemnification as provided therein, or elsewhere.

ARTICLE 9

The Board of Directors of the Corporation shall have the power to make, alter, amend, change, add to or repeal the Bylaws of the Corporation.