

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	conversion of limited liability company to corporation and change of name		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Lowermybills.com, Inc.		09/25/2003	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	LowerMyBills, Inc.		
Street Address:	2401 Colorado Avenue, Suite 200		
City:	Santa Monica		
State/Country:	CALIFORNIA		
Postal Code:	90404		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	2519342	LOWERMYBILLS.COM	
Registration Number:	2879519	LOWERMYBILLS.COM	
CORRESPONDENCE DATA			
Fax Number:	(312)222-0818		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	312.222.0800		
Email:	jhbrown@michaelbest.com		
Correspondent Name:	Jeffrey H. Brown		
Address Line 1:	180 N. Stetson, Suite 2000		
Address Line 4:	Chicago, ILLINOIS 60601		
ATTORNEY DOCKET NUMBER:	017721-9001		
NAME OF SUBMITTER:	Jeffrey H. Brown		
Signature:	/Jeffrey H. Brown/		
Date:	01/14/2008		

CH \$65.00 2519342

Total Attachments: 26

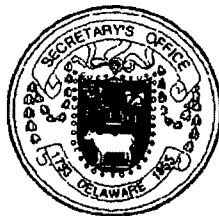
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Delaware

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The First State

I, HARRIET SMITH WINDSOR, OWNER, 500 MARKET STREET, WILMINGTON, DELAWARE, HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE RECORD OF THE PROCEEDINGS OF THE BOARD OF DIRECTORS OF THE DELAWARE STATE BANK, INC., FOR THE YEAR ENDING DECEMBER 31, 1906, AT 2 O'CLOCK P.M.



3077193 8100
060640642

Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4877819

DATE: 07-05-06

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REEL: 003695 FRAME: 0705

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

LOWERMYBILLS, INC.

FIRST: The present name of the corporation (hereinafter called the "corporation") is LowerMyBills, Inc. and the date of filing the original certificate of incorporation of the corporation with the Secretary of State of the State of Delaware is December 14, 1999.

SECOND: The corporation was initially formed as LowerMyBills.com, LLC, a Delaware limited liability company; the date of filing of the original certificate of formation with the Secretary of State of the State of Delaware is July 30, 1999; such limited liability company was converted to a corporation pursuant to Section 265 of the Delaware General Corporation Law; and the date of filing of the Certificate of Conversion with the Secretary of State of the State of Delaware is December 14, 1999.

THIRD: The provisions of the certificate of incorporation of the corporation as heretofore amended and/or supplemented, and as herein amended, are hereby restated and integrated into the single instrument which is hereinafter set forth, and which is entitled Amended and Restated Certificate of Incorporation of LowerMyBills, Inc.

FOURTH: The required stockholder vote to approve this Amended and Restated Certificate of Incorporation is (i) a majority of the outstanding shares of Series B Preferred Stock voting as a separate class, (ii) two-thirds of the outstanding shares of Series C Preferred Stock voting as a separate class, and (iii) a majority of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock, voting together as a single class. This Amended and Restated Certificate of Incorporation has been duly adopted by the holders of the requisite number of shares of the corporation in accordance with Section 242 of the General Corporation Law of the State of Delaware pursuant to a written stockholder consent in accordance with Section 228 of the General Corporation Law of the State of Delaware.

FIFTH: The amendment and the restatement herein certified have been duly adopted by at least a majority of the directors who have been elected and qualified in the manner and by the vote prescribed by Section 242 and Section 245 of the General Corporation Law of the State of Delaware.

SIXTH: The certificate of incorporation of the corporation, as amended and restated herein, shall at the effective time of this Amended and Restated Certificate of Incorporation, read as follows:

1. The name of the corporation is: LowerMyBills, Inc. (the "Corporation").
2. The address of its registered office in the State of Delaware is 32 Loockenman Square, Suite 109, in the City of Dover, County of Kent. The name of its registered agent at such address is Corporate Research Solutions, Inc.
3. The nature of the business or purposes to be conducted or promoted is to: engage in a business of providing consumers with information and assistance to research, compare and lower their recurring expenses; and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.
4. The total number of shares of stock which the corporation shall have authority to issue is: (a) Eighty Seven Million Five Hundred Thousand (87,500,000) shares of common stock, par value of \$.001 per share ("Common Stock") (b) Seven Hundred Fourteen Thousand Two Hundred Eighty-Six (714,286) shares of Series A Preferred Stock, par value of \$.001 per share; (c) Five Million One Hundred Twenty-Four Thousand Eight Hundred Eight (5,124,808) shares of Series B Preferred Stock, par value of \$.001 per share; (d) Eleven Million Five Hundred and Fifty Thousand (11,550,000) shares of Series C Preferred Stock, par value of \$.001 per share, and (e) Two Million Seven Hundred Fifty Thousand (2,750,000) shares

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of Series C-1 Preferred Stock, par value of \$.001 per share. Effective upon the filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, each issued and outstanding shares of Common Stock of the corporation shall be split, without any further action on the part of the holders thereof, into 2.5 shares of Common Stock of the corporation.

5. A description of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock and a statement of the designations and the relative rights, preferences and limitations of the shares of each are as follows:

A. **Series A Preferred Stock**

1. **Dividends and Distributions.**

(a) The shares of Series A Preferred Stock are collectively referred to herein as the "Series A Shares." The holder of Series A Shares shall be entitled to receive, out of any funds legally available therefor, dividends at the annual rate of ten percent (10%) of the Series A Original Issue Price per Series A Share, on a cumulative basis payable upon: (i) liquidation, dissolution or winding up of the Corporation, or (ii) redemption of the Series A Shares. The Series A Original Issue Price is \$.35 per Series A Share. The Series A Shares shall be subordinate to the Series B Preferred Stock, the Series C Preferred Stock and the Series C-1 Preferred Stock in terms of rights to distributions relating to redemption, dissolution, liquidation or winding-up of the Company and dividends.

(b) All numbers relating to calculation of dividends shall be subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Series A Shares.

(c) Upon any voluntary conversion of any Series A Shares pursuant to Section 5 hereof, all accrued and unpaid dividends on such Series A Shares shall be waived and shall not be due and payable.

(d) Unless all accrued dividends on the Series A Shares have been paid or a sum sufficient for the payment thereof has been set apart, no dividend shall be paid on any shares of Common Stock except for: (i) a stock split, or (ii) declaring or paying any dividend consisting of shares of any class of the Corporation's capital stock to holders of such class of capital stock. In the event that the Board of Directors of the Corporation shall declare a dividend payable on the then outstanding shares of Common Stock of the Corporation, the holders of the Series A Shares shall be entitled to receive dividends in an amount per Series A Share that is equal to the product of (i) the number of shares of Common Stock into which the Series A Share is convertible on the record date for the declaration of such dividend, multiplied by (ii) the per share cash dividend and the per share amount (payable in cash, based upon the fair market value at the time the non-cash dividend or other distribution is declared or paid as determined in good faith by the Board of Directors) of all non-cash dividends or other distributions on the Common Stock, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock. Such dividends shall be declared and paid contemporaneously with the declaration and payment of the related dividend on the Common Stock.

2. **Liquidation.** Upon any liquidation, dissolution or winding up of the Corporation, the holders of the Series A Shares will be entitled to be paid pro rata, before any distribution or payment is made upon any shares of Common Stock, an amount in cash equal to \$.35 per Series A Share held by such holder, plus accrued and unpaid dividends, and the holders of the Series A Shares will not be entitled to any further payment. If upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of the Series A Shares are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid, then, subject to the preferential distribution of assets to the holders of the Series B Preferred Stock in accordance with Section 2 of Part B below, the Series C Preferred Stock in accordance with Section 2 of Part C below, and the Series C-1 Preferred Stock in accordance with Section 2 of Part D below, the assets to be distributed will be distributed ratably among such holders based upon the number of Series A Shares held by each such holder. The Corporation will mail written notice of such liquidation, dissolution or winding up,

not less than 45 days prior to the payment date stated therein, to each record holder of the Series A Shares. A consolidation or merger of the Corporation in a transaction in which the stockholders of the Corporation receive cash, securities or other consideration in exchange for the shares of capital stock of the Corporation, or a sale, conveyance or disposition of all or substantially all of the assets of the Corporation to another person or persons, or the effectuation by the Corporation of a transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of, shall be regarded as a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Section.

3. Redemption. The Corporation shall have no right to require any holder of Series A Shares to submit such shares to redemption and the holder of Series A Shares shall have no right to require the Corporation to redeem such holder's shares.

4. Voting Rights.

(a) The Series A Shares shall have voting rights identical to the voting rights of the Common Stock and shall vote with the Common Stock, Series B Preferred Stock, Series C Preferred Stock and Series C-1 Preferred Stock as a single class.

(b) The foregoing notwithstanding, where the holders of the Series A Shares are, as required by law, entitled to vote as a separate class, approval by affirmative vote or written consent of the holders of at least a majority of the outstanding Series A Shares shall be required.

(c) On all matters where holders of the Series A Shares are entitled to vote, each holder of Series A Shares shall be entitled to the number of votes equal to the largest integral number of shares of Common Stock into which such holder's Series A Shares could be converted, as of the record date, in the case of a meeting, or the effective date of any consent given in lieu of a meeting.

5. Conversion.

(a) At any time any holder of Series A Shares may convert all or any portion of the Series A Shares held by such holder into shares of Common Stock. Each Series A Share is convertible into the number of shares of Common Stock equal to the quotient obtained by dividing the Series A Original Issue Price by the Series A Conversion Value, as such values may be adjusted as provided in Part A Sections 5(e), and 7 below. Until so adjusted, the Series A Original Issue Price shall be \$.35 and the Series A Conversion Value shall be \$.35.

(b) Each conversion of Series A Shares will be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series A Shares to be converted have been surrendered at the principal office of the Corporation or its transfer agent, if any. At such time as such conversion has been effected, the rights of the holder of such Series A Shares as such holder will cease and such holder will be deemed to have become the holder of record of the shares of Common Stock represented thereby.

(c) As soon as possible after a conversion has been effected (but in any event within seven (7) business days in the case of subparagraph (i) below), the Corporation will deliver to the converting holder:

(i) certificates representing the number of shares of Common Stock issuable by reason of such conversion; and

(ii) a certificate representing any Series A Shares which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(d) The issuance of certificates for shares of Common Stock upon conversion of Series A Shares will be made without charge to the holder of such Series A Shares for any issuance tax in respect

thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of each Series A Share, the Common Stock issued pursuant to such conversion will be validly issued, fully paid and nonassessable and the Corporation will take all such actions as are necessary in order to insure such result.

(e) If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series A Conversion Value in effect immediately prior to such subdivision will be proportionately reduced, and if the Corporation at any time combines (by reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Series A Conversion Value in effect immediately prior to such combination will be proportionately increased.

(f) Any capital reorganization, reclassification, consolidation, public offering, merger or sale of all or substantially all of the Corporation's assets which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for their Common Stock is referred to herein as an Extraordinary Transaction. Prior to the consummation of any Extraordinary Transaction, the Corporation will make appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series A Shares then outstanding) to insure that each of the holders of Series A Shares will thereafter have the right to acquire and receive such shares of stock, securities or assets as such holder would have received in connection with such Extraordinary Transaction if such holder had converted his Series A Shares immediately prior to such Extraordinary Transaction. In any such case, the Corporation will make appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series A Shares then outstanding) to insure that the provisions of this Section will thereafter be applicable to the Series A Shares. The Corporation will not effect any such Extraordinary Transaction, unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from consolidation or merger or the corporation purchasing such assets assumes by written instrument (in form reasonably satisfactory to the holders of a majority of the Series A Shares then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(g) The Corporation shall deliver written notice to all holders of Series A Shares:

(i) immediately upon any adjustment of the Series A Conversion Value; or

(ii) at least 20 days prior to the date on which the Corporation closes its books or takes a record: (A) with respect to any dividend or other distribution upon Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Extraordinary Transaction, dissolution or liquidation.

(h) All outstanding Series A Shares shall automatically be converted into shares of Common Stock upon the first to occur of the following: (i) the consummation of the Corporation's first underwritten public offering of its Common Stock; (ii) a merger, or acquisition of, the Corporation; (iii) such time as less than 30% of the Series A Shares remain issued and outstanding; or (iv) upon the vote of a majority of the holders of Series A Shares; provided, the Series B Preferred Stock, the Series C Preferred Stock and the Series C-1 Preferred Stock are also converted.

6. Reversion to Preferred Stock. Series A Shares that are converted by the holder or that are purchased by the Corporation shall be cancelled and shall revert to authorized but unissued Preferred Stock undesignated as to series.

7. Anti-Dilution.

(a) If the Corporation shall, while there are any Series A Shares outstanding, issue or sell Common Stock (or securities convertible into, or exchangeable for, Common Stock) without consideration or for a price per share (assuming full conversion or exchange of the securities convertible or exchangeable

into Common Stock) less than the Series A Conversion Value in effect immediately prior to such sale (such stock, "Series A Dilution Stock"), then, except as otherwise provided herein, the Series A Conversion Value shall be decreased to an amount determined by multiplying the Series A Conversion Value by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to the issuance of the Series A Dilution Stock (calculated on a fully diluted basis assuming full conversion), plus (B) the number of shares of Common Stock which the net aggregate consideration, if any, received by the Corporation from the issuance of the Series A Dilution Stock would purchase at the Series A Conversion Value in effect immediately prior to the issuance of the Series A Dilution Stock, and

(ii) the denominator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to the issuance of the Series A Dilution Stock (calculated on a fully diluted basis assuming full conversion), plus (B) the number of shares of Common Stock (calculated on a fully diluted basis assuming full conversion) to be issued as part of the Series A Dilution Stock issuance.

(b) Series A Dilution Stock issued as dividends on any class of the Corporation's capital stock other than Common Stock shall be deemed to have been issued at a per share price of \$.001.

(c) Series A Dilution Stock issued as compensation for goods or services provided to the Corporation shall be deemed to be issued for the fair market value of such goods or services as determined in good faith by the Corporation's Board of Directors.

(d) Anything herein to the contrary notwithstanding, the anti-dilution protection set forth in this Section shall not apply to: (i) securities issued upon conversion of the Series A Shares, Series B Preferred Stock, Series C Preferred Stock or Series C-1 Preferred Stock, (ii) the issuance of securities in connection with acquisitions by the Corporation of stock or assets of another entity, (iii) the issuance of securities to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions, (iv) options exercisable for shares of Common Stock, or Shares issuable pursuant to grants of qualified or non-qualified stock options, approved by the Board of Directors, (v) the issuance of securities in connection with a public offering, or (vi) the issuance of securities in connection with strategic alliances.

8. Registration of Transfer. The Corporation will keep at its principal office a register for the registration of Series A Shares. Upon the surrender of any certificate representing Series A Shares at such place, the Corporation will, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Series A Shares represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of Series A Shares as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate.

9. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Series A Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation, or, in the case of any such mutilation upon surrender of such certificate, the Corporation will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Series A Shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

10. Amendment and Waiver. No amendment, modification or waiver will be binding or effective with respect to any provision of this Part A of Article 5 of this Amended and Restated Certificate of Incorporation without the prior written consent of the holders of a majority of the Series A Shares outstanding at the time such action is taken. No change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation unless the Corporation has obtained the prior written consent of the holders of a majority of the Series A Shares then outstanding.

11. Notices. Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated in writing by any such holder).

B. Series B Preferred Stock

The shares of Series B Preferred Stock are collectively referred to herein as the "Series B Shares." The Series A Shares and any other series of Preferred Stock ranking junior to the Series B Shares as to liquidation, dividend and redemption preferences or rights shall be referred to in this Part B as "Junior Preferred Stock." The rights of the holders of Series B Shares, the Series C Preferred Stock and the Series C-I Preferred Stock as to dividends shall be *pari passu*.

1. Dividends and Distributions.

(a) The holder of Series B Shares shall be entitled to receive, out of any funds legally available therefor, at the annual rate of eight percent (8%) of the Series B Original Issue Price per Series B Share, non-cumulative dividends payable only upon: (i) liquidation, dissolution or winding up of the Corporation, or (ii) the sale of all or substantially all of the assets of the Corporation. The Series B Original Issue Price is \$.781 per Series B Share.

(b) All numbers relating to calculation of dividends shall be subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Series B Shares.

(c) Upon any voluntary conversion of any Series B Shares pursuant to Section 5 hereof, all accrued and unpaid dividends on such Series B Shares shall be waived and shall not be due and payable.

(d) Unless all accrued dividends on the Series B Shares have been paid or a sum sufficient for the payment thereof has been set apart, no dividend shall be paid on any shares of Common Stock or Series A Shares except for: (i) a stock split, or (ii) declaring or paying any dividend consisting of shares of any class of the Corporation's capital stock to holders of such class of capital stock. In the event that the Board of Directors of the Corporation shall declare a dividend payable on the then outstanding shares of Common Stock of the Corporation, the holders of the Series B Shares shall be entitled to receive dividends in an amount per Series B Share that is equal to the product of (i) the number of shares of Common Stock into which the Series B Share is convertible on the record date for the declaration of such dividend, multiplied by (ii) the per share cash dividend and the per share amount (payable in cash, based upon the fair market value at the time the non-cash dividend or other distribution is declared or paid as determined in good faith by the Board of Directors) of all non-cash dividends or other distributions on the Common Stock, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock. Such dividends shall be declared and paid contemporaneously with the declaration and payment of the related dividend on the Common Stock.

2. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, the holders of the Series B Shares will be entitled to be paid pro rata among the holders of Series B Shares, before any distribution or payment is made upon any shares of Common Stock or Junior Preferred Stock, an amount in cash equal to \$.781 per Series B Share (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or similar event involving a change in Series B Shares) held by each such holder, plus accrued and unpaid dividends up to and including the date of liquidation, in accordance with Section 1 above (the "Series B Liquidation Amount"). If upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of the Series B Shares are insufficient to permit payment to such holders of the Series B Liquidation Amount, then, subject to the preferential distribution of assets to the holders of the Series C Preferred Stock in accordance with Section 2 of Part C below and the Series C-I Preferred Stock in accordance with Section 2 of Part

D below, the assets to be distributed will be distributed ratably among such holders based upon the number of Series B Shares held by each such holder. The Corporation will mail written notice of such liquidation, dissolution or winding up, not less than 45 days prior to the payment date stated therein, to each record holder of the Series B Shares. A consolidation or merger of the Corporation in a transaction in which the stockholders of the Corporation receive cash, securities or other consideration in exchange for the shares of capital stock of the Corporation, or a sale, conveyance or disposition of all or substantially all of the assets of the Corporation to another person or persons, or the effectuation by the Corporation of a transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of, shall be regarded as a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Section.

3. Redemption. The Corporation shall have no right to require any holder of Series B Shares to submit such shares to redemption and the holder of Series B Shares shall have no right to require the Corporation to redeem such holder's shares.

4. Voting Rights.

(a) The holders of Series B Shares shall have voting rights identical to the voting rights of the Common Stock and shall vote with the Common Stock, Series A Shares, Series C Preferred Stock and Series C-1 Preferred Stock as a class.

(b) The foregoing notwithstanding, approval, by affirmative vote or written consent, of holders of at least a majority of the outstanding Series B Shares shall be required for any of the following (whether accomplished by an amendment or modification of the Corporation's Certificate of Incorporation, Bylaws or otherwise): (i) any action that adversely alters or affects the powers, preferences, or rights of the Series B Shares or restrictions for the benefit of the holders thereof, (ii) any increase or decrease in the number of authorized Series B Shares, (iii) any sale, lease, encumbrance or other disposition of substantially all of the assets of the Corporation, (iv) any consolidation, merger or sale of the stock of the Corporation that results in the holders of the Corporation's capital stock immediately prior to such transaction owning less than fifty percent (50%) of the Corporation's capital stock following such transaction, (v) any redemption of outstanding shares of the Corporation's capital stock, other than redemptions of Series C Preferred Stock upon the terms provided in Part C Section 3 of this Amended and Restated Certificate of Incorporation or redemptions upon the termination of an officer, employee, director or consultant pursuant to a restricted stock purchase agreement (vi) any increase in the size of the Corporation's Board of Directors in excess of seven (7) directors (vii) any authorization of the payment of dividends or other distributions of assets to holders of Common Stock or Junior Preferred Stock, and (viii) creation of any class or series of stock having preferences over or being on a parity with the Series B Shares as to dividends, liquidation preference, voting or redemption rights.

(c) On all matters where holders of the Series B Shares are entitled to vote, each holder of Series B Shares shall be entitled to the number of votes equal to the largest whole number of shares of Common Stock into which such holder's Series B Shares could be converted, as of the record date, in the case of a meeting, or the effective date of any consent given in lieu of a meeting. Notwithstanding the foregoing, (i) the holders of the Series B Shares shall be entitled, voting as a separate class, to elect two (2) members of the Corporation's Board of Directors (the "Series B Directors"), (ii) the holders of the Series C Preferred Stock shall be entitled, voting as a separate class, to elect two (2) members of the Corporation's Board of Directors (the "Series C Directors"), and (iii) the holders of the Common Stock shall be entitled, voting as a separate class, to elect the remaining three (3) members of the Corporation's Board of Directors (the "Common Stock Directors").

5. Conversion.

(a) At any time any holder of Series B Shares may convert all or any portion of the Series B Shares held by such holder into Common Stock. Each Series B Share is convertible into the number of shares of Common Stock equal to the quotient obtained by dividing the Series B Original Issue Price by the Series B Conversion Value, as such value may be adjusted as provided in Part B Sections 5(e), and 7 below. Until so adjusted, the Series B Conversion Value shall be \$.781.

(b) Each conversion of Series B Shares will be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series B Shares to be converted have been surrendered at the principal office of the Corporation or its transfer agent, if any. At such time as such conversion has been effected, the rights of the holder of such Series B Shares as such holder will cease and such holder will be deemed to have become the holder of record of the shares of Common Stock represented thereby. If a holder of Series B Shares plans to convert such shares into Common Stock in connection with an offer by the Company of any of its shares of Common Stock being registered pursuant to the Securities Act of 1933, such conversion may, at the option of such holder, be conditioned upon the effectiveness of such registration and the closing of the sale of such registered shares pursuant to such offering, and such conversion shall be deemed to occur immediately prior to such closing. If a holder of Series B Shares plans to convert such shares into Common Stock in connection with an Extraordinary Transaction described in Part B Section 5(f) below, such conversion may, at the option of such holder, be conditioned upon the closing of such transaction, and such conversion shall be deemed to occur immediately prior to such closing.

(c) As soon as possible after a conversion has been effected (but in any event within seven (7) business days, the Corporation will deliver to the converting holder:

(i) certificates representing the number of shares of Common Stock issuable by reason of such conversion; and

(ii) a certificate representing any Series B Shares which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(d) The issuance of certificates for shares of Common Stock upon conversion of Series B Shares will be made without charge to the holder of such Series B Shares for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of each Series B Share, the Common Stock issued pursuant to such conversion will be validly issued, fully paid and nonassessable and the Corporation will take all such actions as are necessary in order to insure such result.

(e) If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series B Conversion Value in effect immediately prior to such subdivision will be proportionately increased, and if the Corporation at any time combines (by reverse stock split or otherwise) outstanding shares of Common Stock into a smaller number of shares, the Series B Conversion Value in effect immediately prior to such combination will be proportionately increased.

(f) Any capital reorganization, reclassification, consolidation, merger or sale of all or substantially all of the Corporation's assets which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for their Common Stock is referred to herein as an Extraordinary Transaction. Prior to the consummation of any Extraordinary Transaction, the Corporation will make appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series B Shares then outstanding) to insure that each of the holders of Series B Shares will thereafter have the right to acquire and receive such shares of stock, securities or assets as such holder would have received in connection with such Extraordinary Transaction if such holder had converted his Series B Shares immediately prior to such Extraordinary Transaction. In any such case, the Corporation will make appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series B Shares then outstanding) to insure that the provisions of this Section will thereafter be applicable to the Series B Shares. The Corporation will not effect any such Extraordinary Transaction, unless prior to the consummation thereof, the successor corporation or other entity (if other than the Corporation) resulting from consolidation or merger or the corporation or other entity purchasing such assets assumes by written instrument (in form reasonably satisfactory to the holders of a majority of the Series B Shares then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(g) The Corporation shall deliver written notice to all holders of Series B Shares:

(i) immediately upon any adjustment of the Series B Conversion Value; or

(ii) at least 20 days prior to the date on which the Corporation closes its books or takes a record: (A) with respect to any or divided or other distribution upon Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Extraordinary Transaction, dissolution or liquidation.

(h) All outstanding Series B Shares shall automatically be converted into shares of Common Stock, in accordance with this Section: (i) upon the consummation of a Qualified Public Offering; or (ii) upon the vote of a majority of the holders of Series B Shares; provided the Series A Shares, the Series C Preferred Stock and the Series C-1 Preferred Stock are also converted. "Qualified Public Offering" shall mean the consummation of the first underwritten public offering of securities of the Company offered on a "firm commitment" basis pursuant to a registration statement filed with the Commission under the Securities Act on Form S-1 or Form SB-2 or their then equivalents and the aggregate price actually paid for such shares by the public is at least \$20,000,000 (in the case of the per share price and aggregate price, before deductions for any underwriting discounts or expenses of sale).

(i) No Impairment. The Corporation, whether by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but at all times in good faith shall assist in the carrying out of all of such action as may be necessary or appropriate in order to protect the conversion rights pursuant to this Part B Section 5 and Section 7 below of the holders of Series B Shares against dilution or other impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series B Conversion Value pursuant to this Part B Section 5 or Section 7 below, the Corporation at its expense promptly shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation, upon the written request at any time of any holder of Series B Shares shall furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series B Conversion Value 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 the Series B Shares held by such holder.

6. Reversion to Preferred Stock. Series B Shares that are converted by the holder or that are purchased by the Corporation shall be cancelled and shall revert to authorized but unissued Preferred Stock undesignated as to series.

7. Anti-Dilution.

(a) If the Corporation shall, while there are any Series B Shares outstanding, issue or sell Common Stock (or securities convertible into, or exchangeable for, Common Stock) without consideration or for a price per share (assuming full conversion or exchange of the securities convertible or exchangeable into Common Stock) less than the Series B Conversion Value in effect immediately prior to such sale (such stock, "Series B Dilution Stock"), then, except as otherwise provided herein, the Series B Conversion Value shall be decreased to an amount determined by multiplying the Series B Conversion Value by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to the issuance of the Series B Dilution Stock (calculated on a fully diluted basis assuming full conversion), plus (B) the number of shares of Common Stock which the net aggregate consideration, if any, received by the Corporation from the issuance of the Series B Dilution Stock would

purchase at the Conversion Value in effect immediately prior to the issuance of the Series B Dilution Stock, and

(ii) the denominator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to the issuance of the Series B Dilution Stock (calculated on a fully diluted basis assuming full conversion), plus (B) the number of shares of Common Stock (calculated on a fully diluted basis assuming full conversion) to be issued as part of the Series B Dilution Stock issuance.

(b) Series B Dilution Stock issued as dividends on any class of the Corporation's capital stock other than Common Stock shall be deemed to have been issued at a per share price of \$.001.

(c) Series B Dilution Stock issued as compensation for goods or services provided to the Corporation shall be deemed to be issued for the fair market value of such goods or services as determined in good faith by the Corporation's Board of Directors.

(d) For purposes of Section 7(a), "Series B Dilution Stock" shall be deemed to include any grant by the Corporation, other than as described in Section 7(e) below, of any rights or options to subscribe for, purchase, or otherwise acquire shares of Common Stock, or any securities convertible into or exchangeable for Common Stock ("Convertible Securities"), and in each case the price per share of Common Stock issuable on the exercise of the rights or options or the conversion of the Convertible Securities will be determined by dividing the total amount, if any, received or receivable by the Corporation as consideration for the granting of the rights or options or the issue or sale of the Convertible Securities, plus the minimum aggregate amount of additional consideration payable to the Corporation on exercise or conversion of the securities, by the maximum number of shares of Common Stock issuable on the exercise or conversion; provided that such granting or issue or sale will be considered to be an issue or sale for cash of the maximum number of shares of Common Stock issuable on exercise or conversion at the price per share determined under this section 7(d), and the Series B Conversion Value will be adjusted as above provided to reflect (on the basis of that determination) the issue or sale; provided further that no further adjustment of the Series B Conversion Value will be made as a result of the actual issuance of shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities; provided that upon the redemption or repurchase of any such Convertible Securities or the expiration or termination of the right to convert into, exchange for, or exercise with respect to, Common Stock, the Series B Conversion Value will be readjusted to such amount as would have been obtained had the adjustment made upon their issuance pursuant to Section 7(d) been made upon the basis of the issuance of only the number of such securities as were actually converted into, exchanged for, or exercised with respect to, Common Stock.

(e) Anything herein to the contrary notwithstanding, the anti-dilution protection set forth in this Section shall not apply to securities issued: (i) upon conversion of the Series A Shares, the Series B Shares, the Series C Preferred Stock or the Series C-1 Preferred Stock; (ii) to employees, consultants, directors, vendors or customers of the Corporation directly or pursuant to a stock option plan approved by the Board of Directors (presuming such transactions are primarily for non-financing purposes); (iii) in connection with a bona fide business acquisition; (iv) in connection with a bona fide lease transaction or bank financing approved by the Board of Directors (including the Series B Directors); (v) in a public offering in which all of the Series B Shares will be converted to Common Stock; or (vi) in connection with the formation of a strategic business relationship, such determination being made in good faith by the Board of Directors. Notwithstanding the foregoing, (X) the securities that shall be excluded from the anti-dilution protection set forth in this Section as a result of (ii) above may not exceed Three Million (3,000,000) shares unless the transaction authorizing such issuance is approved by the Series B Directors; and (Y) the securities that shall be excluded from the anti-dilution protection set forth in this Section as a result of (vi) above may not exceed twenty five percent (25%) of the aggregate number of shares of capital stock then outstanding, for which purposes, all securities issuable upon conversion of convertible securities shall be deemed to be outstanding, unless the transaction authorizing such issuance is approved by the Board of Directors. In the event that the Series B Directors approve an increase in the share reserve of a Corporation stock option plan, such approval shall be considered as authorization by the Series B Directors for any stock issuance thereunder up to such increased share reserve so long as the stock issuance is approved by the Board of Directors or any authorized committee thereof.

8. Registration of Transfer. The Corporation will keep at its principal office a register for the registration of Series B Shares. Upon the surrender of any certificate representing Series B Shares at such place, the Corporation will, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Series B Shares represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of Series B Shares as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate.

9. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Series B Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation, or, in the case of any such mutilation upon surrender of such certificate, the Corporation will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Series B Shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

10. Amendment and Waiver. No amendment, modification or waiver will be binding or effective with respect to any provision of this Certificate of Incorporation without the prior written consent of the holders of a majority of the Series B Shares outstanding at the time such action is taken. No change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation unless the Corporation has obtained the prior written consent of the holders of a majority of the Series B Shares then outstanding.

11. Notices. Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated in writing by any such holder).

C. Series C Preferred Stock

The shares of Series C Preferred Stock are collectively referred to herein as the "Series C Shares." The Series A Shares and any other series of Preferred Stock ranking junior to the Series C Shares as to liquidation, dividend and redemption preferences or rights shall be referred to in this Part C as "Junior Preferred Stock." The rights of the holders of Series B Shares, Series C Shares and Series C-1 Preferred Stock as to dividends shall be pari passu. The rights of the holders of Series C Shares and Series C-1 Preferred Stock as to redemption shall be pari passu. The Series A Shares, ranking junior to the Series C Shares as to liquidation, dividend and redemption preferences or rights, shall be a class of Junior Preferred Stock in regards to all such rights; and the Series B Shares, ranking junior to the Series C Shares as to liquidation and redemption preferences or rights, shall be a class of Junior Preferred Stock in regards to liquidation and redemption preferences or rights only.

1. Dividends and Distributions.

(a) The holder of Series C Shares shall be entitled to receive, out of any funds legally available therefor, at the annual rate of eight percent (8%) of the Series C Original Issue Price per Series C Share, non-cumulative dividends payable only upon: (i) liquidation, dissolution or winding up of the Corporation, (ii) the sale of all or substantially all of the assets of the Corporation, or (iii) redemption of the Series C Shares. The Series C Original Issue Price is \$.781 per Series C Share.

(b) All numbers relating to calculation of dividends shall be subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Series C shares.

(c) Upon any voluntary conversion of any Series C Shares pursuant to Section 5 hereof, all accrued and unpaid dividends on such Series C Shares shall be waived and shall not be due and payable.

(d) Unless all accrued dividends on the Series C Shares have been paid or a sum sufficient for the payment thereof has been set apart, no dividend shall be paid on any shares of Common Stock or Series A Shares except for: (i) a stock split, or (ii) declaring or paying any dividend consisting of shares of any class of the Corporation's capital stock to holders of such class of capital stock. In the event that the Board of Directors of the Corporation shall declare a dividend payable on the then outstanding shares of Common Stock of the Corporation, the holders of the Series C Shares shall be entitled to receive dividends in an amount per Series C Share that is equal to the product of (i) the number of shares of Common Stock into which the Series C Share is convertible on the record date for the declaration of such dividend, multiplied by (ii) the per share cash dividend and the per share amount (payable in cash, based upon the fair market value at the time the non-cash dividend or other distribution is declared or paid as determined in good faith by the Board of Directors) of all non-cash dividends or other distributions on the Common Stock, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock. Such dividends shall be declared and paid contemporaneously with the declaration and payment of the related dividend on the Common Stock.

2. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, the holders of the Series C Shares will be entitled to be paid pro rata among the holders of Series C Shares, before any distribution or payment is made upon any shares of Common Stock or Junior Preferred Stock, an amount in cash equal to \$.781 per Series C Share (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or similar event involving a change in Series C Shares) held by each such holder, plus accrued and unpaid dividends up to and including the date of liquidation, in accordance with Section 1 above (the "Series C Liquidation Amount"). If upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of the Series C Shares are insufficient to permit payment to such holders of the Series C Liquidation Amount, then the entire assets to be distributed will be distributed ratably among such holders based upon the number of Series C Shares held by each such holder. The Corporation will mail written notice of such liquidation, dissolution or winding up, not less than 45 days prior to the payment date stated therein, to each record holder of the Series C Shares. A consolidation or merger of the Corporation in a transaction in which the stockholders of the Corporation receive cash, securities or other consideration in exchange for the shares of capital stock of the Corporation, or a sale, conveyance or disposition of all or substantially all of the assets of the Corporation to another person or persons, or the effectuation by the Corporation of a transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of, shall be regarded as a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Section.

3. Redemption Rights.

(a) Scheduled Redemptions. To the extent the Corporation shall have funds legally available for such payments, the Corporation shall offer to redeem one-half of all of the outstanding Series C Shares on May 31, 2008 and the remaining one-half of the outstanding Series C Shares on May 31, 2009. The shares to be redeemed shall be determined pro rata among the holders of shares of the Series C Shares. The Corporation's obligation to redeem the Series C Shares pursuant to this Section shall be cumulative. Each holder of Series C Shares may accept or reject the redemption offer at each Series C Redemption Date (as hereinafter defined). The rejection of any one scheduled Series C Redemption Date by a holder of shares for which the offer of redemption has been made shall not be deemed to be a rejection of an offer of redemption for any other shares to be made on any future scheduled Series C Redemption Date. If the Corporation shall fail to discharge all or any part of any scheduled redemption obligation pursuant to this subsection because of insufficient funds or because of state law restrictions on such redemption, (i) the entire amount legally available for the payment of the Corporation's redemption obligations to all series of Preferred Stock shall be divided in proportion to the total redemption obligation owing to such series, and (ii) the amount of funds allocated to the Series C Shares according to the previous sentence shall be used to offer and redeem the shares of holders of the Series C Shares ratably in proportion to the full number of shares which they would otherwise be entitled to have redeemed, and the balance of such redemption obligation shall be deferred and shall be discharged in one or more installments as soon as the Corporation shall have funds legally available to permit such redemption, at which time the Board of Directors shall promptly fix a date for such redemption and so notify the holders of such shares in writing.

(b) Price. The Series C Redemption Price of the Series C Shares (the "Series C Redemption Price") shall be an amount per share equal to \$.781 per share plus an amount equal to 8% per annum compounded annually, subject to appropriate adjustments for stock splits and other combinations. The Series C Redemption Price shall be subject to adjustment as provided in Section 7 hereof, and shall be subject to a 10% increase for each year that the redemption obligation is deferred under the last sentence of Section 3(a) above.

(c) Series C Redemption Notice. The Corporation shall, not less than thirty (30) days or more than sixty (60) days prior to the date fixed for redemption ("Series C Redemption Date"), mail written notice ("Series C Redemption Notice"), postage prepaid, to each holder of record of Series C Shares redeemed, at such holder's post office address last shown on the records of the Corporation. The Series C Redemption Notice shall state:

- (i) the total number of shares of Series C Shares which the Corporation is required to offer to redeem;
- (ii) the number of shares of Series C Shares held by the holder which the Corporation intends to offer to redeem;
- (iii) the Series C Redemption Date and Series C Redemption Price; and
- (iv) the time, place and manner in which the holder may elect to surrender to the Corporation the certificate or certificates representing the shares of Series C Shares to be redeemed.

The Series C Redemption Date and the Series C-1 Redemption Date (as defined in Part D below) shall be the same date.

(d) Surrender of Stock. On or before the Series C Redemption Date, each holder of Series C Shares electing to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series C Redemption Notice, and thereupon the Series C Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares represented by such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(e) Termination of Rights. If the Series C Redemption Notice is duly given, and if, on or prior to the Series C Redemption Date, the holders of the Series C Shares elect to have her, his or its shares redeemed and the Series C Redemption Price is either paid or made available for payment, then notwithstanding that the certificates evidencing any of the Series C Shares so called for redemption have not been surrendered, all rights with respect to such shares shall forthwith after the Series C Redemption Date cease and terminate, except only the right of the holders to promptly receive the Series C Redemption Price without interest upon surrender of their certificates therefor. If, on the other hand, the holders of Series C Shares electing to redeem her, his or its Series C Shares surrender such shares and payment of the Series C Redemption Price is not forthcoming, such holders of Series C Shares shall retain all of the rights of a holder of Series C Shares.

(f) Adjustment for Stock Splits and Combinations. If the Corporation at any time or from time to time after May 31, 2002 effects a subdivision of the outstanding shares of such Series C Shares, the Series C Redemption Price for the Series C Shares then in effect immediately before the subdivision shall be proportionately decreased, and conversely, if the Corporation at any time or from time to time after May 31, 2002, combines the outstanding shares of such Series C Shares into a smaller number of shares, the Series C Redemption Price for the Series C Shares then in effect immediately before the combination shall be proportionately increased. Any adjustment under this subdivision shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) Adjustment for Certain Dividends and Distributions. If the Corporation at any time or from time to time after May 31, 2002 makes or issues or fixes a record date for the determination of holders of Series C Shares entitled to receive, a dividend or other distribution payable in additional shares of such Series C Shares, then and in each such event the Series C Redemption Price for the Series C Shares then in effect shall be decreased as of the time of such issuances or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series C Redemption Price for such class of the Series C Shares then in effect by a fraction (i) the numerator of which is the total number of Series C Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which shall be the total number of Series C Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of Series C Shares issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series C Redemption Price for the Series C Shares shall be recomputed accordingly as of the close of business on such record date and thereafter the Series C Redemption Price for the Series C Shares shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions.

(h) Other Redemptions. Other than the scheduled redemptions provided for in Section 3(a) and in Section 3(a) of Part D below, the Corporation shall not, without the prior approval of a majority of the Board (including the affirmative vote of the Series C Directors), purchase or set aside any sums for the purchase of shares of Common Stock, except for the purchase of Common Stock from former employees, directors, officers, consultants or agents of the Corporation who acquired such shares directly from the Corporation, if (i) such purchase is made pursuant to the contractual rights held by the Corporation relating to the termination of services of such employee, director, officer, consultant or agent, and (ii) the purchase price does not exceed the original issue price paid by such former employee, director, officer, consultant or agent agreements to the Corporation.

4. Voting Rights.

(a) The holders of Series C Shares shall have voting rights identical to the voting rights of the Common Stock and shall vote with the Common Stock, the Series A Shares, the Series B Shares and the Series C-1 Preferred Stock as a single class.

(b) The foregoing notwithstanding, approval, by affirmative vote or written consent, of holders of at least two-thirds (2/3) of the outstanding Series C Shares shall be required for any of the following (whether accomplished by an amendment or modification of the Corporation's Certificate of Incorporation, Bylaws or otherwise): (i) any action that adversely alters or affects the powers, preferences, or rights of the Series C Shares or restrictions for the benefit of the holders thereof, (ii) any increase or decrease in the number of authorized Series C Shares, (iii) any sale, lease, encumbrance or other disposition of substantially all of the assets of the Corporation, (iv) any consolidation, merger or sale of the stock of the Corporation that results in the holders of the Corporation's capital stock immediately prior to such transaction owning less than fifty percent (50%) of the Corporation's capital stock, other than redemptions of Series C Shares in accordance with Part C Section 3 herein and redemptions upon the termination of an officer, employee, director or consultant pursuant to a restricted stock purchase agreement, (v) any increase in the size of the Corporation's Board of Directors in excess of seven (7) directors, (vi) any authorization of the payment of dividends or other distributions of assets to holders of Common Stock or Junior Preferred Stock, and (viii) creation of any class or series of stock having preferences over or being on a parity with the Series C Shares as to dividends, liquidation preference, voting or redemption rights.

(c) On all matters where holders of the Series C Shares are entitled to vote, each holder of Series C Shares shall be entitled to the number of votes equal to the largest whole number of shares of Common Stock into which such holder's Series C Shares could be converted, as of the record date, in the case of a meeting, or the effective date of any consent given in lieu of a meeting. Notwithstanding the foregoing, (1) the holders of the Series C Shares shall be entitled, voting as a separate class, to elect the two (2) Series C Directors, (ii) the holders of the Series B Shares shall be entitled, voting as a separate class, to

elect the two (2) Series B Directors, and (iii) the holders of the Common Stock shall be entitled, voting as a separate class, to elect the remaining three (3) Common Stock Directors.

5. Conversion.

(a) At any time any holder of Series C Shares may convert all or any portion of the Series C Shares held by such holder into Common Stock. Each Series C Share is convertible into the number of shares of Common Stock equal to the quotient obtained by dividing the Series C Original Issue Price by the Series C Conversion Value, as such value may be adjusted as provided in Sections 5(e), and 7 below. Until so adjusted, the Series C Conversion Value shall be \$.781.

(b) Each conversion of Series C Shares will be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series C Shares to be converted have been surrendered at the principal office of the Corporation or its transfer agent, if any. At such time as such conversion has been effected, the rights of the holder of such Series C Shares as such holder will cease and such holder will be deemed to have become the holder of record of the shares of Common Stock represented thereby. If a holder of Series C Shares plans to convert such shares into Common Stock in connection with an offer by the Corporation of any of its shares of Common Stock being registered pursuant to the Securities Act of 1933, such conversion may, at the option of such holder, be conditioned upon the effectiveness of such registration and the closing of the sale of such registered shares pursuant to such offering, and such conversion shall be deemed to occur immediately prior to such closing. If a holder of Series C Shares plans to convert such shares into Common Stock in connection with an Extraordinary Transaction described in Part B Section 5(f), such conversion may, at the option of such holder, be conditioned upon the closing of such transaction, and such conversion shall be deemed to occur immediately prior to such closing.

(c) As soon as possible after a conversion has been effected (but in any event within seven (7) business days, the Corporation will deliver to the converting holder:

(i) certificates representing the number of shares of Common Stock issuable by reason of such conversion; and

(ii) a certificate representing any Series C Shares which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(d) The issuance of certificates for shares of Common Stock upon conversion of Series C Shares will be made without charge to the holder of such Series C Shares for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of each Series C Share, the Common Stock issued pursuant to such conversion will be validly issued, fully paid and nonassessable and the Corporation will take all such actions as are necessary in order to insure such result.

(e) If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series C Conversion Value in effect immediately prior to such subdivision will be proportionately increased, and if the Corporation at any time combines (by reverse stock split or otherwise) outstanding shares of Common Stock into a smaller number of shares, the Series C Conversion Value in effect immediately prior to such combination will be proportionately increased.

(f) Prior to the consummation of any Extraordinary Transaction, the Corporation will make appropriate provisions (in form and substance satisfactory to the holders of two-thirds (2/3) of the Series C Shares then outstanding) to insure that each of the holders of Series C Shares will thereafter have the right to acquire and receive such shares of stock, securities or assets as such holder would have received in connection with such Extraordinary Transaction if such holder had converted his Series C Shares immediately prior to such Extraordinary Transaction. In any such case, the Corporation will make

appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series C Shares then outstanding) to insure that the provisions of this Section will thereafter be applicable to the Series C Shares. The Corporation will not effect any such Extraordinary Transaction, unless prior to the consummation thereof, the successor corporation or other entity (if other than the Corporation) resulting from consolidation or merger of the corporation or other entity purchasing such assets assumes by written instrument (in form reasonably satisfactory to the holders of a majority of the Series C Shares then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(g) The Corporation shall deliver written notice to all holders of Series C Shares:

(i) immediately upon any adjustment of the Series C Conversion Value; or

(ii) at least 20 days prior to the date on which the Corporation closes its books or takes a record: (A) with respect to any or divided or other distribution upon Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Extraordinary Transaction, dissolution or liquidation.

(h) All outstanding Series C Shares shall automatically be converted into shares of Common Stock, in accordance with this Section: (i) upon the consummation of a Qualified Public Offering; or (ii) upon the vote of two-thirds (2/3) of the holders of Series C Shares; provided the Series A Shares, the Series B Shares and the Series C-1 Preferred Stock are also converted.

(i) No Impairment. The Corporation, whether by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but at all times in good faith shall assist in the carrying out of all of such action as may be necessary or appropriate in order to protect the conversion rights pursuant to this Section 5 and Section 7 below of the holders of Series C Shares against dilution or other impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series C Conversion Value pursuant to this Section 5 or Section 7 below, the Corporation at its expense promptly shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series C Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation, upon the written request at any time of any holder of Series C Shares shall furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series C Conversion Value 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 the Series C Shares held by such holder.

6. Reversion to Preferred Stock. Series C Shares that are converted by the holder or that are purchased by the Corporation shall be cancelled and shall revert to authorized but unissued Preferred Stock undesignated as to series.

7. Anti-Dilution.

(a) If the Corporation shall, while there are any Series C Shares outstanding, issue or sell Common Stock (or securities convertible into, or exchangeable for, Common Stock) without consideration or for a price per share (assuming full conversion or exchange of the securities convertible or exchangeable into Common Stock) less than the Series C Conversion Value in effect immediately prior to such sale (such stock, "Series C Dilution Stock"), then, except as otherwise provided herein, the Series C Conversion Value shall be decreased to an amount determined by multiplying the Series C Conversion Value by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to the issuance of the Series C Dilution Stock (calculated on a fully diluted basis assuming full conversion), plus (B) the number of shares of Common Stock which the net aggregate consideration, if any, received by the Corporation from the issuance of the Series C Dilution Stock would purchase at the Conversion Value in effect immediately prior to the issuance of the Series C Dilution Stock, and

(ii) the denominator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to the issuance of the Series C Dilution Stock (calculated on a fully diluted basis assuming full conversion), plus (B) the number of shares of Common Stock (calculated on a fully diluted basis assuming full conversion) to be issued as part of the Series C Dilution Stock issuance.

(b) Series C Dilution Stock issued as dividends on any class of the Corporation's capital stock other than Common Stock shall be deemed to have been issued at a per share price of \$.001.

(c) Series C Dilution Stock issued as compensation for goods or services provided to the Corporation shall be deemed to be issued for the fair market value of such goods or services as determined in good faith by the Corporation's Board of Directors.

(d) For purposes of Section 7(a), "Series C Dilution Stock" shall be deemed to include any grant by the Corporation, other than as described in Section 7(e) below, of any Convertible Securities, and in each case the price per share of Common Stock issuable on the exercise of the rights or options or the conversion of the Convertible Securities will be determined by dividing the total amount, if any, received or receivable by the Corporation as consideration for the granting of the rights or options or the issue or sale of the Convertible Securities, plus the minimum aggregate amount of additional consideration payable to the Corporation on exercise or conversion of the securities, by the maximum number of shares of Common Stock issuable on the exercise or conversion; provided that such granting or issue or sale will be considered to be an issue or sale for cash of the maximum number of shares of Common Stock issuable on exercise or conversion at the price per share determined under this section 7(d), and the Series C Conversion Value will be adjusted as above provided to reflect (on the basis of that determination) the issue or sale; provided further that no further adjustment of the Series C Conversion Value will be made as a result of the actual issuance of shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities; provided that upon the redemption or repurchase of any such Convertible Securities or the expiration or termination of the right to convert into, exchange for, or exercise with respect to, Common Stock, the Series C Conversion Value will be readjusted to such amount as would have been obtained had the adjustment made upon their issuance pursuant to Section 7(d) been made upon the basis of the issuance of only the number of such securities as were actually converted into, exchanged for, or exercised with respect to, Common Stock.

(e) Anything herein to the contrary notwithstanding, the anti-dilution protection set forth in this Section shall not apply to securities issued: (i) upon conversion of the Series A Shares, the Series B Shares or the Series C Shares; (ii) to employees, consultants, directors, vendors or customers of the Corporation directly or pursuant to a stock option plan approved by the Board of Directors (presuming such transactions are primarily for non-financing purposes); (iii) in connection with a bona fide business acquisition; (iv) in connection with a bona fide lease transaction, strategic business relationship or bank financing approved by the Board of Directors (including the Series C Directors); and (v) in a public

offering in which all of the Series C Shares will be converted to Common Stock. Notwithstanding the foregoing, the securities that shall be excluded from the anti-dilution protection set forth in this Section as a result of (ii) above may not exceed Three Million (3,000,000) shares unless the transaction authorizing such issuance is approved by the Series C Directors. In the event that the Series C Directors approve an increase in the share reserve of a Corporation stock option plan, such approval shall be considered as authorization by the Series C Directors for any stock issuance thereunder up to such increased share reserve so long as the stock issuance is approved by the Board of Directors or any authorized committee thereof.

8. Registration of Transfer. The Corporation will keep at its principal office a register for the registration of Series C Shares. Upon the surrender of any certificate representing Series C Shares at such place, the Corporation will, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Series C Shares represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of Series C Shares as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate.

9. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Series C Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation, or, in the case of any such mutilation upon surrender of such certificate, the Corporation will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Series C Shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

10. Amendment and Waiver. No amendment, modification or waiver will be binding or effective with respect to any provision of this Certificate of Incorporation without the prior written consent of the holders of two-thirds (2/3) of the Series C Shares outstanding at the time such action is taken. No change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation unless the Corporation has obtained the prior written consent of the holders of a majority of the Series C Shares then outstanding.

11. Notices. Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated in writing by any such holder).

D. Series C-1 Preferred Stock

The shares of Series C-1 Preferred Stock are collectively referred to herein as the "Series C-1 Shares." The Series A Shares and any other series of Preferred Stock ranking junior to the Series C-1 Shares as to liquidation, dividend and redemption preferences or rights shall be referred to in this Part D as "Junior Preferred Stock." The rights of the holders of Series B Shares, Series C Shares and Series C-1 Shares as to dividends shall be *pari passu*. The rights of the holders of Series C Shares and Series C-1 Shares as to redemption shall be *pari passu*. The Series A Shares, ranking junior to the Series C-1 Shares as to liquidation and dividend preferences or rights, shall be a class of Junior Preferred Stock in regards to all such rights, and the Series B Shares and Series C Shares, ranking junior to the Series C-1 Shares as to liquidation preferences, shall be a class of Junior Preferred Stock in regards to liquidation preferences only.

1. Dividends and Distributions.

(a) The holder of Series C-1 Shares shall be entitled to receive, out of any funds legally available therefor, at the annual rate of eight percent (8%) of the Series C-1 Original Issue Price per Series C-1 Share, non-cumulative dividends payable only upon: (i) liquidation, dissolution or winding up of the Corporation, (ii) the sale of all or substantially all of the assets of the Corporation, or (iii) redemption of the Series C-1 Shares. The Series C-1 Original Issue Price is \$.84 per Series C Share.

(b) All numbers relating to calculation of dividends shall be subject to equitable adjustment in the event of any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Series C-1 shares.

(c) Upon any voluntary conversion of any Series C-1 Shares pursuant to Section 5 hereof, all accrued and unpaid dividends on such Series C-1 Shares shall be waived and shall not be due and payable.

(d) Unless all accrued dividends on the Series C-1 Shares have been paid or a sum sufficient for the payment thereof has been set apart, no dividend shall be paid on any shares of Common Stock or Series A Shares except for: (i) a stock split, or (ii) declaring or paying any dividend consisting of shares of any class of the Corporation's capital stock to holders of such class of capital stock. In the event that the Board of Directors of the Corporation shall declare a dividend payable on the then outstanding shares of Common Stock of the Corporation, the holders of the Series C-1 Shares shall be entitled to receive dividends in an amount per Series C-1 Share that is equal to the product of (i) the number of shares of Common Stock into which the Series C-1 Share is convertible on the record date for the declaration of such dividend, multiplied by (ii) the per share cash dividend and the per share amount (payable in cash, based upon the fair market value at the time the non-cash dividend or other distribution is declared or paid as determined in good faith by the Board of Directors) of all non-cash dividends or other distributions on the Common Stock, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock. Such dividends shall be declared and paid contemporaneously with the declaration and payment of the related dividend on the Common Stock.

2. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, the holders of the Series C-1 Shares will be entitled to be paid pro rata among the holders of Series C-1 Shares, before any distribution or payment is made upon any shares of Common Stock or Junior Preferred Stock, an amount in cash equal to \$.84 per Series C-1 Share (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or similar event involving a change in Series C-1 Shares) held by each such holder, plus accrued and unpaid dividends up to and including the date of liquidation, in accordance with Section 1 above (the "Series C-1 Liquidation Amount"). If upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of the Series C-1 Shares are insufficient to permit payment to such holders of the Series C-1 Liquidation Amount, then the entire assets to be distributed will be distributed ratably among such holders based upon the number of Series C-1 Shares held by each such holder. The Corporation will mail written notice of such liquidation, dissolution or winding up, not less than 45 days prior to the payment date stated therein, to each record holder of the Series C-1 Shares. A consolidation or merger of the Corporation in a transaction in which the stockholders of the Corporation receive cash, securities or other consideration in exchange for the shares of capital stock of the Corporation, or a sale, conveyance or disposition of all or substantially all of the assets of the Corporation to another person or persons, or the effectuation by the Corporation of a transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of, shall be regarded as a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Section.

3. Redemption Rights.

(a) Scheduled Redemptions. To the extent the Corporation shall have funds legally available for such payments, the Corporation shall offer to redeem one-half of all of the outstanding Series C-1 Shares on May 31, 2008 and the remaining one-half of the outstanding Series C-1 Shares on May 31, 2009. The shares to be redeemed shall be determined pro rata among the holders of shares of the Series C-1 Shares. The Corporation's obligation to redeem the Series C-1 Shares pursuant to this Section shall be cumulative. Each holder of Series C-1 Shares may accept or reject the redemption offer at each Series C-1 Redemption Date (as hereinafter defined). The rejection of any one scheduled Series C-1 Redemption Date by a holder of shares for which the offer of redemption has been made shall not be deemed to be a rejection of an offer of redemption for any other shares to be made on any future scheduled Series C-1 Redemption Date. If the Corporation shall fail to discharge all or any part of any scheduled redemption obligation pursuant to this subsection because of insufficient funds or because of state law restrictions on such redemption, (i) the entire amount legally available for the payment of the Corporation's redemption obligations to all series of Preferred Stock shall be divided in proportion to the total redemption obligation

owing to such series, and (ii) the amount of funds allocated to the Series C-1 Shares according to the previous sentence shall be used to offer and redeem the shares of holders of the Series C-1 Shares ratably in proportion to the full number of shares which they would otherwise be entitled to have redeemed, and the balance of such redemption obligation shall be deferred and shall be discharged in one or more installments as soon as the Corporation shall have funds legally available to permit such redemption, at which time the Board of Directors shall promptly fix a date for such redemption and so notify the holders of such shares in writing.

(b) Price. The Series C-1 Redemption Price of the Series C-1 Shares (the "Series C-1 Redemption Price") shall be an amount per share equal to \$.84 per share plus an amount equal to 8% per annum compounded annually, subject to appropriate adjustments for stock splits and other combinations. The Series C-1 Redemption Price shall be subject to adjustment as provided in Section 7 hereof, and shall be subject to a 10% increase for each year that the redemption obligation is deferred under the last sentence of Section 3(a) above.

(c) Series C-1 Redemption Notice. The Corporation shall, not less than thirty (30) days or more than sixty (60) days prior to the date fixed for redemption ("Series C-1 Redemption Date"), mail written notice ("Series C-1 Redemption Notice"), postage prepaid, to each holder of record of Series C-1 Shares redeemed, at such holder's post office address last shown on the records of the Corporation. The Series C-1 Redemption Notice shall state:

(i) the total number of shares of Series C-1 Shares which the Corporation is required to offer to redeem;

(ii) the number of shares of Series C-1 Shares held by the holder which the Corporation intends to offer to redeem;

(iii) the Series C-1 Redemption Date and Series C-1 Redemption Price; and

(iv) the time, place and manner in which the holder may elect to surrender to the Corporation the certificate or certificates representing the shares of Series C-1 Shares to be redeemed.

The Series C Redemption Date and the Series C-1 Redemption Date shall be the same date.

(d) Surrender of Stock. On or before the Series C-1 Redemption Date, each holder of Series C-1 Shares electing to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series C-1 Redemption Notice, and thereupon the Series C-1 Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares represented by such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(e) Termination of Rights. If the Series C-1 Redemption Notice is duly given, and if, on or prior to the Series C-1 Redemption Date, the holders of the Series C-1 Shares elect to have her, his or its shares redeemed and the Series C-1 Redemption Price is either paid or made available for payment, then notwithstanding that the certificates evidencing any of the Series C-1 Shares so called for redemption have not been surrendered, all rights with respect to such shares shall forthwith after the Series C-1 Redemption Date cease and terminate, except only the right of the holders to promptly receive the Series C-1 Redemption Price without interest upon surrender of their certificates therefor. If, on the other hand, the holders of Series C-1 Shares electing to redeem her, his or its Series C-1 Shares surrender such shares and payment of the Series C-1 Redemption Price is not forthcoming, such holders of Series C-1 Shares shall retain all of the rights of a holder of Series C-1 Shares.

(f) Adjustment for Stock Splits and Combinations. If the Corporation at any time or from time to time after May 31, 2002 effects a subdivision of the outstanding shares of such Series C-1 Shares,

the Series C-1 Redemption Price for the Series C-1 Shares then in effect immediately before the subdivision shall be proportionately decreased, and conversely, if the Corporation at any time or from time to time after May 31, 2002, combines the outstanding shares of such Series C-1 Shares into a smaller number of shares, the Series C-1 Redemption Price for the Series C-1 Shares then in effect immediately before the combination shall be proportionately increased. Any adjustment under this subdivision shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) Adjustment for Certain Dividends and Distributions. If the Corporation at any time or from time to time after May 31, 2002 makes or issues or fixes a record date for the determination of holders of Series C-1 Shares entitled to receive a dividend or other distribution payable in additional shares of such Series C-1 Shares, then and in each such event the Series C-1 Redemption Price for the Series C-1 Shares then in effect shall be decreased as of the time of such issuances or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series C-1 Redemption Price for such class of the Series C-1 Shares then in effect by a fraction (i) the numerator of which is the total number of Series C-1 Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which shall be the total number of Series C-1 Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of Series C-1 Shares issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series C-1 Redemption Price for the Series C-1 Shares shall be recomputed accordingly as of the close of business on such record date and thereafter the Series C-1 Redemption Price for the Series C-1 Shares shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions.

(h) Other Redemptions. Other than the scheduled redemptions provided for in Section 3(a) and in Section 3(a) of Part C above, the Corporation shall not, without the prior approval of a majority of the Board (including the affirmative vote of the Series C Directors), purchase or set aside any sums for the purchase of shares of Common Stock, except for the purchase of Common Stock from former employees, directors, officers, consultants or agents of the Corporation who acquired such shares directly from the Corporation, if (i) such purchase is made pursuant to the contractual rights held by the Corporation relating to the termination of services of such employee, director, officer, consultant or agent, and (ii) the purchase price does not exceed the original issue price paid by such former employee, director, officer, consultant or agent agreements to the Corporation.

4. Voting Rights.

(a) The holders of Series C-1 Shares shall have voting rights identical to the voting rights of the Common Stock and shall vote with the Common Stock, the Series A Shares, the Series B Shares and the Series C Shares as a single class.

(b) On all matters where holders of the Series C-1 Shares are entitled to vote, each holder of Series C-1 Shares shall be entitled to the number of votes equal to the largest whole number of shares of Common Stock into which such holder's Series C-1 Shares could be converted, as of the record date, in the case of a meeting, or the effective date of any consent given in lieu of a meeting.

5. Conversion.

(a) At any time any holder of Series C-1 Shares may convert all or any portion of the Series C-1 Shares held by such holder into Common Stock. Each Series C-1 Share is convertible into the number of shares of Common Stock equal to the quotient obtained by dividing the Series C-1 Original Issue Price by the Series C-1 Conversion Value, as such value may be adjusted as provided in Sections 5(e), and 7 below. Until so adjusted, the Series C-1 Conversion Value shall be \$.84.

(b) Each conversion of Series C-1 Shares will be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series C-1 Shares to be converted have been surrendered at the principal office of the Corporation or its transfer agent, if any. At

such time as such conversion has been effected, the rights of the holder of such Series C-1 Shares as such holder will cease and such holder will be deemed to have become the holder of record of the shares of Common Stock represented thereby. If a holder of Series C-1 Shares plans to convert such shares into Common Stock in connection with an offer by the Corporation of any of its shares of Common Stock being registered pursuant to the Securities Act of 1933, such conversion may, at the option of such holder, be conditioned upon the effectiveness of such registration and the closing of the sale of such registered shares pursuant to such offering, and such conversion shall be deemed to occur immediately prior to such closing. If a holder of Series C-1 Shares plans to convert such shares into Common Stock in connection with an Extraordinary Transaction described in Part B Section 5(f), such conversion may, at the option of such holder, be conditioned upon the closing of such transaction, and such conversion shall be deemed to occur immediately prior to such closing.

(c) As soon as possible after a conversion has been effected (but in any event within seven (7) business days, the Corporation will deliver to the converting holder:

(i) certificates representing the number of shares of Common Stock issuable by reason of such conversion; and

(ii) a certificate representing any Series C-1 Shares which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(d) The issuance of certificates for shares of Common Stock upon conversion of Series C-1 Shares will be made without charge to the holder of such Series C-1 Shares for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of each Series C-1 Share, the Common Stock issued pursuant to such conversion will be validly issued, fully paid and nonassessable and the Corporation will take all such actions as are necessary in order to insure such result.

(e) If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series C-1 Conversion Value in effect immediately prior to such subdivision will be proportionately increased, and if the Corporation at any time combines (by reverse stock split or otherwise) outstanding shares of Common Stock into a smaller number of shares, the Series C-1 Conversion Value in effect immediately prior to such combination will be proportionately increased.

(f) Prior to the consummation of any Extraordinary Transaction, the Corporation will make appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series C-1 Shares then outstanding) to insure that each of the holders of Series C-1 Shares will thereafter have the right to acquire and receive such shares of stock, securities or assets as such holder would have received in connection with such Extraordinary Transaction if such holder had converted his Series C-1 Shares immediately prior to such Extraordinary Transaction. In any such case, the Corporation will make appropriate provisions (in form and substance satisfactory to the holders of a majority of the Series C-1 Shares then outstanding) to insure that the provisions of this Section will thereafter be applicable to the Series C-1 Shares. The Corporation will not effect any such Extraordinary Transaction, unless prior to the consummation thereof, the successor corporation or other entity (if other than the Corporation) resulting from consolidation or merger or the corporation or other entity purchasing such assets assumes by written instrument (in form reasonably satisfactory to the holders of a majority of the Series C-1 Shares then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(g) The Corporation shall deliver written notice to all holders of Series C-1 Shares:

(i) immediately upon any adjustment of the Series C-1 Conversion Value; or

(ii) at least 20 days prior to the date on which the Corporation closes its books or takes a record: (A) with respect to any or divided or other distribution upon Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Extraordinary Transaction, dissolution or liquidation.

(h) All outstanding Series C-1 Shares shall automatically be converted into shares of Common Stock, in accordance with this Section: (i) upon the consummation of a Qualified Public Offering; or (ii) upon the vote of a majority of the holders of Series C-1 Shares; provided the Series A Shares, the Series B Shares, and the Series C Shares are also converted.

(i) No Impairment. The Corporation, whether by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but at all times in good faith shall assist in the carrying out of all of such action as may be necessary or appropriate in order to protect the conversion rights pursuant to this Section 5 and Section 7 below of the holders of Series C-1 Shares against dilution or other impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series C-1 Conversion Value pursuant to this Section 5 or Section 7 below, the Corporation at its expense promptly shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series C-1 Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation, upon the written request at any time of any holder of Series C-1 Shares shall furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series C-1 Conversion Value 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 the Series C-1 Shares held by such holder.

6. Reversion to Preferred Stock. Series C-1 Shares that are converted by the holder or that are purchased by the Corporation shall be cancelled and shall revert to authorized but unissued Preferred Stock undesignated as to series.

7. Anti-Dilution.

(a) If the Corporation shall, while there are any Series C-1 Shares outstanding, issue or sell Common Stock (or securities convertible into, or exchangeable for, Common Stock) without consideration or for a price per share (assuming full conversion or exchange of the securities convertible or exchangeable into Common Stock) less than the Series C-1 Conversion Value in effect immediately prior to such sale (such stock, "Series C Dilution Stock"), then, except as otherwise provided herein, the Series C-1 Conversion Value shall be decreased to an amount determined by multiplying the Series C-1 Conversion Value by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to the issuance of the Series C-1 Dilution Stock (calculated on a fully diluted basis assuming full conversion), plus (B) the number of shares of Common Stock which the net aggregate consideration, if any, received by the Corporation from the issuance of the Series C-1 Dilution Stock would purchase at the Conversion Value in effect immediately prior to the issuance of the Series C-1 Dilution Stock, and

(ii) the denominator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to the issuance of the Series C-1 Dilution Stock (calculated on a fully diluted basis assuming full conversion), plus (B) the number of shares of Common Stock (calculated on a fully diluted basis assuming full conversion) to be issued as part of the Series C-1 Dilution Stock issuance.

(b) Series C-1 Dilution Stock issued as dividends on any class of the Corporation's capital stock other than Common Stock shall be deemed to have been issued at a per share price of \$.001.

(c) Series C-1 Dilution Stock issued as compensation for goods or services provided to the Corporation shall be deemed to be issued for the fair market value of such goods or services as determined in good faith by the Corporation's Board of Directors.

(d) For purposes of Section 7(a), "Series C-1 Dilution Stock" shall be deemed to include any grant by the Corporation, other than as described in Section 7(e) below, of any Convertible Securities, and in each case the price per share of Common Stock issuable on the exercise of the rights or options or the conversion of the Convertible Securities will be determined by dividing the total amount, if any, received or receivable by the Corporation as consideration for the granting of the rights or options or the issue or sale of the Convertible Securities, plus the minimum aggregate amount of additional consideration payable to the Corporation on exercise or conversion of the securities, by the maximum number of shares of Common Stock issuable on the exercise or conversion; provided that such granting or issue or sale will be considered to be an issue or sale for cash of the maximum number of shares of Common Stock issuable on exercise or conversion at the price per share determined under this section 7(d), and the Series C-1 Conversion Value will be adjusted as above provided to reflect (on the basis of that determination) the issue or sale; provided further that no further adjustment of the Series C-1 Conversion Value will be made as a result of the actual issuance of shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities; provided that upon the redemption or repurchase of any such Convertible Securities or the expiration or termination of the right to convert into, exchange for, or exercise with respect to, Common Stock, the Series C-1 Conversion Value will be readjusted to such amount as would have been obtained had the adjustment made upon their issuance pursuant to Section 7(d) been made upon the basis of the issuance of only the number of such securities as were actually converted into, exchanged for, or exercised with respect to, Common Stock.

(e) Anything herein to the contrary notwithstanding, the anti-dilution protection set forth in this Section shall not apply to securities issued: (i) upon conversion of the Series A Shares, the Series B Shares, the Series C Shares or the Series C-1 Shares; (ii) to employees, consultants, directors, vendors or customers of the Corporation directly or pursuant to a stock option plan approved by the Board of Directors (presuming such transactions are primarily for non-financing purposes); (iii) in connection with a bona fide business acquisition; (iv) in connection with a bona fide lease transaction, strategic business relationship or bank financing approved by the Board of Directors (including the Series C Directors); and (v) in a public offering in which all of the Series C-1 Shares will be converted to Common Stock. Notwithstanding the foregoing, the securities that shall be excluded from the anti-dilution protection set forth in this Section as a result of (ii) above may not exceed Three Million (3,000,000) shares unless the transaction authorizing such issuance is approved by the Series C Directors. In the event that the Series C Directors approve an increase in the share reserve of a Corporation stock option plan, such approval shall be considered as authorization by the Series C Directors for any stock issuance thereunder up to such increased share reserve so long as the stock issuance is approved by the Board of Directors or any authorized committee thereof.

8. Registration of Transfer. The Corporation will keep at its principal office a register for the registration of Series C-1 Shares. Upon the surrender of any certificate representing Series C-1 Shares at such place, the Corporation will, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Series C-1 Shares represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of Series C-1 Shares as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate.

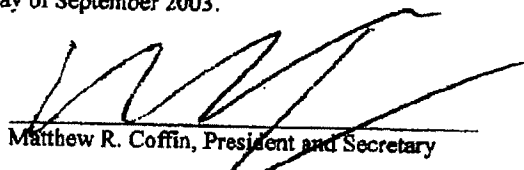
9. **Replacement.** Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Series C-1 Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation, or, in the case of any such mutilation upon surrender of such certificate, the Corporation will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Series C-1 Shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

10. **Amendment and Waiver.** No amendment, modification or waiver will be binding or effective with respect to any provision of this Part D of Article 5 of this Amended and Restated Certificate of Incorporation without the prior written consent of the holders of at least a majority of the Series C-1 Shares outstanding at the time such action is taken. No change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation unless the Corporation has obtained the prior written consent of the holders of a majority of the Series C-1 Shares then outstanding.

11. **Notices.** Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated in writing by any such holder).

6. The Corporation is to have perpetual existence.
7. Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.
8. Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the Corporation may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the corporation.
9. Subject to Sections 4 and 10 of Parts A, B, C and D of Article 5 above, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.
10. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omission not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit.

THE UNDERSIGNED, being the duly elected and acting President and Secretary of the Corporation, for the purpose of amending and restating this Certificate of Incorporation pursuant to the General Corporation Law of the State of Delaware, hereby declares and certifies that this is his act and deed and the facts stated herein are true, and accordingly has hereunto set his hand this 25th day of September 2003.


Matthew R. Coffin, President and Secretary