

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
CombineNet, Inc.	FORMERLY Combine.Net, Inc. (DE)	04/25/2002	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	CombineNet, Inc.		
Street Address:	15 East North Street		
City:	Dover		
State/Country:	DELAWARE		
Postal Code:	19901		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Registration Number:	2652523	COMBINENET	
Registration Number:	2640639	COMBINENET	
Registration Number:	2652522	COMBINENET	
Registration Number:	2640638	COMBINENET	
CORRESPONDENCE DATA			
Fax Number:	(412)355-6501		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	412-355-6785		
Email:	trademarks@klgates.com		
Correspondent Name:	K&L Gates LLP - George D. Dickos		
Address Line 1:	535 Smithfield Street		
Address Line 2:	Henry W. Oliver Building		
Address Line 4:	Pittsburgh, PENNSYLVANIA 15222-2312		
NAME OF SUBMITTER:	George D. Dickos		

CH \$115.00 2652523

Signature:	/George D. Dickos/
Date:	05/27/2009
<p>Total Attachments: 25</p> <p>source=CombineNet_Inc#page1.tif source=CombineNet_Inc#page2.tif source=CombineNet_Inc#page3.tif source=CombineNet_Inc#page4.tif source=CombineNet_Inc#page5.tif source=CombineNet_Inc#page6.tif source=CombineNet_Inc#page7.tif source=CombineNet_Inc#page8.tif source=CombineNet_Inc#page9.tif source=CombineNet_Inc#page10.tif source=CombineNet_Inc#page11.tif source=CombineNet_Inc#page12.tif source=CombineNet_Inc#page13.tif source=CombineNet_Inc#page14.tif source=CombineNet_Inc#page15.tif source=CombineNet_Inc#page16.tif source=CombineNet_Inc#page17.tif source=CombineNet_Inc#page18.tif source=CombineNet_Inc#page19.tif source=CombineNet_Inc#page20.tif source=CombineNet_Inc#page21.tif source=CombineNet_Inc#page22.tif source=CombineNet_Inc#page23.tif source=CombineNet_Inc#page24.tif source=CombineNet_Inc#page25.tif</p>	

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "COMBINE.NET, INC. (DE)", CHANGING ITS NAME FROM "COMBINE.NET, INC. (DE)" TO "COMBINENET, INC.", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF APRIL, A.D. 2002, AT 9 O'CLOCK A.M.

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



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3351580 8100

AUTHENTICATION: 1741814

020263666

DATE: 04-25-02

TRADEMARK
REEL: 003994 FRAME: 0234

"Series A Preferred Stock." The second series of Preferred Stock shall be comprised of Ten Million One Hundred Thirty Eight Thousand Five Hundred Sixty (10,138,560) shares and shall be designated the **"Series B Preferred Stock."** As used herein, the term **"Preferred Stock"** without designation shall refer to shares of the Corporation's Preferred Stock.

A. SERIES A PREFERRED STOCK

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Series A Preferred Stock are as follows:

1. Dividends. Subject to the rights of series of Preferred Stock which may from time to time come into existence, the holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of 8% of the Original Series A Price (as defined in Article IV, Section A.5) as adjusted for any consolidations, combinations, stock distributions, stock dividends, stock splits or similar events (each a **"Recapitalization Event"**) per share per annum. Such dividends shall accrue on each share from the Series A Original Issue Date (as defined in Article IV, Section A.5), and shall accrue from day to day, whether or not earned or declared. Such dividends shall be cumulative so that, if such dividends in respect of any previous or current annual dividend period, at the annual rate specified above, shall not have been paid the deficiency shall first be fully paid before any dividend or other distribution shall be declared and set apart for the Common Stock. Any accumulation of dividends on the Series A Preferred Stock shall not bear interest.

2. Liquidation Preference. Subject to the provisions of Section B.4, and if and only if a Liquidation Event as defined in Section B.4 is triggered, distributions to the holders of Series A Preferred Stock shall be made in the following manner: The holders of Series A Preferred Stock shall be entitled to receive prior and in preference to any distribution of any assets or property of the Corporation to the holders of Common Stock by reason of their ownership hereof, an amount equal to the applicable Original Series A Price (as defined in Article IV, Section A.5(a) below) (as adjusted for any Recapitalization Event) plus an amount equal to all accrued and unpaid dividends with respect thereto. If upon the occurrence of such event, the assets and funds available for distribution are insufficient to permit the payment to the holders of Series A Preferred Stock of the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution to stockholders will be distributed among the holders of the Series A Preferred Stock ratably in proportion to the full preferential amount which they would be entitled to receive pursuant to the preceding sentence of this Article IV, Section A.2(a).

3. Voting Rights.

(a) General Rights. The holder of each share of Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each share of Series A Preferred Stock could be converted into on the record date for the vote or written consent of stockholders and, except as otherwise required by law or as set forth herein,

shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Series A Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall vote with holders of the Common Stock at any annual or special meeting of stockholders of the Corporation, or by written consent, upon the election of directors and upon any other matter submitted to a vote of stockholders, except as otherwise provided herein or those matters required by law to be submitted to a class vote. Fractional votes shall not; however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Common Stock into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded down to the nearest whole number. Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

(b) **Board Seats.** The board rights of the Series A Preferred Stock shall be as set forth in Section B.2(c).

4. Redemption.

(a) **Redemption Date and Price.** If the Corporation has not completed a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "*Securities Act*"), which results in aggregate cash proceeds (net of underwriting discounts and commissions) to the Corporation of not less than twenty-five million dollars (\$25,000,000) prior to May 30, 2009 (the "*Redemption End Date*"), then, subject to the rights of series of Preferred Stock which may from time to time come into existence, on a date (the "*Redemption Date*") within thirty (30) days after receipt by the Corporation of a written request (a "*Redemption Election*") from the holders of not less than a majority of the then outstanding Series A Preferred Stock that all of the shares of such Series A Preferred Stock be redeemed, the Corporation shall, to the extent it may lawfully do so, redeem the number of shares specified in the Redemption Election in accordance with the procedures set forth in this Article IV, Section A.4 by paying in cash therefor a sum per share equal to (x) the Original Series A Price (as defined in Article IV, Section A.5) per share of Series A Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all accrued but unpaid dividends on such shares (the "*Redemption Price*"). To the extent legally permitted, the Corporation shall pay the Redemption Price within sixty (60) days of the Redemption Election unless otherwise agreed to in writing by the Corporation and the holders of Series A Preferred Stock holding a majority in interest. The holders of Series A Preferred Stock shall have thirty (30) days after the Redemption End Date to make a Redemption Election. Notwithstanding the foregoing, no redemption of Series A Preferred Stock shall take place while any shares of Series B Preferred Stock are outstanding.

(b) **Procedure.** Subject to the rights of series of Preferred Stock which may from time to time come into existence, within fifteen (15) days following its receipt of the Redemption Election, the Corporation shall mail a written notice, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Series A Preferred Stock at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the applicable Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the

Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "*Redemption Notice*"). Except as provided in Article IV, Section A.4(c) on or after the Redemption Date, each holder of Series A Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of 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 cancelled.

(c) **Effect of Redemption, Insufficient Funds.** From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series A Preferred Stock designated for redemption in the Redemption Notice (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. Subject to the rights of series of Preferred Stock which may from time to time come into existence, if the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on the Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon the total Redemption Price applicable their holdings of Series A Preferred Stock. The shares of Series A Preferred Stock not redeemed shall remain outstanding and the holders thereof shall be entitled to all the rights and preferences provided herein. Subject to the rights of series of Preferred Stock which may from time to time come into existence, at any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on the Redemption Date but which it has not redeemed.

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

(a) **Right to Convert.** Each share of Series A Preferred Stock shall be convertible without the payment of any additional consideration by the holder thereof and, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent of the Corporation for the Series A Preferred Stock. Each share of Series A Preferred Stock shall be convertible into Common Stock at the conversion rate determined by dividing the Original Series A Price by the Series A Conversion Price (determined as provided herein) in effect at the time of conversion. The "*Original Series A Price*" shall be \$0.40 and the initial "*Series A Conversion Price*" shall be \$0.40. The number of shares of Common Stock into which each share of Series A Preferred Stock may be converted is hereinafter referred to as the "*Series A Conversion Rate*" of the Series A Preferred Stock. The Series A Conversion Price shall be subject to adjustment as set forth in Article IV, Section A.5(c) below.

(b) **Automatic Conversion.** Each share of Series A Preferred Stock shall automatically be converted into such number of fully paid and nonassessable shares of Common

Stock at the then effective Series A Conversion Rate, as applicable, immediately upon the earlier of:

(i) the vote or written consent of the holders of more than a majority of the then outstanding Series A Preferred Stock, voting together as a class; or

(ii) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act covering the offer and sale of Common Stock (other than a registration on Form S-8, Form S-4 or comparable or successor forms), with aggregate gross proceeds (prior to underwriters' commissions and expenses) to the Corporation of more than \$25,000,000.

(c) Adjustments to Series A Conversion Price.

(i) **Special Definitions.** For purposes of this Article IV, Section A.5(c), the following definitions shall apply:

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

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

(C) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued (or, pursuant to Article IV, Section A.5(c)(iii) below, deemed to be issued) by the Corporation after the Series A Original Issue Date (as defined below), other than shares of Common Stock issued or issuable:

(1) upon conversion of shares of Series A Preferred Stock;

(2) shares of Common Stock (including securities convertible into and exercisable for such shares), reserved for issuance to employees, consultants, directors or officers of the Corporation pursuant to stock grant, stock purchase and/or stock option plans or any other stock incentive program, agreement or arrangement approved by the Board of Directors;

(3) pursuant to or in connection with a strategic investment, acquisition of technology or intellectual property or the acquisition of another business entity or other business segment of any such entity by the Corporation by merger, purchase of substantially all the assets or other reorganization whereby the Corporation will own more than fifty percent (50%) of the voting power of such business entity or business segment of any such entity approved by the Board of Directors;

(4) shares of Common Stock or Preferred Stock issuable upon exercise of warrants outstanding as of the date of these Second Amended and Restated Certificate of Incorporation;

(5) in connection with a transaction described in Article IV, Section A.5(c)(vi);

(6) by way of dividend or other distribution on shares of Common Stock or Preferred Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (1) through (6).

(D) "*Series A Original Issue Date*" shall mean the date that these Second Amended and Restated Certificate of Incorporation are filed with the Delaware Secretary of State.

(ii) **No Adjustment of Series A Conversion Price.** No adjustment in the Series A Conversion Price shall be made with respect to the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation (as determined pursuant to Section A.5(c)(v) below) is less than the Series A Conversion Price in effect on the date of, and immediately prior to, such issue.

(iii) **Deemed Issue of Additional Shares of Common Stock.** In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of the Convertible Securities shall be deemed to be Additional Shares of Common Stock issued as of the time of the grant of such Option or issuance of Convertible Security or, in case such a record date shall have been fixed, as of the close of business on such record date:

(A) except as provided in Article IV, Section A.5(c)(iii)(B) and A.5(d)(iii)(C) below, no further adjustment in the Series A Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof (other than under or by reason of provisions designed to protect against dilution), a Series A Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) upon the expiration of any such Options or Convertible Securities, the Series A Conversion Price, to the extent in any way affected by or computed using such Options or Convertible Securities, shall be recomputed to reflect the issuance of only the

number of shares of Common Stock actually issued upon the exercise of such Options or Convertible Securities; and

(D) no readjustment pursuant to Article IV, Section A.5(c)(iii) clauses (B) and (C) above shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (1) the Series A Conversion Price on the original adjustment date or (2) the Series A Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) **Adjustment of Conversion Price for Dilutive Issuances.** In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section A.3(d)(ii)) after the Original Issue Date of the Series A Preferred Stock without consideration or for a consideration per share less than the Series A Conversion Price in effect immediately prior to such issuance, then the Series A Conversion Price shall be reduced to the price determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock actually outstanding immediately prior to such issue or sale multiplied by the then existing Series A Conversion Price and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) the total number of shares of Common Stock actually outstanding immediately after such issue or sale. For purposes of this section, "Common Stock" shall be defined in Article IV, Section B.6(n).

(v) **Determination of Consideration.** For purposes of this Article IV, Section A.5(c), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) **Cash and Property.** Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof;

(2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined by Board in the good faith exercise of its reasonable business judgment; and

(3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration, which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board.

(B) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Article IV, Section A.5(c), relating to Options and Convertible Securities, shall be determined by dividing:

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

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

(vi) Other Adjustments to Series A Conversion Price.

(A) Subdivisions, Combinations, or Consolidations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by stock split, stock dividend, combination or like event, into a greater or lesser number of shares of Common Stock after the Series A Original Issue Date, the Series A Conversion Price in effect immediately prior to such subdivision, combination, consolidation or stock dividend shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

(B) Distributions Other Than Cash Dividends Out of Retained Earnings. In case the Corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than shares of Common Stock and other than as otherwise adjusted in this Article IV, Section A.5(c)), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock), then, in each such case, provision shall be made so that the holders of Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Article IV, Section A.5 with respect to the rights of the holders of the Series A Preferred Stock.

(C) Adjustment for Common Stock Dividends and Distributions. If, after the Series A Original Issue Date, the Corporation at any time or from time to time makes, or fixes a record date for determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series A Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction of (i)

the numerator of which is the total number of shares of Common Stock 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 is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock 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 A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this Article IV, Section A.5(c)(vi)(C) to reflect the actual payment of such dividend or distribution.

(D) Reclassifications and Reorganizations. In the case, at any time after the date hereof, of any capital reorganization (except as provided in Article IV, Section A.2(d)) or any reclassification of the stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the shares of the Series A Preferred Stock shall, after such reorganization or reclassification, be convertible into the kind and number of shares of stock or other securities or property of the Corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization or reclassification, the holder had converted the holder's shares of the Series A Preferred Stock into Common Stock. The provisions of this Article IV, Section A.5(c)(vi)(D) shall similarly apply to successive reorganizations, reclassifications, consolidations or Corporate Sales.

(d) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Article IV, Section A.5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based including the consideration received for any Additional Shares of Common Stock issued. The Corporation shall, upon the written request at any time of any holder of the Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series A Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the type and amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred Stock.

(e) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the headquarters of the Corporation or of any transfer agent for the Corporation and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Article IV, Section A.5(b) hereof). The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of

shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted (except that in the case of an automatic conversion pursuant to Article IV, Section A.5(b) hereof such conversion shall be deemed to have been made immediately prior to the closing of the offering referred to in Article IV, Section A.5(b)) and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. Upon the occurrence of either of the events specified in Article IV, Section A.5(b) above, the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however*, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates.

(f) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of shares of Series A Preferred Stock. In lieu of any fractional shares to which the holder of Series A Preferred Stock would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined by the Board of Directors of the Corporation. The number of whole shares issuable to each holder upon such conversion shall be determined on the basis of the number of shares of Common Stock issuable upon conversion of the total number of shares of Series A Preferred Stock of each holder at the time converting into Common Stock.

(g) No Dilution or Impairment. Except as provided in Article IV, Section A.6, the Corporation will not amend its Certificate of Incorporation or participate in any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against dilution or other impairment.

(h) Status of Converted Shares. No shares of Series A Preferred Stock which have been converted into Common Stock after the Series A Original Issue Date thereof shall ever again be reissued and all such shares so converted shall upon such conversion be appropriately canceled on the books of the Corporation and shall be restored to the status of authorized but unissued Preferred Stock of the Corporation, undesignated as to series.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock; and if at any time the number

of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

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

6. Protective Provisions. In addition to any other rights provided by law, so long as 2,000,000 shares of Series A Preferred Stock shall be outstanding, this Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than fifty percent (50%) of the outstanding shares of Series A Preferred Stock, voting together as a class:

(a) authorize a new series of stock or other Convertible Security of the Corporation senior to or on a parity with the Series A Preferred Stock with respect to dividends, voting, conversion or liquidation preference;

(b) pay dividends or distributions on, or repurchase, any securities junior to or ranking on a parity with the Series A Preferred Stock except as provided in Section A.2(e);

(c) effect a Corporate Sale;

(d) amend or repeal any provision of, or add any provision to, this Corporation's Second Amended and Restated Certificate of Incorporation or By-laws, so as to adversely affect the rights of the holders of Series A Preferred Stock;

(e) commence any bankruptcy, dissolution, termination of corporate existence;

(f) take any action that may result in the liquidation, dissolution or winding-up of the Corporation;

B. SERIES B PREFERRED STOCK

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Series B Preferred Stock are as follows:

1. Number of Shares. The Series B Preferred Stock shall be comprised of Ten Million, One Hundred Thirty-Eight Thousand and Five Hundred Sixty (10,138,560).

2. Voting.

(a) **General.** Except as may be otherwise provided in these terms of the Series B Preferred Stock or by law, the Series B Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Series B Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock (including fractions of a share) into which each share of Series B Preferred Stock is then convertible.

(b) **Board Size.** The Corporation shall not, without the written consent or affirmative vote of the holders of at least two-thirds of the then outstanding shares of Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, increase the maximum number of directors constituting the Board of Directors to a number in excess of five (5).

(c) **Board Seats.** The holders of the Series B Preferred Stock and Series A Preferred Stock, voting together as a separate class, shall be entitled to elect two (2) directors of the Corporation. The holders of the Common Stock, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation. A fifth director shall be such person, if any, who has received a plurality vote of the holders of the Series B Preferred Stock and Series A Preferred Stock, voting together as a separate class, and a plurality vote of the holders of the Common Stock, voting as a separate class. Notwithstanding the foregoing or anything else to the contrary provided in the Certificate of Incorporation, if the Corporation fails or refuses, for any reason or for no reason, to redeem on the Redemption Date (as defined in Section B.7) all of the then outstanding shares of Series B Preferred Stock in accordance with the terms and provisions of Section B.7, the holders of the Series B Preferred Stock, voting as a separate series, shall be entitled to elect a majority of the directors of the Corporation, which shall be accomplished by increasing the size of the Board of Directors to a number such that number of directors elected by the Series B Preferred Stock plus the new directors shall constitute greater than one-half of the directors, and the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect the new directors. At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of Series B Preferred Stock and Series A Preferred Stock then outstanding shall constitute a quorum of the Series B Preferred Stock and Series A Preferred Stock for the election of directors to be elected solely by the holders of the Series B Preferred Stock. A vacancy in any directorship elected by the holders of the Series B Preferred Stock and Series A Preferred Stock shall be filled only by vote or written consent of the holders of the Series B Preferred Stock and Series A Preferred Stock and a vacancy in any directorship elected by the holders of the Common Stock shall be filled only by vote or written consent of the holders of the Common Stock.

3. **Dividends.** Subject to the rights of Series of Preferred Stock which from time to time came into existence, the holders of the Series B Preferred Stock shall be entitled to receive, in preference to the holders of any other capital stock of the Company, out of funds legally available therefor, when and if declared by the Board of Directors, quarterly dividends (the "*Accruing Dividends*") at the rate of eight percent (8%) per annum of the original issue price per

share of \$ 0.5918 (the "*Original Issue Price Per Share*"). Accruing Dividends shall accrue from day to day, whether or not earned or declared, and shall be cumulative.

4. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "*Liquidation Event*"), the holders of the shares of Series B Preferred Stock shall first be entitled, before any distribution or payment is made upon any stock ranking on liquidation junior to the Series B Preferred Stock, to be paid an amount equal to the Original Issue Price Per Share plus, in the case of each share, an amount equal to all Accruing Dividends unpaid thereon (whether or not declared) and any other dividends declared but unpaid thereon, computed to the date payment thereof is made available, such amount payable with respect to one share of Series B Preferred Stock being sometimes referred to as the "*Liquidation Preference Payment*" and with respect to all shares of Series B Preferred Stock being sometimes referred to as the "*Liquidation Preference Payments*." If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series B Preferred Stock shall be insufficient to permit payment in full to the holders of Series B Preferred Stock of the Liquidation Preference Payments, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series B Preferred Stock. Upon any such liquidation, dissolution or winding up of the Corporation, immediately after the holders of Series B Preferred Stock shall have been paid in full the Liquidation Preference Payments, the holders of the Series A Preferred Stock shall be paid the liquidation preference, if any, to which they are entitled and thereafter the remaining net assets of the Corporation available for distribution shall be distributed ratably among the holders of Series B Preferred Stock, Series A Preferred Stock and Common Stock (with each share of Series B Preferred Stock and Series A Preferred Stock being deemed, for such purpose, to be equal to the number of shares of Common Stock (including fractions of a share) into which such share of Series B Preferred Stock and Series A Preferred Stock is convertible immediately prior to the close of business on the business day fixed for such distribution). Written notice of such liquidation, dissolution or winding up, stating a payment date and the amount of the Liquidation Preference Payments shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex, not less than twenty (20) days prior to the payment date stated therein, to the holders of record of Series B Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation. The consolidation or merger of the Corporation into or with any other entity or entities in which stockholders holding more than fifty percent (50%) of the voting stock of the Corporation immediately prior to the transaction hold fifty percent (50%) or less of the voting stock immediately after the transaction (other than a merger to reincorporate the Corporation in a different jurisdiction), and the sale, lease, abandonment, transfer or other disposition by the Corporation of all or substantially all its assets, shall be deemed to be a Liquidation Event within the meaning of the provisions of this Section B.4. The foregoing notwithstanding, no amount equal to the Accruing Dividends shall be paid upon any liquidation, dissolution or winding up if, absent such payment, the holders of Series B Preferred Stock shall first be entitled to an amount pursuant to this Section B.4 which is at least three (3) times the Original Issue Price Per Share. For purposes hereof, the Common Stock and Series A Preferred Stock shall rank on liquidation junior to the Series B Preferred Stock.

5. Restrictions. At any time when shares of Series B Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the

Corporation is required by law or by the Certificate of Incorporation, and in addition to any other vote required by law or the Certificate of Incorporation, without the approval of the holders of at least two-thirds of the then outstanding shares of Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, the Corporation will not:

(a) Create or authorize the creation of any additional class or series of shares of stock unless the same ranks junior to the Series B Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, or increase the authorized amount of the Series B Preferred Stock or increase the authorized amount of any additional class or series of shares of stock unless the same ranks junior to the Series B Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, or create or authorize any obligation or security convertible into shares of Series B Preferred Stock or into shares of any other class or series of stock unless the same ranks junior to the Series B Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, whether any such creation, authorization or increase shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise;

(b) Consent to any liquidation, dissolution or winding up of the Corporation or consolidate or merge into or with any other entity or entities or sell, lease, abandon, transfer or otherwise dispose of all or substantially all its assets;

(c) Amend, alter or repeal its Certificate of Incorporation or By-laws;

(d) Purchase or set aside any sums for the purchase of, or pay any dividend or make any distribution on, any shares of stock other than the Series B Preferred Stock, except for dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and except for the purchase of shares of Common Stock from former employees of the Corporation who acquired such shares directly from the Corporation, if each such purchase is made pursuant to contractual rights held by the Corporation relating to the termination of employment of such former employee and the purchase price does not exceed the original issue price paid by such former employee to the Corporation for such shares; or

(e) Redeem or otherwise acquire any shares of Series B Preferred Stock except as expressly authorized in Section B.7 hereof or pursuant to a purchase offer made pro rata to all holders of the shares of Series B Preferred Stock on the basis of the aggregate number of outstanding shares of Series B Preferred Stock then held by each such holder; or

(f) Issue any shares of capital share of the Corporation, or any options, warrants or convertible securities, except: (i) Reserved Employee Shares as that term is defined in a certain Investors Rights Agreement, dated on or about April 25, 2002, among the Corporation and certain of its investors or (ii) as approved by those directors elected solely by the Series B Preferred Stock and Series A Preferred Stock, voting together as a separate class.

6. Conversions. The holders of shares of Series B Preferred Stock shall have the following conversion rights:

(a) Right to Convert. Subject to the terms and conditions of this Section B.6, the holder of any share or shares of Series B Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series B Preferred Stock (except that upon any liquidation of the Corporation the right of conversion shall terminate at the close of business on the business day fixed for payment of the amount distributable on the Series B Preferred Stock) into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series B Preferred Stock so to be converted by the Original Issue Price Per Share and (ii) dividing the result by the conversion price of \$ 0.5918 per share or, in case an adjustment of such price has taken place pursuant to the further provisions of this Section B.6, then by the conversion price as last adjusted and in effect at the date any share or shares of Series B Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, being referred to as the "*Conversion Price*"). Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of shares of Series B Preferred Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Series B Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued.

(b) Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in Section B.6(a) and surrender of the certificate or certificates for the share or shares of Series B Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series B Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Series B Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

(c) Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of Series B Preferred Stock into Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. At the time of each conversion, the Corporation shall pay, in cash, out of funds legally available therefor, an amount equal to all dividends, excluding Accruing Dividends, accrued and unpaid on the shares of Series B Preferred Stock surrendered for conversion to the date upon which such conversion is deemed to take place as provided in Section B.6(b). In case the number of shares of Series B Preferred Stock represented by the certificate or certificates surrendered pursuant to Section B.6(b) exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of

Series B Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this Section B.6(c), be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Series B Preferred Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Corporation.

(d) Adjustment of Price Upon Issuance of Common Stock. Except as provided in Section B.6(e), if and whenever the Corporation shall issue or sell, or is, in accordance with Sections B.6(d)(1) through B.6(d)(7), deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Conversion Price shall be reduced to the price determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock actually outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) the total number of shares of Common Stock actually outstanding immediately after such issue or sale.

For purposes of this Section B.6(d) the following Sections B.6(d)(1) to B.6(d)(7) shall also be applicable:

(i) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "*Options*" and such convertible or exchangeable stock or securities being called "*Convertible Securities*") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in Section B.6.(d)(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

(ii) **Issuance of Convertible Securities.** In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in Section B.6(d)(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price have been or are to be made pursuant to other provisions of this Section B.6(d), no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(iii) **Change in Option Price or Conversion Rate.** Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in Section B.6(d)(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section B.6(d)(1) or B.6(d)(2), or the rate at which Convertible Securities referred to in Section B.6(d)(1) or 6(d)(2) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Price in effect at the time of such event shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; provided however, that no readjustment pursuant to this Section B.(d)(3) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date or (ii) the Conversion Price that would have resulted from any issuance of Common Stock between the original adjustment date and such readjustment date, and on the termination of any such Option or any such right to convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(iv) **Stock Dividends.** In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation (other than the Common Stock) payable in Common Stock, Options or Convertible Securities, then any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

(v) **Consideration for Stock.** In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

(vi) **Record Date.** In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(vii) **Treasury Shares.** The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this Section B.6(d).

(e) **Certain Issues of Common Stock Excepted.** Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price in the case of the issuance from and after the date of filing of these terms of the Series B Preferred Stock:

(i) of up to an aggregate of 6,640,235 shares (appropriately adjusted to reflect the occurrence of any event described in Section B.6(f) of Common Stock ("Reserved Employee Shares") to directors, officers, employees or consultants of the Corporation in connection with their service as directors of the Corporation, their employment by the Corporation or their retention as consultants by the Corporation. The number of Reserved Employee Shares set forth in this clause shall be increased by .3578 shares for each share of Series B Preferred Stock issued and sold by the Corporation beyond the first 8,449,029 shares of series B Preferred Stock, up to a maximum additional number of Reserved Employee Shares of 604,514. Such additional number of Reserved Employee Shares shall be available solely for options which may be granted by the Corporation to Tony Bonidy, Brian Jacobsen, David Levine, Sean Devine, Tom Finn, Tuomas Sandholm and Subash Suri in order to maintain their percentage ownership in the Company;

(ii) of Common Stock which are repurchased by the Corporation from such persons after such date pursuant to contractual rights held by the Corporation and at repurchase prices not exceeding the respective original purchase prices paid by such persons to the Corporation therefore;

(iii) of Shares in connection with a strategic investment and/or acquisition of technology or intellectual property approved by the Board of Directors, including the approval of those directors elected solely by the holders of the Series B Preferred Stock and Series A Preferred Stock, voting together as a separate class, and provided that such issuance does not result in the adjustment of the conversion price or exercise price (or any similar adjustment) under any outstanding securities of the Corporation;

(iv) of Shares issued in connection with a transaction described in Section B.6(f);

(v) of Common Stock upon Conversion of shares of Preferred Stock and of Common Stock and Preferred Stock issuable upon exercise or conversion of outstanding warrants as of the date of this Second Amended and Restated Certificate of Incorporation;

(vi) of Shares issued in connection with the acquisition by the Corporation of another business entity or majority ownership thereof approved by the Board of Directors, including the approval of those directors elected solely by the holders of the Series B Preferred Stock and Series A Preferred Stock, voting together as a separate class, and provided that such issuance does not result in the adjustment of the conversion price or exercise price (or any similar adjustment) under any outstanding securities of the Corporation.

(f) Subdivision or Combination of Common Stock. In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased. In the case of any such subdivision, no further adjustment shall be made pursuant to Section B.6(d)(4) by reason thereof.

(g) Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Series B Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Series B Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the

provisions hereof (including without limitation provisions for adjustments of the Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

(h) Notice of Adjustment. Upon any adjustment of the Conversion Price, then and in each such case the Corporation shall give written notice thereof, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of shares of Series B Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Conversion Price resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

(i) Other Notices. In case at any time:

(i) the Corporation shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(ii) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;

(iii) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into another entity or entities, or a sale, lease, abandonment, transfer or other disposition of all or substantially all its assets; or

(iv) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, the Corporation shall give, by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, addressed to each holder of any shares of Series B Preferred Stock at the address of such holder as shown on the books of the Corporation, **(a)** at least ten (10) business days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up and **(b)** in the case of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, at least ten (10) business days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause **(a)** shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto and such notice in accordance with the foregoing clause **(b)** shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, as the case may be.

(j) Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Series B Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Series B

Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the Conversion Price in effect at the time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed. The Corporation will not take any action which results in any adjustment of the Conversion Price if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Series B Preferred Stock would exceed the total number of shares of Common Stock then authorized by the Certificate of Incorporation.

(k) No Reissuance of Series B Preferred Stock. Shares of Series B Preferred Stock which are converted into shares of Common Stock as provided herein shall not be reissued.

(l) Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Series B Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series B Preferred Stock which is being converted.

(m) Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Series B Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series B Preferred Stock in any manner which interferes with the timely conversion of such Series B Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

(n) Definition of Common Stock. As used in this Section B.6, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, \$.001 par value, as constituted on the date of filing of this Second Amended and Restated Certificate of Incorporation and any shares of Common Stock issuable upon conversion of the Series A Preferred Stock and Series B Preferred Stock.

(o) Mandatory Conversion. Upon (i) the date specified by the vote of at least a majority of the shares of Series B Preferred Stock then outstanding, or (ii) if at any time the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock in which (1) the aggregate price paid for such shares by the public shall be at least \$20,000,000 and (2) the price paid by the public for such shares shall be at least three (3) times the Original Issue Price Per Share (appropriately adjusted to reflect the occurrence of any event described in Section B.6(f)), then effective upon such vote or immediately prior to the closing of the sale of such shares by the Corporation pursuant to such public offering, all outstanding shares of Series B Preferred Stock shall automatically convert to shares of Common Stock on the basis set forth in this B.6. Holders of shares of Series B Preferred Stock so converted may deliver to the Corporation at its principal office (or such other office or agency of the Corporation as the

Corporation may designate by notice in writing to such holders) during its usual business hours, the certificate or certificates for the shares so converted. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with, out of funds legally available therefore, any cash dividends and payment in lieu of fractional shares to which such holder may be entitled pursuant to Section B.6(c). Until such time as a holder of shares of Series B Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.

7. Redemption. The shares of Series B Preferred Stock shall be redeemed as follows:

(a) Optional Redemption. On April 30, 2007, and on each of the next two anniversaries thereafter (the "*Redemption Dates*", and each a "*Redemption Date*"), the Corporation upon receipt of not less than sixty (60) days prior written request (prior to each such Redemption Date) of at least a majority of the shares of Series B Preferred Stock then outstanding, shall redeem, out of funds legally available therefor, any outstanding shares of Series B Preferred Stock according to the percentages listed below:

<u>Date of Redemption</u>	<u>Percentage of Shares of Series B Preferred Stock then Outstanding to be Redeemed</u>
April 30, 2007	33 1/3% of all the shares of Series B Preferred Stock originally issued or such lesser amount as is then outstanding
April 30, 2008	66 2/3% of all the shares of Series B Preferred Stock originally issued or such lesser amount as is then outstanding
April 30, 2009	100% of all the shares of Series B Preferred Stock then outstanding

(b) Redemption Price and Payment. The shares of Series B Preferred Stock to be redeemed on any Redemption Date shall be redeemed by paying for each share, out of funds legally available therefor, in cash an amount equal to the Original Issue Price Per Share plus, in the case of each share, an amount equal to all Accruing Dividends unpaid therein (whether or not declared) and all other dividends, declared but unpaid thereon, computed to such Redemption Date, such amount being referred to as the "*Redemption Price*." Such payment shall be made in full on the applicable Redemption Date to the holders entitled thereto.

(c) Redemption Mechanics. After receipt of the written notice as set forth in Section B.7(a), at least twenty (20) but not more than thirty (30) days prior to each Redemption Date, written notice (the "*Redemption Notice*") shall be given by the Corporation by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, to each holder of record (at the close of business on the business day next preceding the day on which the Redemption Notice is given) of shares of Series B Preferred Stock notifying such holder of the redemption and specifying the Redemption Price, such Redemption Date, the number of shares

of Series B Preferred Stock to be redeemed from such holder (computed on a pro rata basis in accordance with the number of such shares held by all holders thereof) and the place where said Redemption Price shall be payable. The Redemption Notice shall be addressed to each holder at his address as shown by the records of the Corporation. From and after the close of business on a Redemption Date, unless there shall have been a default in the payment of the Redemption Price, all rights of holders of shares of Series B Preferred Stock (except the right to receive the Redemption Price) shall cease with respect to the shares to be redeemed on such Redemption Date, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series B Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock to be redeemed on such Redemption Date, the holders of such shares shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable to them if the full number of shares to be redeemed on such Redemption Date were actually redeemed. The shares of Series B Preferred Stock required to be redeemed but not so redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series B Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above.

(d) Redeemed or Otherwise Acquired Shares to be Retired. Any shares of Series B Preferred Stock redeemed pursuant to this Section B.7 or otherwise acquired by the Corporation in any manner whatsoever shall be cancelled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Series B Preferred Stock.

(e) Amendments. No provision of these terms of the Series B Preferred Stock may be amended, modified or waived without the written consent or affirmative vote of the holders of at least two-thirds of the then outstanding shares of Series B Preferred Stock.

ARTICLE V

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Second Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation. Election of directors need not be by written ballot, unless the Bylaws so provide.

ARTICLE VI

The Board of Directors is authorized to make, adopt, amend, alter or repeal the Bylaws of the Corporation. The stockholders shall also have power to make, adopt, amend, alter or repeal the Bylaws of the Corporation.

ARTICLE VII

To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended, a director of the Corporation shall be indemnified by the Corporation in accordance with the Bylaws and shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Any repeal or modification of the foregoing provisions of this Article VII by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such repeal or modification.

IN WITNESS WHEREOF, the Corporation has caused this Second Amended and Restated Certificate to be signed by a duly authorized officer on this 25 day of April 2002.

COMBINE.NET, INC.

By: /s/ Anthony J. Bonidy

Name: Anthony J. Bonidy

Title: President and CEO

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