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U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

RECORDATION FORM COVER SHEET
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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID # _____
- Correction of PTO Error
Reel # _____ Frame # _____
- Corrective Document
Reel # _____ Frame # _____

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
- Merger
Effective Date
Month Day Year
01 27 00
- Change of Name
- Other _____

Conveying Party

- Mark if additional names of conveying parties attached
- Name Execution Date
Month Day Year
01 27 00

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

- Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

- Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment)
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

TRADEMARK
REEL: 002039 FRAME: 0604

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

Number of Properties

Enter the total number of properties involved. #

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)
Deposit Account Number: #

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Mark A. Fischer

3/2/00

Name of Person Signing

Signature

Date Signed

State of Delaware

PAGE 1

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "PRIZMA INCORPORATED", CHANGING ITS NAME FROM "PRIZMA INCORPORATED" TO "MESSAGEBLASTER.COM, INC.", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF JANUARY, A.D. 2000, AT 2 O'CLOCK P.M.

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



Edward J. Freel

Edward J. Freel, Secretary of State

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001042241

AUTHENTICATION: 0221666

DATE: 01-27-00

THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

OF

PRIZMA INCORPORATED

The undersigned, for the purpose of amending and restating the Certificate of Incorporation of Prizma Incorporated (the "Corporation") under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the Corporation is Prizma Incorporated. The Corporation was incorporated under the name Prizma Incorporated pursuant to an original Certificate of Incorporation filed with the Secretary of the State of Delaware (the "Delaware Secretary") on June 10, 1998, which was amended and restated pursuant to a Restated Certificate of Incorporation filed with the Delaware Secretary on October 28, 1998, and pursuant to an Amended and Restated Certificate of Incorporation filed with the Delaware Secretary of State on April 30, 1999.

2. The Certificate of Incorporation of the Corporation is hereby further amended and restated as follows:

- a. The name of the Corporation is hereby changed to "MessageBlaster.com, Inc."
- b. The existing Article FOURTH is deleted in its entirety, and replaced with a new Article FOURTH, pursuant to which the total number of shares of all classes of stock which the Corporation shall have authority to issue is increased from ten million (10,000,000) shares to thirty-five million (35,000,000) shares and to authorize the issuance of up to (i) five million (5,000,000) shares of Preferred Stock and (ii) thirty million (30,000,000) shares of Common Stock.
- c. the new Article FOURTH further reauthorizes the Board of Directors to designate the powers, preferences and rights of the shares of one or more series of the Preferred Stock and to establish from time to time the number of shares to be included in each such series.
- d. The new Article FOURTH further designates a new class of Preferred Stock designated as Series C Convertible Preferred Stock, par value \$0.01 per share, consisting of an aggregate of two million one hundred thousand (2,100,000) shares, and setting forth the powers, preferences and rights of such series and the qualifications, limitations and restrictions thereof.
- e. The new Article FOURTH alters and restates certain approval rights held by the holders of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock in light of such rights held by the holders of

the Series C Convertible Preferred Stock, and gives effect to a 3-for-1 stock split of the issued and outstanding shares of Common Stock approved by the Corporation's Board of Directors on January 21, 2000; so that effective immediately upon the filing of this Third Amended and Restated Certificate of Incorporation each share of Common Stock, \$0.01 par value per share, issued and outstanding immediately prior to such filing shall be converted into and exchanged for three shares of Common Stock, remaining at \$0.01 par value per share.

f. Certain other provisions of the existing Certificate of Incorporation are amended as required or appropriate to implement the foregoing.

3. The provisions of the Certificate of Incorporation of the Corporation as heretofore amended and as herein amended are hereby restated and integrated into the single instrument which is hereinafter set forth, and which is entitled "Third Amended and Restated Certificate of Incorporation of Prizma Incorporated" without any further amendments other than the amendments herein certified and without any discrepancy between the provisions of the Certificate of Incorporation as heretofore amended and supplemented and the provisions of the single instrument hereinafter set forth.

4. The amendments and the restatement of the Certificate of Incorporation herein certified have been duly adopted by the stockholders of the Corporation in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

5. The Certificate of Incorporation of the Corporation, as amended and restated herein, shall at the effective time of this Third Amended and Restated Certificate of Incorporation, read as follows:

**"THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
MESSAGEBLASTER.COM, INC.**

FIRST. The name of the Corporation is MessageBlaster.com, Inc. (hereinafter the "Corporation").

SECOND. The address of its registered office registered in the State of Delaware is 1013 Centre Road, in the City of Wilmington, County of New Castle, Delaware 19805. The name of its registered agent at such address is Corporation Service Company.

THIRD. The nature of the business or purposes to be conducted is to engage in any lawful act or activity for which Corporations may be organized under the General Corporation Law of the State of Delaware (the "Delaware Code"). The corporation shall possess and may exercise all the powers and privileges granted or available to it under any and all applicable statutory and common laws in effect from time to time.

FOURTH. The total number of shares of capital stock of all classes which the Corporation shall have authority to issue is 35,000,000 shares, consisting of 30,000,000 shares of

Common Stock, \$0.01 par value per share, and 5,000,000 shares of Preferred Stock, \$0.01 par value per share.

The following is a description of each class of stock with the preferences, voting powers, qualifications, special or relative rights or privileges as to each class thereof and any series now established:

I. COMMON STOCK

1. Voting Rights. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (any written actions of stockholders in lieu of meetings). There shall be no cumulative voting. Notwithstanding the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware, the number of authorized shares of Common Stock may be increased or decreased by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation entitled to vote.

2. Dividends. Subject to the preferences of the Preferred Stock, if any, dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors of the Corporation.

3. Liquidation and Dissolution. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive pro rata all net assets of the Corporation available for distribution after payment of creditors and of any preferential rights, if any, of any then outstanding shares of Preferred Stock.

4. General. The voting and dividend rights, and the rights in the event of the liquidation of the Corporation, of the holders of the Common Stock are subject to and qualified by such rights, if any, of the holders of any then outstanding Preferred Stock.

II. PREFERRED STOCK

The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation is hereby authorized, within the limitations and restrictions stated in this Article Fourth, to determine or alter the preferences, voting powers, qualifications, special or relative rights or privileges as to any wholly unissued series of Preferred Stock, and the number of shares constituting any such series; to increase or decrease the number of shares constituting any such series; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares then constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

The authority of the Board of Directors of the Corporation with respect to each such series of Preferred Stock shall include the right to determine and fix any and all preferences, voting powers, qualifications, special or relative rights or privileges not inconsistent with law and this Certificate of Incorporation including, without limitation:

- (1) The distinctive designation of such series and the number of shares to constitute such series;

- (2) The rate at which dividends, if any, on the shares of such series shall be declared and paid, or set aside for payment, whether dividends at the rate so determined shall be cumulative and whether the shares of such series shall be entitled to any participating or other dividends in addition to dividends at the rate so determined, and if so, on what terms;
- (3) The right, if any, of the Corporation to redeem shares of the particular series and, if redeemable, the price, terms and manner of such redemption;
- (4) The special and relative rights and preferences, if any, and the amount or amounts per share, if any, which the shares of such series shall be entitled to receive upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation;
- (5) The terms and conditions, if any, upon which shares of such series shall be convertible into, or exchangeable for, shares of stock of any other class or classes, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;
- (6) The obligation, if any, of the Corporation to retire or purchase shares of such series pursuant to a sinking fund or fund of a similar nature or otherwise, and the terms and conditions of such obligation;
- (7) Voting rights, if any;
- (8) Limitations, if any, on the issuance of additional shares of such series or any shares of any other series of Preferred Stock; and
- (9) Such other preferences, voting rights, qualifications, special or relative rights or privileges thereof as the Board of Directors of the Corporation may deem advisable.

III. DESIGNATION OF SERIES A CONVERTIBLE PREFERRED STOCK, SERIES B CONVERTIBLE PREFERRED STOCK, AND SERIES C CONVERTIBLE PREFERRED STOCK

1. Designation. There are hereby designated three series of Preferred Stock, \$0.01 par value per share, to be known as (i) Series A Convertible Preferred Stock ("Series A Preferred Stock"), consisting of 700,000 shares of such Series A Preferred Stock, of which 100,000 shares shall be designated "Series A-1 Preferred Stock" and 600,000 shares shall be designated "Series A-2 Preferred Stock"; (ii) Series B Convertible Preferred Stock ("Series B Preferred Stock"), consisting of 535,034 shares of such Series B Preferred Stock; and (iii) Series C Convertible Preferred Stock ("Series C Preferred Stock"), consisting of 2,100,000 shares of such Series C Preferred Stock. The rights, preferences, powers, privileges and restrictions, qualifications and limitations granted to or imposed upon the shares of Series A Preferred Stock, Series B

Preferred Stock and Series C Preferred Stock shall be as set forth in this Part III of Article Fourth. The Series A Preferred Stock, the Series B Preferred Stock, Series C Preferred Stock and any other series of Preferred Stock designated or issued subsequent to the date hereof are sometimes collectively referred to as the "Preferred Stock".

2. Dividends and Distributions. The holders of shares of Series A Preferred Stock shall be entitled to receive, if, when and as declared by the Board of Directors of the Corporation, on a non-cumulative basis, out of the funds legally available for that purpose and before any dividends shall be declared and paid upon or set aside for the Common Stock, an annual cash dividend of \$0.04 per share. The holders of shares of Series B Preferred Stock shall be entitled to receive, if, when and as declared by the Board of Directors of the Corporation, on a non-cumulative basis, out of the funds legally available for that purpose and before any dividends shall be declared and paid upon or set aside for the Common Stock, an annual cash dividend of \$0.12 per share. The holders of shares of Series C Preferred Stock shall be entitled to receive, if, when and as declared by the Board of Directors of the Corporation, on a non-cumulative basis, out of funds legally available for that purpose and before any dividends shall be declared or paid upon or set aside for the Common Stock, an annual cash dividend of \$0.24 per share. Such dividends shall accrue only upon actual declaration by the Board of Directors. In connection with the determination of such dividends, each share of the Series A Preferred Stock, each share of Series B Preferred Stock and each share of Series C Preferred Stock shall be deemed to represent that number of shares of Common Stock into which it is convertible. Unless full dividends on the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock in accordance with the foregoing shall have been paid or declared and a sum sufficient for the payment thereof set apart and/or so long as any shares of Series C Preferred Stock shall remain outstanding, no dividends (other than any dividend payable solely in shares of common Stock) shall be paid or declared, and no distribution shall be made, on any Common Stock or any other shares of capital stock of the Corporation ranking upon liquidation junior to the Series A Preferred Stock, the Series B Preferred Stock or Series C Preferred Stock ("Junior Stock").
3. Liquidation, Dissolution or Winding Up.
 - (a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock then outstanding shall

be entitled to be paid (on a pari passu basis) out of the assets of the Corporation available for distribution to its stockholders, but before any payment shall be made to the holders of Common Stock or any other Junior Stock by reason of their ownership thereof, an amount equal to \$1.00 per share of Series A Preferred Stock, \$3.00 per share of Series B Preferred Stock, and \$6.0595 per share of Series C Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

- (b) After the payment of all preferential amounts required to be paid to the holders of Series A Preferred Stock Series B Preferred Stock and Series C Preferred Stock and any other class or series of the Corporation ranking on liquidation on a parity with the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, upon the dissolution, liquidation or winding up of the Corporation, the holders of shares of Junior Stock and Series C Preferred Stock then outstanding shall be entitled to receive the remaining assets and funds of the Corporation available for distribution to its stockholders with the holders of the Series C Preferred Stock sharing in an amount per share as would have been payable had each share of Series C Preferred Stock been converted to Common Stock pursuant to Section 5 below immediately prior to such liquidation, dissolution or winding up; provided, further, however, if the consideration per share receivable by the holders of the Series C Preferred Stock upon such liquidation, dissolution or winding up (whether or not by merger, consolidation, sale or change in ownership) (as determined in good faith by the Corporation's Board of Directors) if the provisions

of Section 5(h) were to be applicable is equal to or greater than \$8.08 (as adjusted for any stock split, subdivision, reclassification or similar event), no liquidation, dissolution or winding up of the Corporation within the meaning of the provisions of this Section 3 shall be deemed to have occurred and the provisions of Section 5(h) shall, in fact, apply.

- (c) The (i) merger or consolidation of the Corporation into or with another corporation (except if the ownership of the surviving or resulting entity is substantially the same as the ownership of the Corporation prior to the merger or consolidation), (ii) the sale of all or substantially all the assets of the Corporation, or (iii) the sale or transfer by the Corporation's stockholders of capital stock representing a majority of the voting power at elections of directors of the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of the provisions of this Section 3 (subject to the provisions of this Section 3 and not the provisions of Section 5(h) hereof, unless 5(h) is elected in the following proviso), provided, however, that the holders of at least a majority in interest of the then outstanding shares of Series C Preferred Stock shall have the right to elect the benefits of the provisions of Section 5(h) in lieu of receiving payment in liquidation, dissolution or winding up of the Corporation pursuant to this Section 3. The amount deemed distributed to the holders of Preferred Stock upon any such, merger or consolidation shall be the cash or the value of the property, rights or securities distributed to such holders. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors of the Corporation.

4. Voting.

- (a) Each holder of outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, held by such holder are convertible (as adjusted from time to time pursuant to Section 5 of this Part III), at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as otherwise provided

in this Certificate of Incorporation or by law, or by the provisions establishing any other series of Preferred Stock, holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and of any other outstanding series of Preferred Stock shall vote together with the holders of Common Stock as a single class.

- (b) The Corporation shall not, without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series C 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 six (6). For so long as at least 25% of the maximum number of shares of Series C Preferred Stock ever issued remain outstanding, the holders of the Series C Preferred Stock, voting as a separate series, shall be entitled to elect two (2) directors of the Corporation. 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 at least a majority in interest of the then outstanding shares of Series C Preferred Stock shall constitute a quorum of the Series C Preferred Stock for the election of directors to be elected solely by the holders of the Series C Preferred Stock. A vacancy in any directorship elected by the holders of the Series C Preferred Stock shall be filled only by vote or written consent of the holders of the Series C Preferred Stock. The directors to be elected by the holders of the Series C Preferred Stock, voting separately as one class, pursuant to this subsection (b), shall serve for terms extending from the date of their election and qualification until the time of the next succeeding annual meeting of stockholders and until their successors have been elected and qualified.
- (c) The preferences, special rights or other powers of the Series A Preferred Stock, the Series B Preferred Stock and Series C Preferred Stock, respectively, shall not be amended, altered or repealed, and the Corporation shall not otherwise amend, alter or modify its Certificate of Incorporation so as to affect adversely the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of such series, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class. For this purpose,

without limiting the generality of the foregoing, an amendment of the Certificate of Incorporation to establish any other series or class of Preferred Stock with preference or priority over (as opposed to *pari passu* with) Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall be deemed to affect such series adversely. The number of authorized shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, respectively, may be increased or decreased (but not below the number of shares then outstanding) only by the affirmative vote of the holders of at least a majority of the then outstanding shares of the affected series voting as a separate class, together with the affirmative vote of the holders of a majority of the then outstanding shares of Common Stock and all other classes or series of stock of the Corporation entitled to vote thereon voting as a single class.

- (d) Without the written consent or affirmative vote of the holders of at least a majority in interest (as calculated pursuant to Subsection 4(a) above) of the then outstanding shares of Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, the Corporation will not:
 - (i) merge with or into or consolidate with any other corporation, or sell, lease or otherwise dispose of all or substantially all of its properties or assets;
 - (ii) declare, make or pay any dividends or any other distribution of property, assets or instruments of indebtedness on shares of Common Stock or other Junior Stock (other than dividends payable solely in Common Stock or other Junior Stock);
 - (iii) amend or modify any employee stock option plans in effect on the Original Issue Date (as defined below) or authorize any new employee stock option plans;
 - (iv) make any material amendment to its Certificate of Incorporation;
 - (v) create or authorize the creation of any additional class or series of shares of stock unless the same ranks junior to or on a parity with the 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 Preferred Stock or increase the authorized amount of any additional class or series of shares of

stock unless the same ranks junior to or on a parity with the 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 Preferred Stock or into shares of any other class or series of stock unless the same ranks junior to or on a parity with the 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; or

(vi) Unless otherwise waived by the holders of a majority of the shares of Series C Preferred Stock, purchase or set aside any sums for the purchase of, any shares of stock other than the Series C Preferred Stock, 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.

(e) The provisions of this Section 4 shall remain in effect so long as any shares of any series of Preferred Stock are outstanding.

5. Optional Conversion. The holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall have respective conversion rights as follows (the 'Conversion Rights'):

(a) Right to Convert. Each share of Series A Preferred Stock, each share of Series B Preferred Stock, and each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing, in the case of Series A Preferred Stock, \$1.00, in the case of Series B Preferred Stock, \$3.00, and in the case of the Series C Preferred Stock, \$6.0595 by the Conversion Price (as defined below) in effect for such series at the time of conversion. The conversion price to be used to determine the number of shares of Common Stock which shall be deliverable upon conversion without the payment of additional consideration by the holder thereof (the 'Conversion Price') shall, following the Original Issue Date, initially be \$.333 for Series A Preferred Stock, \$1.00 for Series B Preferred Stock and \$2.0198 for the Series C Preferred Stock. Such initial Conversion Price, and the rate

at which shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

In the event of a notice of redemption of any shares of Series C Preferred Stock, pursuant to Section 7 of this Part III, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the third full day preceding the date designated for redemption, unless the redemption price is not paid when due, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation of the Corporation (including any transaction treated as a liquidation, dissolution or winding up under Section 3(c) hereof), the Conversion Rights shall terminate at the close of business on the first full day preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock, the Series B Preferred Stock, or the Series C Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price for such series.

(c) Mechanics of Conversion.

(i) In order for a holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock to convert such shares into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock as the case may be, at the office of the transfer agent for such series of Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ('Conversion Date'). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of

Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, or to his or its nominees, a certificate or certificates for the number of whole shares of Common Stock (and any shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock represented by the certificate or certificates delivered to the Corporation by the holder thereof which are not converted into Common Stock) issuable upon such conversion in accordance with the provisions hereof, together with cash in lieu of fractional shares as provided in Section 5(b) of this Part III.

- (ii) The Corporation shall at all times when any shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Series B Preferred Stock, or the Series C Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.
- (iii) Upon any such conversion, no adjustment to the Conversion Price shall be made for any accrued or declared but unpaid dividends on the Series A Preferred Stock, the Series B Preferred Stock, or the Series C Preferred Stock surrendered for conversion or for any declared but unpaid dividends on Common Stock delivered upon conversion.
- (iv) All shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any declared but unpaid dividends thereon. Any shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the

Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, accordingly.

(d) Adjustments to Conversion Price of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock for Diluting Issues:

(i) Special Definitions. For purposes of this Part III of Article Fourth, the following definitions shall apply:

(A) 'Option' shall mean rights, options or warrants (other than Key Employee Shares) to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) 'Key Employee Shares' shall mean up to 4,980,669 shares (such amount to be appropriately adjusted in the event of any stock dividend, stock split or combination, or similar recapitalization affecting the Common Stock) of Common Stock or options for the purchase thereof issued, sold or granted, in the past or future, by the Corporation to its employees, advisors, or consultants pursuant to bona fide employee stock purchase, option or similar benefit plans or other arrangements approved by the Board of Directors of the Corporation.

(C) 'Original Issue Date' shall mean the date on which any shares of Series C Preferred Stock were first issued.

(D) 'Convertible Securities' shall mean any evidence of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(E) 'Additional Shares of Common Stock' shall mean all shares of Common Stock issued or transferred from its treasury (or, pursuant to Subsection 5(d)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date, other than Key Employee Shares and other than shares of Common Stock issued, transferred from its treasury or issuable:

- (I) upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock;
- (II) as a dividend or distribution on Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock;
- (III) upon exercise of Options outstanding on the Original Issue Date;
- (IV) pursuant to a joint venture or strategic partnership approved by a majority of the Board, which majority includes at least both representatives of the holders of the Series C Preferred Stock;
- (V) by reason of a dividend, stock split, split-up or other distribution, on shares of Common Stock excluded from the definition of

Additional Shares of Common Stock by the foregoing clauses (I) and (II).

(F) 'Common Stock Deemed Outstanding' shall mean, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock issuable at such time upon conversion of the Series A Preferred Stock, the Series B Preferred Stock, Series C Preferred Stock or other Convertible Securities then outstanding, plus the number of shares of Common Stock issuable at any time upon the exercise of all Options, plus all Key Employee Shares.

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which either the Series A Preferred Stock, the Series B Preferred Stock, or the Series C Preferred Stock, as the case may be, is convertible shall be made, by adjustment in the applicable Conversion Price thereof or otherwise, (a) as the result of the issuance of Additional Shares of Common Stock or otherwise, unless the consideration per share (determined pursuant to Subsection 5(d)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Share, or (b) if prior to such issuance, the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, voting separately with respect to such series only and agreeing that no such adjustment shall be made to the Conversion Price of such series.

(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock.

(A) Options and Convertible Securities. If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 5(d)(v)) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

- (I) no further adjustments in the 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;
- (II) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the 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;
- (III) no recomputation pursuant to clause (II) above shall provide 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 Additional Shares of Common Stock between the original adjustment date and such recomputation date; and
- (IV) upon the expiration or termination of any unexercised Option, the Conversion Price shall be readjusted, and the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option shall not be deemed issued for the purposes of any subsequent adjustment of the Conversion Price.

(B) Stock Dividends and Subdivisions. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then Additional Shares of Common Stock shall be deemed to have been issued:

- (I) in the case of any such dividend, immediately after the close of business on the record date for the determination of holders or any class of securities entitled to receive such dividend, or
- (II) in the case of any subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and such dividend shall not have been fully paid on the date fixed therefor, the adjustment previously made in the applicable Conversion Price which became effective on such record date shall be cancelled as of the close

of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to Subsection 5(d)(iv) as of the time of actual payment of such dividend.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

(A) Except as provided in Subsection 5(d)(iv)(B) below, in the event the Corporation shall issue Additional Shares of Common Stock (other than Additional Shares of Common Stock issued pursuant to a dividend or other distribution payable in shares of Common Stock or shares of a class or series convertible into or exchangeable for Common Stock), without consideration or for a consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, then forthwith upon such issue the Conversion Price applicable to shares of Series A Preferred Stock and/or shares of Series B Preferred Stock, and/or shares of Series C Preferred Stock, as the case may be, will be the Conversion Price determined in accordance with the following formula:

Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock Conversion Price

$$\frac{p_1 q_1 + p_2 q_2}{q_1 + q_2}$$

where:

p₁ = Conversion Price in effect immediately prior to such issue;

q₁ = Number of shares of Common Stock Deemed Outstanding (as defined in Subsection 5(d)(1)(F)) immediately prior to such issue;

p₂ = Average price per share received by the Corporation upon such issue; and

q₂ = Number of shares of Common Stock issued, or deemed to have been issued, in the subject transaction;

provided that the applicable Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$.01, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$.01 or more.

(B) In the event the Corporation shall declare a dividend or other distribution payable in Common Stock, or shall subdivide its outstanding shares of Common Stock into a larger number, then the Conversion Price in effect immediately prior to such dividend, other distribution or subdivision, as the case may be, shall forthwith be adjusted to that price determined by multiplying such Conversion Price by a fraction (x) the numerator of which shall be the total number of shares of Common Stock Deemed Outstanding immediately prior to such dividend, other distribution or subdivision and (y) the denominator of which shall be the total number of shares of Common Stock Deemed Outstanding immediately after such dividend, other distribution or subdivision.

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

(A) Cash and Property: Such consideration shall:

- (I) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;
- (II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and
- (III) 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 (I) and (II) above, as determined in good faith by the Board of Directors.

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

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any 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

(y) 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) Adjustment for Combinations or Consolidation of Common Stock.

In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise into a lesser number of shares of Common Stock, the applicable Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be increased proportionately.

(e) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 5, the Corporation at its expense shall promptly make such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock of the series so adjusted a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be.

(g) Notice of Record Date. In the event:

- (i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities or assets of the Corporation;
- (ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;
- (iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into

or with another corporation, or of the sale of all or substantially all of the assets of the Corporation;

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed with its books and records and at the office of the transfer agent of the Series A Preferred Stock, the Series B Preferred Stock and Series C Preferred Stock, and shall cause to be mailed to the holders of Series A Preferred Stock, the Series B Preferred Stock and Series C Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the record date specified in (A) below or twenty days before the date specified in (B) below, a notice stating

(A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(B) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

(h) Reorganization or Reclassification. If any capital reorganization, reclassification, recapitalization, consolidation, merger, sale of all or substantially all of the Corporation's assets or other similar transaction (any such transaction being referred to herein as an "Organic Change") shall be effected in such a way that holders of Common Stock shall be entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such Organic Change, lawful and adequate provisions shall be made whereby each holder of a share or shares of 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 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 Organic Change not taken place, and in any case of a reorganization or reclassification only 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

Dear Mr. ...
Enclosed ...
Sincerely,
...

Very truly yours,
...

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.

6. Mandatory Conversion.

- (a) The Corporation may, at its option, require all (but not less than all) holders of shares of Series A Preferred Stock and Series B Preferred Stock then outstanding to convert their shares of Series A Preferred Stock or Series B Preferred Stock, as the case may be, into shares of Common Stock, at the then effective Conversion Price pursuant to Section 5, at any time on or after the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale by the Corporation of Common Stock to the public at a per-share price not less than an amount equal to three times the aggregate average of the then effective Conversion Price for the Series A Preferred Stock and Series B Preferred Stock and which results in at least \$10,000,000 of gross proceeds to the Corporation (a "Public Offering") or (ii) upon the written consent of the holders of at least a majority of then outstanding shares of the Series A Preferred Stock and Series B Preferred Stock, voting together as a single class.
- (b) The Corporation may, at its option, require all (but not less than all) holders of shares of Series C Preferred Stock then outstanding to convert their shares of Series C Preferred Stock then outstanding into shares of Common Stock, at the then effective Conversion Price pursuant to Section 5, at any time on or after the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sales by the Corporation of Common Stock to the public at a per-share price not less than an amount equal to three times the then effective Conversion Price for the Series C Preferred Stock and which results in at least \$25,000,000 of net proceeds to the Corporation, or (ii) upon the written consent of holders of at least a majority of the then outstanding shares of Series C Preferred Stock voting separately as a single class.
- (c) All holders of record of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock will be given at least ten days' prior written notice of the date fixed and the place designated for mandatory conversion of all such shares of Series A Preferred Stock, Series B

Preferred Stock, and Series C Preferred Stock pursuant to this Section 6. Such notice will be sent by first class or registered mail, postage prepaid, to each record holder (at the close of business on the business day next preceding the day on which notice is given) of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock at such holder's address last shown on the records of the transfer agent for the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). On or before the date fixed for conversion, each holder of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 6. On the date fixed for conversion, all rights with respect to the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock so converted, including the rights, if any, to receive notices and vote, will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificate(s) for the number of shares of Common Stock into which such Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the former registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the date of such mandatory conversion and the surrender of the certificate or certificates for Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 5(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

- (d) All certificates evidencing shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and

after the date such certificates are so required to be surrendered, be deemed to have been retired and cancelled and the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action as may be necessary to reduce the authorized Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock accordingly.

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

- (a) Optional Redemption. The Corporation shall not have the right to call or redeem at any time all or any shares of Series C Preferred Stock. With the approval of the holders of fifty percent (50%) or more of the then outstanding shares of Series C Preferred Stock, one or more holders of shares of Series C Preferred Stock may, by giving notice (the "Notice") to the Corporation at any time after January __, 2005 require the Corporation to redeem all of the outstanding Series C Preferred Stock in three equal installments, with one-third of the shares of Series C Preferred Stock redeemed on the First Redemption Date (as defined below), one-third of the shares redeemed on the first anniversary of the First Redemption Date (the "Second Redemption Date") and the remainder to be redeemed on the second anniversary of the Redemption Date (the "Third Redemption Date"). Upon receipt of the Notice, the Corporation will so notify all other persons holding Series C Preferred Stock. After receipt of the Notice, the Corporation shall fix the first date for redemption (the "First Redemption Date"), provided that such First Redemption Date shall occur within sixty (60) days after receipt of the Notice. All holders of Series C Preferred Stock shall deliver to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Series C Preferred Stock, or at the principal office of the Corporation or at such other place as may be designated by the Corporation, the certificate or certificates for the Series C Preferred Stock, duly endorsed for transfer to the Corporation (if required by it) on or before the First Redemption Date. The First Redemption Date, the Second Redemption Date and the Third Redemption Date are collectively referred to as the "Redemption Dates".

- (b) **Redemption Price and Payment.** The Series C Preferred Stock to be redeemed on the Redemption Dates shall be redeemed by paying for each share in cash an amount equal to the (a) greater of (x) the then Fair Market Value (as defined below) per share, or (y) \$6.0595 per share, plus (b) an amount equal to all dividends accrued and unpaid on each such share, such amount being referred to as the "Series C Redemption Price." Such payment shall be made in full on each of the Redemption Dates to the holders entitled thereto.
- (c) **Redemption Mechanics.** At least 20 but not more than 30 days prior to each Redemption Date, written notice (the "Redemption Notice") shall be given by the Corporation by mail, postage prepaid, or by facsimile transmission to non-U.S. residents, 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 C Preferred Stock notifying such holder of the redemption and specifying the Series C Redemption Price, the Redemption Date and the place where said Series C 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 the Redemption Date, unless there shall have been a default in the payment of the Series C Redemption Price, all rights of holders of shares of Series C Preferred Stock (except the right to receive the Series C Redemption Price) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series C Preferred Stock on any Redemption Date are insufficient to redeem the total number of outstanding shares of Series C Preferred Stock to be redeemed on such Redemption Date, the holders of shares of Series C Preferred Stock shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. The shares of Series C Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein; provided, however, that such unredeemed shares shall be entitled to receive interest accruing daily with respect to the applicable Series C Redemption Price at the rate of 15% per annum, payable quarterly in arrears. At

any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series C 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 C Preferred Stock redeemed pursuant to this Section 6 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled 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 C Preferred Stock .

- (e) The term "Fair Market Value" shall mean an amount equal to the fair market value of a share of Series C Preferred Stock (giving effect to the value of the rights and preferences of such shares as herein provided) determined as follows: the Board of Directors shall endeavor in good faith to agree (by vote of two-thirds of its members which affirmative votes must include the members designated by the holders of the Series C Preferred Stock) to the fair market value of a share of Series C Preferred Stock. If they are unable to do so within sixty (60) days after the occurrence of an event giving rise to a need to determine that fair market value, an investment banking firm chosen by a majority in interest of the holders of the Series C Preferred Stock and an investment banking firm chosen by the Corporation shall each calculate such value. In the event the difference between such valuations is less than 20% of the higher valuation, then the Fair Market Value shall be deemed to be the average of such two valuations. In the event that the difference between such valuations is greater than 20% of the higher valuation, the two investment banking firms shall designate a third investment banking firm which shall select from the two valuations the valuation that such third firm determines to be closer to its own valuation, and the valuation so selected shall be considered the Fair Market Value. In all events, the fees and expenses of any such investment banking firms shall be paid by the Corporation.

FIFTH. The Corporation is to have perpetual existence.

SIXTH. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

B. Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

SEVENTH. A director shall not be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except to the extent that the elimination or limitation of liability is not permitted under the Delaware Code as in effect when such liability is determined. No amendment or repeal of this provision shall deprive a director of the benefits hereof with respect to any act or omission occurring prior to such amendment or repeal.

EIGHTH: The Corporation shall, to the fullest extent permitted by the Delaware Code, as amended from time to time, indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom.

Indemnification may include payment by the Corporation of expenses in defending an action or proceeding in advance of the final disposition of such action or proceeding upon receipt of any undertaking by the person indemnified to repay such payment if it is ultimately determined that such person is not entitled to indemnification under this Article, which undertaking may be accepted without reference to the financial ability of such person to make such repayments.

The Corporation shall not indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person unless the initiation thereof was approved by the Board of Directors of the Corporation.


The Indemnification rights provided in this Article (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any law, agreement or vote of shareholders or disinterested directors or otherwise, and (ii) shall inure to the benefit of the heirs, executors and administrators of such persons. The Corporation may, to the extent authorized from time to time by its board of directors, grant indemnification rights to other employees or agents of the corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article.

Any person seeking indemnification under this Article shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. Any amendment or repeal of the provisions of this Article shall not adversely affect any right or

protection of a director or officer of this Corporation with respect to any act or omission of such director or officer occurring prior to such amendment or repeal.

NINTH. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon a stockholder herein are granted subject to this reservation."

IN WITNESS WHEREOF, I, David A. Page, the Chairman of the Board and Chief Operating Officer of Prizma Incorporated, have signed this Third Amended and Restated Certificate of Incorporation and the signature of the undersigned shall constitute the affirmation and acknowledgment of the undersigned, under penalties of perjury, that this Third Amended and Restated Certificate of Incorporation is the act and deed of the Corporation and that the facts stated in this Certificate are true.



David A. Page
Chairman of the Board and Chief Operating Officer

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