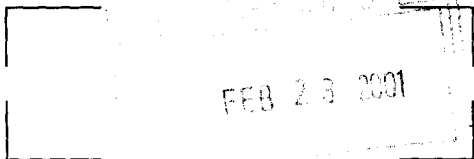


FORM PTO-1618A
Expires 06/30/99
OMB 0651-0027



03-08-2001



101628209

**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

TO: The Commissioner For Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

2-23-01

- 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
 - Change of Name
 - Other
- Effective Date
Month Day Year

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

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/AK/A/T/A

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

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

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 attached from Assignment.)

FOR OFFICE USE ONLY

65E

03/07/2001 6T0N11 00000179 76168465

01 FC:481 40.00 DP
02 FE:100 25.00 DP

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 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.

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)

<input type="text" value="76/168,465"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="76/176,762"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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.
Jonathan A. Harris Jonathan Harris 2/22/01
Name of Person Signing Signature Date Signed

State of Delaware
Office of the Secretary of State

PAGE 1

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 "TOPICAL STORM, INC.", CHANGING ITS NAME FROM "TOPICAL STORM INC." TO "TOPICALNET, INC.", FILED IN THIS OFFICE ON THE SECOND DAY OF FEBRUARY, A.D. 2001, AT 5 O'CLOCK P.M.

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



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

2458627 8100

AUTHENTICATION: 0953670

010056444

DATE: 02-02-01

TRADEMARK
REEL: 002246 FRAME: 0856

FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

TOPICAL STORM, INC.

I, Raymond R. Kingman, Jr., President and Chief Executive Officer of Topical Storm, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, and whose original Certificate of Incorporation was filed, under the name Continuum Software, Inc., with the office of the Secretary of State of the State of Delaware on December 16, 1994, do hereby certify that the Fourth Amended and Restated Certificate of Incorporation of Continuum Software, Inc., has been further amended, and restated as amended, in accordance with provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, and, as amended and restated, is set forth in its entirety as follows:

FIRST. The name of the Corporation is TopicalNet, Inc.

SECOND. The address of its registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is 37,757,368 consisting of : (i) 22,000,000 shares of Voting Common Stock, par value \$.001 per share (the "Common Stock"); (ii) 8,300,000 shares of Non-Voting Common Stock, par value \$.001 per share; (iii) 3,700,000 shares of Series A Convertible Preferred Stock, par value \$.01 per share (iv) 3,100,000 shares of Series B Convertible Preferred Stock, par value \$.01 per share and (v) 657,368 shares of Series C Convertible Preferred Stock, par value \$.01 per share. (The Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock and

the Series C Convertible Preferred Stock are herein collectively referred to as the "Preferred Stock".)

The designations, preferences and rights of the Voting Common Stock, Non-Voting Common Stock, Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Series C Convertible Preferred Stock, and any qualifications, limitations or restrictions thereon, shall be as follows:

A. TERMS OF COMMON STOCK

1. Relative Rights of the Voting Common Stock and the Non-Voting Common Stock. Except as otherwise provided by applicable law or herein, all shares of Voting Common Stock and Non-Voting Common Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges, subject to the same qualifications, limitations and restrictions.

2. Voting Rights. Except as otherwise required by law or by the Restated Certificate of Incorporation, as amended, each holder of Voting Common Stock shall have one vote in respect of each share of such stock held by such holder of record on the books of the Corporation for the election of directors and on all matters submitted to a vote of stockholders of the Corporation, and the holders of the Non-Voting Common Stock shall have no right to vote for the election of directors or on any other matters submitted to a vote of stockholders of the Corporation.

3. Dividends. Subject to the provisions of Section B.3., the holders of shares of Common Stock shall be entitled to receive, when and as declared by the board of directors of the Corporation, out of the assets of the Corporation which are by law available therefor, dividends either in cash, in property or in shares of capital stock. As and when dividends are declared or paid on Common Stock, whether in cash, property or securities of the Corporation, the holders of Voting Common Stock and the holders of Non-Voting Common Stock shall be entitled to participate in such dividends ratably on a per share basis; provided that (i) if dividends are declared which are payable in shares of Voting Common Stock or Non-Voting Common Stock, dividends shall be declared which are payable at the same rate on both classes of stock and the dividends payable in shares of Voting Common Stock shall be payable to holders of that class of stock and the dividends payable in shares of Non-Voting Common Stock shall be payable to holders of that class of stock and (ii) if the dividends consist of other voting securities of the Corporation, the Corporation shall make available to each holder of Non-Voting Common Stock, dividends consisting of nonvoting securities of the Corporation which are otherwise identical to the voting securities and which are convertible into or

exchangeable for such voting securities on the same terms as the Non-Voting Common Stock is convertible into the Voting Common Stock.

4. Dissolution, Liquidation or Winding Up. In the event of any liquidation, dissolution or winding up of the Corporation, holders of Common Stock shall be entitled, unless otherwise provided by law, to receive the distributions specified in Section B.4A. of this Restated Certificate of Incorporation. The holders of the Voting Common and the Non-Voting Common shall be entitled to participate ratably on a per share basis in all distributions to the holders of Common Stock in any liquidation, dissolution or winding up of the Corporation.

5. Conversion of Non-Voting Common Stock.

5A. Mandatory Conversion.

5A(1) Immediately prior to the closing or consummation of any Conversion Event, each share of Non-Voting Common Stock shall be converted into one share of Voting Common Stock.

5A(2) For purposes of this paragraph 5A, a "Conversion Event" shall mean (a) the closing of any public offering of securities of the Corporation registered under the Securities Act of 1933; (b) the registration of the Voting Common Stock of the Corporation under the Securities Exchange Act of 1934; and (c) a merger, consolidation, sale of stock or other transaction involving the Corporation if, immediately after such transaction, a person or persons not previously affiliated with the Corporation owns or controls at least 50% of the voting securities of the Corporation or the surviving entity, as the case may be, assuming conversion of the Non-Voting Common Stock. For purpose of this paragraph 5A, "person" shall include any natural person and any corporation, partnership, joint venture, trust, unincorporated organization and any other entity or organization.

5B. Conversion Procedure.

5B(1) Unless otherwise provided in connection with a Conversion Event with respect to the Non-Voting Common Stock, each conversion of shares of one class of Common Stock into shares of the other class of Common Stock shall be effected by the surrender of the certificate or certificates representing the shares to be converted at the principal office of the Corporation at any time during normal business hours, together with a written notice by the holder of such Common Stock. Each conversion shall be deemed to have been effected as of the close of business on the date prior to the date on which the closing or consummation of the applicable Conversion Event shall have occurred, and at such time the rights of the holder of the converted Non-Voting Common Stock as such holder shall cease and the person or persons in whose name or names the certificate or certificates for shares of Voting Common Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Voting Common Stock represented thereby.

5B(2) Promptly after the surrender of certificates, the Corporation shall issue and deliver in accordance with the surrendering holder's instructions (a) the certificate or certificates for the Voting Common Stock issuable upon such conversion.

5B(3) The issuance of certificates for Voting Common Stock upon conversion of Non-Voting Common Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of Voting Common Stock.

5B(4) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Voting Common Stock, solely for the purpose of issuance upon the conversion of the Non-Voting Common Stock, such number of shares of Voting Common Stock issuable upon the conversion of all outstanding Non-Voting Common Stock. All shares of Voting Common Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of Voting Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Voting Common Stock may be listed (except for official notice of issuance).

5C. Stock Splits. If the Corporation in any manner subdivides or combines the outstanding shares of one class of Common Stock, the outstanding shares of the other class of Common Stock shall be proportionately subdivided or combined in a similar manner.

B. PREFERRED STOCK

1. Number of Shares. The Preferred Stock shall be divided into three series. The series of Preferred Stock designated and known as Series A Convertible Preferred Stock (the "Series A Stock") shall consist of 3,700,000 shares. The series of Preferred Stock designated and known as Series B Convertible Preferred Stock (the "Series B Stock") shall consist of 3,100,000 shares. The series of Preferred Stock designated and known as Series C Convertible Preferred Stock (the "Series C Stock") shall consist of 657,368 shares.

2. Voting.

2A. General. Except as may be otherwise provided herein or by law, the 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, including, but not limited to actions amending the Fifth Amended and Restated Certificate of Incorporation of the Corporation to increase the number of authorized shares of Common Stock. Each share of Preferred Stock shall entitle the holder thereof to such number of votes on each such action as shall equal the number of

shares of Voting Common Stock (including fractions of a share) into which each share of Preferred Stock is then convertible.

2B. 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 Preferred Stock, including the holders of at least a majority of the then outstanding Series C 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 seven.

2C. Board Seats. So long as 1,700,000 shares of the Series A Stock and Series B Stock, in the aggregate, are outstanding, the holders of the Series A Stock and Series B Stock, voting together as a separate class, shall be entitled to elect three directors of the Corporation. So long as 165,000 shares of the Series C stock are outstanding, the holders of the Series C Stock, voting as a separate class, shall be entitled to elect one director of the Corporation. The holders of the Voting Common Stock, voting as a separate class, shall be entitled to elect three 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 (i) the holders of a majority of the shares of Series A Stock and the Series B Stock then outstanding shall constitute a quorum of the Series A Stock and the Series B Stock for the election of the director to be elected solely by the holders of the Series A Stock and the Series B Stock, and (ii) the holders of a majority of the shares of Series C Stock then outstanding shall constitute a quorum of the Series C Stock for the election of the director to be elected solely by the holders of the Series C Stock. Any director who shall have been elected by the holders of a class or series of stock or by a combination of any classes or series of stock, as the case may be, may be removed during his term of office, either with or without cause, by, and only by, the affirmative vote of the holders of a majority of the shares of the class or series of stock or combination of classes or series of stock, as the case may be, who elected such director or directors, given either at a special meeting of stockholders duly called for that purpose or pursuant to a written consent of stockholders. A vacancy in any directorship elected by the holders of the Series A Stock and the Series B Stock or the holders of the Series C Stock as the case may be, shall be filled only by vote or written consent of the holders of the Series A Stock and the Series B Stock or the holders of the Series C Stock, respectively, and a vacancy in any directorship elected by the holders of the Voting Common Stock shall be filled only by vote or written consent of the holders of the Voting Common Stock.

3. Dividends. The holders of the Series A Stock, Series B Stock and Series C Stock shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors, non-accruing dividends at the rate per annum of \$0.08 per share, \$0.15 per share and \$0.72 per share, respectively (subject in each case to appropriate and equitable adjustment upon a stock split or other subdivision of the Series A Stock, Series B Stock or Series C Stock, as the case may be, a stock dividend payable

in shares of Series A Stock, Series B Stock or Series C Stock, as the case may be, a reverse stock split or other combination of the Series A Stock, Series B Stock or Series C Stock, as the case may be, or a reclassification of the Series A Stock, Series B Stock or Series C Stock, as the case may be); provided that the rights of the holders of Series C Stock to receive such dividends shall rank pari passu with the holders of Series A Stock and Series B Stock, and prior to the holders of Common Stock to receive dividend payments. In addition, the holders of the Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends at the same rate as dividends (other than dividends paid in additional shares of Common Stock) are paid with respect to the Common Stock (treating each share of Preferred Stock as being equal to the number of shares of Common Stock (including fractions of a share) into which each such share of Preferred Stock is then convertible). So long as any shares of the Preferred Stock are outstanding, no dividends, except as described in the next succeeding sentence, shall be declared or paid or set apart for payment on any equity security of the Corporation to which the Preferred Stock ranks prior, for any period unless full dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Preferred Stock for all dividend periods terminating on or prior to the date of payment of the dividend on such class or series of junior stock. When dividends are not paid in full or a sum sufficient for such payment is not set apart, as aforesaid, all dividends declared upon shares of the Preferred Stock and all dividends declared upon any other class or series of stock ranking on a parity as to dividends and amounts distributable upon liquidation, dissolution or winding up shall be declared ratably in proportion to the respective amounts of dividends unpaid on the Preferred Stock and unpaid on such parity stock.

4. Liquidation.

4A. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Preferred Stock shall first be entitled, before any distribution or payment is made upon any stock ranking on liquidation junior to the Preferred Stock, to be paid an amount equal to (a) \$1.00 per share in the case of Series A Stock (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F or 6G hereof) plus, in the case of each share, an amount equal to all dividends declared but unpaid thereon, computed to the date payment thereof is made available, (b) \$1.89 per share in the case of the Series B Stock (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F or 6G hereof) plus, in the case of each share, an amount equal to all dividends declared but unpaid thereon, computed to the date payment thereof is made available, and (c) \$9.00 per share in the case of the Series C Stock (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F or 6G hereof) plus, in the case of each share, an amount equal to all dividends declared but unpaid thereon, computed to the date payment thereof is made available, such amount payable with respect to one share of Preferred Stock being sometimes referred to as a "Liquidation Preference Payment" and with respect to all shares of 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 Preferred Stock is less than the Liquidation Preference Payments, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Preferred Stock based on relative Liquidation Preference Payment amounts per share. Upon any such liquidation, dissolution or winding up of the Corporation, immediately after the holders of Preferred Stock shall have been paid in full the Liquidation Preference Payments, the remaining net assets of the Corporation available for distribution shall be distributed ratably among the holders of Series C Stock, Series B Stock and Common Stock (with each share of Series C Stock or Series B 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 C Stock or Series B 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, the amount of the Liquidation Preference Payments and the place where said Liquidation Preference Payments shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex, not less than 20 days prior to the payment date stated therein, to the holders of record of 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 which results in the exchange of outstanding shares of the Corporation for securities or other consideration issued or paid or caused to be issued or paid by any such entity or affiliate thereof (other than a merger to reincorporate the Corporation in a different jurisdiction or a merger or consolidation in which the holders of outstanding shares of the Corporation become the holders of a majority of the voting securities of the surviving or resulting entity), any reorganization or other transaction in which the stockholders of the Corporation prior to the transaction do not retain a majority of the voting power in the surviving entity, and the sale, lease, abandonment, transfer or other disposition by the Corporation of all or substantially all its assets, whether in a single transaction or a series of related transactions, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of the provisions of this paragraph 4. In connection with any such transaction contemplated by the preceding sentence, all consideration payable to the stockholders of the Corporation, in connection with a merger or consolidation, or all consideration payable to the Corporation, together with all other available assets of the Corporation (net of obligations owed by the Corporation), in the case of an asset sale, shall be paid to and deemed (to the fullest extent permitted by law) distributed (in the case of a merger or consolidation) or available for distribution and payment as provided herein (in the case of a sale of assets), as applicable, to the holders of capital stock of the Corporation in accordance with the preference and priorities set forth in this paragraph 4, which such preferences and priorities specifically intended to be applicable in any such merger, consolidation or sale transaction as if the same were a liquidation, dissolution or winding up. For purposes hereof, the Common Stock shall rank on liquidation junior to the Preferred Stock.

4B. In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, which will involve the distribution of assets other than cash, the Corporation shall promptly engage a competent independent appraiser approved by holders of a majority of the outstanding shares of the Series B and Series C Stock, to determine the value of the assets to be distributed to the holders of shares of Preferred Stock and Common Stock. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of shares of the Series B Stock and Series C Preferred of the appraiser's valuation. To the extent commercially practicable, distribution of each non-cash asset shall be made pro rata to each stockholder in proportion to the aggregate amount to which such stockholder is entitled in the event of a liquidation, dissolution or winding up of the Corporation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation which will involve the distribution of assets other than cash, if the assets to be distributed are not divisible in a commercially practicable manner so as to effect the pro rata distribution contemplated by this Section 4B, then the Corporation shall use commercially reasonable efforts to liquidate such assets for cash.

5. Restrictions

5A. At any time when shares of 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 Fifth Amended and Restated Certificate of Incorporation, and in addition to any other vote required by law or the Fifth Amended and Restated Certificate of Incorporation, without the approval of the holders of at least a majority of the then outstanding shares of Preferred Stock, including a majority of the then outstanding Series C Stock and Series B Stock (such Series C Stock and Series B Stock voting together as a single class), given in writing or by vote at a meeting, consenting or voting together as a single class, the Corporation will not:

5A(1) Create, issue or authorize the creation or issuance of any additional class or series of shares of stock unless the same ranks junior to the Preferred Stock as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, as to the payment of dividends or distributions, and upon redemption and as to the payment of the applicable redemption price upon redemption, and such additional class or series of shares of stock does not have, as a class, voting or other approval rights that could prohibit the Corporation from taking any action or engaging in any transaction without obtaining the prior approval of the holders of such additional class or series of stock, whether any such creation, authorization or issuance shall be by means of amendment to the Fifth Amended and Restated Certificate of Incorporation or by merger, consolidation or otherwise;

5A(2) Increase the authorized amount of the Preferred Stock or increase the authorized amount of any additional class or series of shares of stock, the issuance or

authorization of which would require the prior approval of holders of Preferred Stock pursuant to subparagraph 5(a) above, whether any such increase shall be by means of amendment to the Fifth Amended and Restated Certificate of Incorporation or by merger, consolidation or otherwise;

5A(3) Create, authorize or issue any obligation or security convertible into shares of Preferred Stock or into shares of any other class or series of stock, the creation, authorization or issuance of which would require the prior approval of the holders of Preferred Stock pursuant to subparagraph 5(a) above; whether any such creation, authorization or increase shall be by means of amendment to the Fourth Amended and Restated Certificate of Incorporation or by merger, consolidation or otherwise;

5A(4) Consent to any liquidation, dissolution or winding up of the Corporation within the meaning of Section B.4A. above;

5A(5) Amend, alter or repeal its Fifth Amended and Restated Certificate of Incorporation or By-laws;

5A(6) Purchase or set aside any sums for the purchase of, or declare or pay any dividend or make any distribution on, any shares of 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;

5A(7) Redeem or otherwise acquire any shares of Preferred Stock or any equity security of the Corporation to which the Preferred Stock ranks prior except as expressly authorized in paragraph 7 hereof or pursuant to a purchase offer made pro rata to all holders of the shares of Preferred Stock on the basis of the aggregate number of outstanding shares of Preferred Stock then held by each such holder;

5A(8) Effect the sale, lease, license, encumbrance or transfer of all or substantially all of the core technology of the Corporation, other than an encumbrance of such technology pursuant to a third party which has been approved by the Board of Directors including the directors elected by the holders of the Preferred Stock; or

5A(9) Cease the operations of, or materially alter, the business of the Corporation, or the acquisition of another business, without the approval of a majority of the Board of Directors including a majority of the directors elected solely by the holders of the Preferred Stock.

5B. At any time when shares of Series A Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of Series A Stock of the Corporation is required by law or by this Fifth Amended and Restated Certificate of Incorporation, and in addition to any other vote required by law or this Fifth Amended and Restated Certificate of Incorporation, without the written consent of the holders of at least a majority in interest of the then outstanding shares of Series A 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 increase the authorized number of shares of Series A Stock or in any manner amend, alter or change the designations or the powers, preferences or rights, privileges or restrictions of the Series A Stock in a manner which would affect the holders of the Series A Stock but would not similarly affect all holders of the Preferred Stock.

5C. At any time when shares of Series B Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of Series B Stock of the Corporation is required by law or by this Fifth Amended and Restated Certificate of Incorporation, and in addition to any other vote required by law or this Fifth Amended and Restated Certificate of Incorporation, without the written consent of the holders of at least a majority in interest of the then outstanding shares of Series B 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 increase the authorized number of shares of Series B Stock or in any manner amend, alter or change the designations or the powers, preferences or rights, privileges or restrictions of the Series B Stock in a manner which would affect the holders of the Series B Stock but would not similarly affect all holders of the Preferred Stock.

5D. At any time when shares of Series C Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of Series C Stock of the Corporation is required by law or by this Fifth Amended and Restated Certificate of Incorporation, and in addition to any other vote required by law or this Fifth Amended and Restated Certificate of Incorporation, without the written consent of the holders of at least a majority in interest of the then outstanding shares of Series C 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 increase the authorized number of shares of Series C Stock or in any manner amend, alter or change the designations or the powers, preferences or rights, privileges or restrictions of the Series C Stock in a manner which would affect the holders of the Series C Stock but would not similarly affect all holders of the Preferred Stock.

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

6A. Right to Convert. Subject to the terms and conditions of this paragraph 6, the holder of any share or shares of Preferred Stock shall have the right, at its sole option at any time and without further action or consent from the holders of shares of any other class or series of the Corporation's capital stock, to convert any such shares of 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 Preferred Stock) into such number of fully paid and nonassessable shares of Voting Common Stock as is obtained by (i) multiplying the number of shares of Preferred Stock so to be converted by \$1.00 in the case of the Series A Stock, \$1.89 in the case of the Series B Stock and \$9.00 in the case of the Series C Stock, and (ii) dividing the result by the conversion price per share of \$1.00 in the case of the Series A Stock, \$1.89 in the case of the Series B Stock and \$9.00 in the case of the Series C Stock or, in case an adjustment of such price has taken place pursuant to the further provisions of this paragraph 6, then by the conversion price as last adjusted and in effect at the date any share or shares of such series of Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, with respect to each Series of Preferred Stock being referred to as the "Applicable 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 Preferred Stock into Voting 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 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 Voting Common Stock shall be issued.

6B. Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in subparagraph 6A and surrender of the certificate or certificates for the share or shares of 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 Voting Common Stock issuable upon the conversion of such share or shares of Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Applicable 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 Preferred Stock shall cease and the person or persons in whose name or names any certificate or certificates for shares of Voting 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.

6C. Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of Preferred Stock into Voting 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 an amount equal to all dividends declared but unpaid on the shares of Preferred Stock surrendered for conversion to the date upon which such conversion is deemed to take place as provided in subparagraph 6B. In case the number of shares of Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 6A 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 Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Voting Common Stock would, except for the provisions of the first sentence of this subparagraph 6C, be delivered upon such conversion (looking at the aggregate number of shares of Preferred Stock being converted at such time), the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the 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.

6D. Adjustment of Price Upon Issuance of Common Stock. Except as provided in subparagraph 6E, if and whenever the Corporation shall issue or sell, or is, in accordance with subparagraphs 6D(1) through 6D(6), deemed to have issued or sold, any shares of Common Stock without consideration or for a consideration per share less than the Applicable Conversion Price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Applicable 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 outstanding immediately prior to such issue or sale multiplied by the then existing Applicable 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 outstanding immediately after such issue or sale.

For purposes of this subparagraph 6D, the following subparagraphs 6D(1) to 6D(6) shall also be applicable:

6D(1) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) 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 Applicable 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 subparagraph 6D(3), no adjustment of the Applicable 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.

6D(2) 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 Applicable 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 subparagraph 6D(3), no adjustment of the Applicable 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 subparagraph 6D, no further adjustment of the Applicable Conversion Price shall be made by reason of such issue or sale.

6D(3) 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 subparagraph 6D(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph 6D(1) or 6D(2), or the rate at which Convertible Securities referred to in subparagraph 6D(1) or 6D(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 Applicable Conversion Price in effect at the time of such event shall forthwith be readjusted to the Applicable 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, but only if as a result of such adjustment the Applicable Conversion Price then in effect hereunder is thereby reduced; and on the termination of any such Option or any such right to convert or exchange such Convertible Securities, the Applicable Conversion Price then in effect hereunder shall forthwith be increased to the Applicable 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.

6D(4) 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.

6D(5) 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.

6D(6) 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 subparagraph 6D.

6E. Certain Issues of Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Applicable Conversion Price in the case of the issuance from and after the first issuance of any shares of Series A Convertible Preferred Stock of (i) any shares of Common Stock issued in exchange for a like number of shares of Voting Common Stock or Non-Voting Common Stock pursuant to paragraph 5 of the Terms of Common Stock, (ii) up to an aggregate of 5,100,000 shares (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F) of Common Stock 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, plus such number of shares 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 therefor, (iii) up to 23,097 shares of Series A Stock issued to effect the exercise of preferred stock purchase warrants outstanding as of October 16, 1998, (iv) up to an aggregate of 300,000 shares of Common Stock pursuant to warrants issued in connection with the issuance of Series B Stock, (v) up to an aggregate of 839,004 shares of Common Stock pursuant to warrants issued in connection with the issuance of Series C Stock, (vi) up to 13,228 shares of Common Stock pursuant to warrants issued in connection with other financing activities and (vii) any securities of the Corporation the issuance of which has been approved by the affirmative vote or written consent of holders of at least two-thirds of the then-outstanding shares of Preferred Stock.

6F. 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 Applicable 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 Applicable Conversion Price in effect immediately prior to such combination shall be proportionately increased.

6G. 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 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 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 Applicable 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.

6H. Notice of Adjustment. Upon any adjustment of the Applicable 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 Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Applicable Conversion Price resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

6I. Other Notices. In case at any time:

(1) 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;

(2) 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;

(3) 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

(4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation within the meaning of Section B.4A. above;

then, in any one or more of said cases, the Corporation shall give, by delivery in person, certified or registered mail, return receipt requested, or telecopier or telex, addressed to each holder of any shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 20 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 20 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.

6J. Stock to be Reserved. The Corporation will at all times reserve and keep available, free from preemptive rights, out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Preferred Stock as herein provided, such number of shares of Voting Common Stock as shall then be issuable upon the conversion of all outstanding shares of Series A Stock, Series B Stock and Series C Stock. The Corporation covenants that all shares of Voting 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 Voting Common Stock is at all times equal to or less than the Applicable 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 Voting 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 Voting Common Stock may be listed. The Corporation will not take any action which results in any adjustment of the Applicable Conversion Price if the total number of shares of Voting Common Stock issued and issuable after such action upon conversion of the Preferred Stock would exceed the total number of shares of Voting Common Stock then authorized by the Certificate of Incorporation.

6K. No Reissuance of Preferred Stock. Shares of Preferred Stock which are converted into shares of Voting Common Stock as provided herein shall not be reissued.

6L. Issue Tax. The issuance of certificates for shares of Voting Common Stock upon conversion of 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 Preferred Stock which is being converted.

6M. Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Voting Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion of such Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

6N. Definition of Common Stock. As used in this paragraph 6, the term "Common Stock" shall mean and include both the Corporation's authorized Voting Common Stock, par value \$.001 per share, and Non-Voting Common Stock, par value \$.001 per share, as constituted on the date of filing of this Fifth Amended and Restated Certificate of Incorporation, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall not be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Voting Common Stock receivable upon conversion of shares of Preferred Stock shall include only shares designated as Voting Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets provided for in subparagraph 6G.

6O. Mandatory Conversion. If at any time (i) the Corporation shall effect a firm commitment underwritten public offering of shares of Voting Common Stock in which (a) the aggregate price paid for such shares by the public shall be at least \$30,000,000 and (b) the price paid by the public for such shares shall be at least \$13.50 per share (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F or 6G hereof), (a "Qualified Public Offering") or (ii) the holders of a majority of the then outstanding Preferred Stock, including the holders of a majority of the then outstanding Series C Stock, shall at any meeting (or in a written consent in lieu thereof), vote to convert share of Preferred Stock to Common Stock, then effective upon the closing of the sale of such shares by the Corporation pursuant to such public offering, or upon the occurrence of such vote or consent, as the case may be, all outstanding shares of Preferred Stock shall automatically convert to shares of Voting Common Stock on the basis set forth in this paragraph 6. Holders of shares of 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 Voting Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares to which such holder may be entitled pursuant to subparagraph 6C. Until such time as a holder of shares of Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Voting Common Stock to which such holder shall be entitled upon the surrender thereof.

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

7A. Mandatory Redemption. In the event that the holders of a majority of the then outstanding shares of Preferred Stock, which majority includes the holders of a majority of the then outstanding Series B Stock and Series C Stock, shall have given notice to the Corporation at any time after February 2, 2006 requesting redemption of all

outstanding shares of Preferred Stock, which notice specifies a date for such redemption (the "Redemption Date") which is at least 45 but not less than 90 days after the date of such notice, the Corporation shall redeem from each holder of shares of Preferred Stock, all of the shares of Preferred Stock held by such holder on the Redemption Date in accordance with the provisions of this Section 7.

7B. Redemption Price and Payment. The Series A Stock to be redeemed on the Redemption Date shall be redeemed, out of funds legally available therefor, by paying for each share in cash an amount equal to \$1.00 per share (subject to appropriate and equitable adjustment upon a stock split or other subdivision of the Series A Stock, a stock dividend payable in shares of Series A Stock, a reverse stock split or other combination of the Series A Stock or a reclassification of the Series A Stock) plus, in the case of each share, an amount equal to all dividends declared but unpaid thereon, computed to the Redemption Date, such amount being referred to as the "Series A Redemption Price". Such payment shall be made in full on the Redemption Date to the holders entitled thereto, subject to restrictions imposed thereon by law and to the extent permitted by law. The Series B Stock to be redeemed on the Redemption Date shall be redeemed, out of funds legally available therefor, by paying for each share in cash an amount equal to \$1.89 per share (subject to appropriate and equitable adjustment upon a stock split or other subdivision of the Series B Stock, a stock dividend payable in shares of Series B Stock, a reverse stock split or other combination of the Series B Stock or a reclassification of the Series B Stock) plus, in the case of each share, an amount equal to all dividends declared but unpaid thereon, computed to the Redemption Date, such amount being referred to as the "Series B Redemption Price". Such payment shall be made in full on the Redemption Date to the holders entitled thereto, subject to restrictions imposed thereon by law and to the extent permitted by law. The Series C Stock to be redeemed on the Redemption Date shall be redeemed, out of funds legally available therefor, by paying for each share in cash an amount equal to \$9.00 per share (subject to appropriate and equitable adjustment upon a stock split or other subdivision of the Series C Stock, a stock dividend payable in shares of Series C Stock, a reverse stock split or other combination of the Series C Stock or a reclassification of the Series C Stock) plus, in the case of each share, an amount equal to all dividends declared but unpaid thereon, computed to the Redemption Date, such amount being referred to as the "Series C Redemption Price" and together with the Series A Redemption Price and the Series B Redemption Price, the "Redemption Price". Such payment shall be made in full on the Redemption Date to the holders entitled thereto, subject to restrictions imposed thereon by law and to the extent permitted by law.

7C. Redemption Mechanics. At least 15 but not more than 45 days prior to the 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 Preferred Stock notifying such holder of the redemption and specifying the Redemption Price, the Redemption Date 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 the Redemption Date, unless there shall have been a default in the payment of the Redemption Price, all rights of holders of shares of Preferred Stock (except the right to receive the 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 Preferred Stock on the Redemption Date are insufficient to redeem the total number of outstanding shares of Preferred Stock, the holders of shares of 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 Preferred Stock not 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 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. If the Corporation is legally able to but for any reason fails to redeem shares of Preferred Stock when it is required to do so pursuant to the provisions of this Section B.7. (whether on the Redemption Date or thereafter) then upon such failure and until such time as all shares of Preferred Stock have been redeemed by the Corporation, the directors elected by the holders of the Preferred Stock shall be deemed to constitute a separate class of directors of the Corporation within the meaning of Section 141(d) of the Delaware General Corporation Law, and such directors shall together be entitled to cast a number of votes on each matter considered by the Board of Directors (including for purposes of determining the existence of a quorum) equal to the sum of the number of votes entitled to be cast by all other members of the Board of Directors plus one.

7D. Redeemed or Otherwise Acquired Shares to be Retired. Any shares of Preferred Stock redeemed pursuant to this Section B.7. 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 A Stock Series B Stock and/or Series C Stock, as the case may be.

8. Amendments. Except where the vote or written consent of (i) the holders of a greater number of shares of the Corporation or (ii) a specific class (or Series) vote is required by law or this Fifth Amended and Restated Certificate of Incorporation, no provision of these terms of Preferred Stock may be amended, modified or waived without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Preferred Stock, which majority includes the holders of a majority of the then outstanding shares of Series C Stock.

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.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the by-laws of the Corporation may provide or as may be designated from time to time by the board of directors of the Corporation.

SEVENTH. The Corporation eliminates the personal liability of each member of its board of directors to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that the foregoing shall not eliminate the liability of a director (i) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of Title 8 of the Delaware Code or (iv) for any transaction from which such director derived an improper personal benefit. All references in this Article Ninth to a director shall also be deemed to refer to such other person or persons, if any, who, pursuant to a provision of this certificate in accordance with subsection (a) of Section 141 of Title 8 of the Delaware Code, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by Title 8 of the Delaware Code.

EIGHTH. The Corporation reserves the right to amend or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has caused this Fifth Amended and Restated Certificate of Incorporation to be signed and attested by its duly elected officers this 2nd day of February, 2001.

TOPICAL STORM, INC.

By: 
Raymond R. Kingman, Jr.
President and Chief Executive Officer