



To the Honorable Commissioner of Patents and Trademarks

101762437

document or copy thereof.

1. Name of Party(ies) conveying an interest:

ROCKETLOGIX, INC. **G-20-61**

Individual(s) Association
 General Partnership Limited Partnership
 Corporation - Delaware
 Other

2. Name and Address of Party(ies) receiving an interest:

RLX TECHNOLOGIES, INC.
 25231 Grogan's Mill Road
 Suite 600
 The Woodlands, Texas 77380 **20**

Individual Association
 General Partnership Limited Partnership
 Corporation - Delaware
 Other
 Citizenship

3. Interest Conveyed:

Assignment Change of Name
 Security Agreement Merger
 Other

If not domiciled in the United States, a domestic representative designation is attached:

Yes
 No

Effective Date: February 14, 2001

4. Application number(s) or registration number(s). Additional sheet attached? Yes No

A. Trademark Application No.(s) SEE ATTACHED SCHEDULE A

B. Trademark Registration No.(s)

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Anita Nesser, Esq.
 Baker Botts L.L.P.
 Street Address: 2001 Ross Avenue
 City: Dallas
 State: Texas Zip: 75201

6. Number of applications and registrations involved: 13

7. Amount of fee enclosed or authorized to be charged: \$340.00

8. Deposit account number (Attach duplicate copy of this form if paying by deposit account):

DO NOT USE THIS SPACE

9. 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.

Anita Nesser *Anita Nesser* June 20, 2001
 Name of Person Signing Signature Date

Total number of pages including cover sheet 26

OMB No. 0651-0011 (exp.4/94)

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Mail documents to be recorded with required cover sheet information:

06/26/2001 1DIAZ1 00000163 76207622

Commissioner of Patent and Trademarks

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SCHEDULE A

Mark	Serial No.	Filing Date	BB File No.
REDEFINING SERVER ECONOMICS	76/207622	02/09/2001	067856.0130
RLX	76/191360	01/08/2001	067856.0113
RLX ADMINBLADE	76/207577	02/09/2001	067856.0138
RLX APPBLADE	76/207650	02/09/2001	067856.0140
RLX BLADEARRAY	76/207579	02/09/2001	067856.0133
RLX BLADEMANAGER	76/207576	02/09/2001	067856.0136
RLX BLADESERVER	76/207578	02/09/2001	067856.0134
RLX NASBLADE	76/207621	02/09/2001	067856.0135
RLX SERVERBLADE	76/207575	02/09/2001	067856.0132
RLX SERVERBLADE MANAGER	76/207624	02/09/2001	067856.0137
RLX SYSTEM 324	76/207623	02/09/2001	067856.0131
RLX TECHNOLOGIES	76/191363	01/08/2001	067856.0114
RLX WEBBLADE	76/207651	02/09/2001	067856.0139

State of Delaware
Office of the Secretary of State

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I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "ROCKETLOGIX, INC.", CHANGING ITS NAME FROM "ROCKETLOGIX, INC." TO "RLX TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF FEBRUARY, A.D. 2001, AT 11 O'CLOCK A.M.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1190979

DATE: 06-14-01

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REEL: 002323 FRAME: 0839

**FOURTH CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
ROCKETLOGIX, INC.**

RocketLogix, Inc. (the "**Corporation**") a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "**DGCL**"), does hereby certify as follows for the purpose of amending its Certificate of Incorporation and filing such amendment pursuant to Section 103(f) of the DGCL:

The name of the Corporation is RocketLogix, Inc, and the original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 17, 2000. A Certificate of Amendment to the Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on March 28, 2000. A Second Certificate of Amendment to the Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on May 24, 2000. A Third Certificate of Amendment to the Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on November 21, 2000.

The Board of Directors of the Corporation duly adopted resolutions setting forth the proposed amendment of the Certificate of Incorporation of said Corporation at a special meeting, declaring such amendment to be advisable and directing that such amendment be submitted to the stockholders of the Corporation for approval.

Thereafter, pursuant to the resolutions of the Board of Directors, the stockholders of the Corporation duly adopted the proposed amendment by written consent in lieu of a special meeting in accordance with Section 242 of the DGCL.

The text of Article I of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

The name of the corporation is RLX Technologies, Inc. (hereinafter called "**Corporation**").

The text of Article IV of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

**AUTHORIZED CAPITAL STOCK AND RIGHTS PREFERENCES AND
RESTRICTIONS OF PREFERRED STOCK**

A. Authorized Capital Stock. The total number of shares of all classes of stock of which the Corporation shall have authority to issue is ninety million (90,000,000) shares, of which sixty million (60,000,000) shares, par value \$0.001 per share, shall be common stock ("**Common**

Stock"), and thirty million (30,000,000) shares, par value \$0.001 per share, shall be Preferred Stock (the "Preferred Stock").

The Preferred Stock may be issued from time to time in one or more series. All shares of Preferred Stock shall be of equal rank and shall be identical, except in respect of the matters that may be fixed by the Board of Directors as hereinafter provided, and each share of each series shall be identical with all other shares of such series. Subject to the provisions of Article IV.B and C, the Board of Directors of the Corporation is expressly authorized to provide for the issuance of all or any of the shares of Preferred Stock in one or more series, and to fix the number of shares and to determine or (so long as no shares of such series are then outstanding) alter for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. Subject to the provisions of Article IV.B and C, the Board of Directors is also expressly authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series of Preferred Stock subsequent to the issuance of shares of that series. In case the number of shares of any such series is so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution or resolutions originally fixing the number of shares of such series.

The Corporation has designated ten million five hundred thousand (10,500,000) shares of Preferred Stock as Series A Convertible Preferred Stock (the "Series A Preferred Stock"). The rights, preferences, restrictions and other matters relating to the Series A Preferred Stock are as set forth in Article IV, Section B.

B. Rights Preferences and Restrictions of Series A Preferred Stock

I. Definitions for this Article IV, Section B

(a) "Additional Stock" has the meaning specified in Section 7(d) hereof.

(b) "Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise.

(c) "Business Day" shall mean any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the States of Delaware or Texas.

(d) "Capital Stock" shall mean any class or series of capital stock of the Corporation.

(e) "Conversion Date" has the meaning specified in Section 5(b) hereof.

(f) "Conversion Notice" has the meaning specified in Section 5(b) hereof.

(g) "Conversion Stock" has the meaning specified in Section 5(a)(i) hereof.

(h) "Convertible Securities" means any evidences of indebtedness, shares of stock, or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(i) "Employee Plan" means any equity incentive plan, agreement, bonus, award, stock purchase plan, stock option plan or other stock arrangement with respect to any employee, officer or director of the Corporation.

(j) "Equity Securities" means any capital stock or other similar security of the Corporation, including, without limitation, securities containing equity features and securities containing profit participation features, and any debt or equity security convertible or exchangeable, with or without consideration, into or for any stock or similar security, or any security carrying any warrant, option or right to subscribe for or to purchase any of the foregoing.

(k) "Holder" shall mean any holder of shares of Series A Preferred Stock.

(l) "Issue" means to grant, issue, sell, assume, or fix a record date for determining persons entitled to receive, any security (including Options), whichever of the foregoing is the first to occur.

(m) "Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series A Preferred Stock and the Series B Preferred Stock.

(n) "Liquidation Preference" has the meaning specified in Section 3 hereof.

(o) "Market Price" means the average of the closing prices of any security's sales on all securities exchanges on which such security may at the time be listed, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted on the Nasdaq National Market ("NASDAQ") as of 4:00 P.M., New York time, or, if on any day such security is not quoted on NASDAQ, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of twenty-one (21) days consisting of the day as of which "Market Price" is being determined and the twenty (20) consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted on NASDAQ or the over-the counter market, the "Market Price" shall be the fair value thereof determined jointly by the Corporation and the holders of a majority of the Series A Preferred Stock then outstanding. If such parties are unable to reach agreement within thirty (30) days after the date as of which Market Price is being determined, such fair value shall be determined by an independent appraiser experienced in valuing securities jointly selected by the Corporation and the Holders of a majority of the Series A Preferred Stock then outstanding. The determination of such appraiser shall be final and binding upon the parties, and the Corporation shall pay the fees and expenses of such appraiser.

(p) "Notice of Election" has the meaning specified in Section 5(a) hereof.

(q) "Option" means any right, option, or warrant to subscribe for, purchase, or otherwise acquire Common Stock or Convertible Securities.

(r) "Original Issue Date" means the initial date of issuance of the Series A Preferred Stock.

(s) "Original Purchase Price" shall mean \$1.91 per share of Series A Preferred Stock.

(t) "Person" shall mean any corporation, natural person, firm, joint venture, partnership, trust, unincorporated organization, enterprise, government or any department or agency of any government.

(u) "Qualified Underwritten Public Offering" shall mean a firm commitment underwritten public offering of Common Stock by a nationally recognized underwriter reasonably acceptable to the Holders, subsequent to which the Common Stock is listed on a national securities exchange or on NASDAQ, at an offering price to the public (without deduction for underwriting fees, commission or discounts) in an aggregate amount not less than \$40,000,000 and at an offering price per share of not less than three times the Original Purchase Price, pursuant to an effective registration statement under the Securities Act of 1933, as amended.

(v) "Redemption Date" has the meaning specified in Section 5(b) hereof.

(w) "Redemption Notice" has the meaning specified in Section 5(b) hereof.

(x) "Redemption Price" has the meaning specified in Section 5(a) hereof.

(y) "Series B Preferred Stock" means the Corporation's \$0.001 par value Series B Convertible Preferred Stock.

2. Voting Rights. Except to the extent otherwise required by law, the Holders of shares of Series A Preferred Stock shall vote together with the Holders of Common Stock on each matter required to be submitted to a vote of Holders of Common Stock under the Certificate of Incorporation of the Corporation or the DGCL. Each share of Series A Preferred Stock shall be entitled to one vote.

3. Dividends; Ranking. Holders of Series A Preferred Stock shall be entitled to receive dividends only as and when the Corporation shall declare and pay dividends in respect of its Common Stock, and absent such a declaration, no dividends shall be payable, accrue or accumulate in respect of shares of Series A Preferred Stock. If the Corporation shall declare a dividend in respect of its Common Stock, each Holder of Series A Preferred Stock shall be paid in an amount equal to the dividend that would be payable if such Holder had converted his shares of Series A Preferred Stock into shares of Common Stock immediately prior to the record date for the payment of such dividend at the Conversion Price then in effect. So long as any Series A Preferred Stock remains outstanding, without the prior written consent of the Holders of at least 66-2/3% of the Series A Preferred Stock then outstanding, the Corporation shall not redeem, purchase or otherwise acquire directly or indirectly any Junior Securities, nor shall the

Corporation directly or indirectly pay or declare any dividend or make any distribution upon any Junior Securities.

4. **Liquidation Preference.** In the event of (i) any bankruptcy, liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, (ii) any merger, reorganization or consolidation in which stockholders of the Corporation immediately prior to such transaction possess less than fifty percent (50%) of the outstanding voting power of the Corporation after the transaction, (iii) any sale of all or substantially all of the assets of the Corporation, or (iv) any capital reorganization or reclassification of the capital stock of the Corporation in such a way that the Holders of Common Stock shall be entitled to receive stock, securities, cash or assets with respect to or in exchange for such Common Stock, then each Holder of the Series A Preferred Stock at the time thereof shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of the Common Stock or other Junior Securities, by reason of their ownership of such stock, an amount in cash per share of the Series A Preferred Stock as follows: (A) first, to the holders of the Series B Preferred Stock until each has received an amount equal to \$2.67 per share, (B) second, to the holders of the Series A Preferred Stock until each has received an amount equal to \$1.91 per share, (C) third, to the holders of the Series B Preferred Stock and the Series A Preferred Stock until each has received an aggregate amount, including any payments pursuant to (A) and (B) above, equal to the greater of (x) \$2.67 with respect to the Series B Preferred Stock or \$1.91 with respect to the Series A Preferred Stock times two (2) plus all declared and unpaid dividends for each share of Series A Preferred Stock or Series B Preferred Stock, as appropriate, if any or (y) the amount per share that would be received with respect to such shares of Series A Preferred Stock or Series B Preferred Stock, as appropriate, in liquidation by a Holder of Series A Preferred Stock or Series B Preferred Stock, as appropriate, following conversion of all of such Holder's outstanding Series A Preferred Stock or Series B Preferred Stock, as appropriate, into Common Stock assuming the conversion of all other shares of Series A Preferred Stock or Series B Preferred Stock, as appropriate; provided, however, that if the Conversion Price for the Series B Preferred Stock has been adjusted to \$1.91 pursuant to Section C7(d) hereof, then the payments pursuant to (A) and (B) above shall not be applicable and only the payments pursuant to (C) above shall be applicable. If the assets and funds of the Corporation available for distribution to the Holders of the Series A Preferred Stock upon any event described in this Section B4 shall be insufficient to permit the payment to Holders of the Series A Preferred Stock of the full aforesaid preferential amounts, the Holders of the Series A Preferred Stock shall share ratably (and ratably as to cash, in-kind or other distributions) in any distribution of assets or funds of the Corporation in proportion to the full respective preferential amounts to which they are entitled.

5. **Redemption.**

(a) Any Holder of the Series A Preferred Stock, at its sole option, may, require the Corporation to redeem any or all of the shares of the Series A Preferred Stock held by such Holder at any time and from time to time after the fifth (5th) anniversary of the Original Issue Date, for a redemption price per share (the "Redemption Price") equal to the greater of (i) \$1.91 (the Original Purchase Price) times two (2) plus all declared and unpaid dividends for each share of Series A Preferred Stock, if any, to and including the Redemption Date (as defined below) or (ii) the amount per share that would be received with respect to such shares of Series A Preferred Stock in liquidation by a Holder of Series A Preferred Stock following conversion of

all of such Holder's outstanding Series A Preferred Stock into Common Stock assuming the conversion of all other shares of Series A Preferred Stock. A Holder who wishes to redeem its Series A Preferred Stock shall give sixty (60) days written notice to the Corporation of such election (the "Notice of Election"), whereupon the Corporation shall be obligated to repurchase such shares of Series A Preferred Stock on such date (the "Redemption Date") as shall be determined by the Corporation, but in any event not earlier than ten (10) days and not later than twenty (20) days after the date on which the Notice of Election is delivered to the Corporation. The Corporation shall pay the Redemption Price in full on the Redemption Date.

(b) **Redemption Closing.** The closing of the Corporation's redemption of the Series A Preferred Stock pursuant to the preceding paragraph shall take place on the Redemption Date at the Corporation's principal executive office or place of business. Promptly (but in no event later than five (5) days) after the delivery of the Notice of Election, the Corporation shall send written notice (the "Redemption Notice") to the redeeming Holders of the Series A Preferred Stock specifying the Redemption Date and the location of the Corporation's principal executive office or place of business where the closing will occur. At the closing, the Corporation shall pay the redeeming Holders of the Series A Preferred Stock, against the Corporation's receipt from such Holders of the certificate or certificates representing the shares of Series A Preferred Stock to be redeemed, an amount equal to the Redemption Price by wire transfer of immediately available funds, or, if a redeeming Holder shall not have specified wire transfer instructions to the Corporation prior to the closing, by certified or official bank check made payable to the order of such Holder.

(c) **Cessation of Dividends on Shares of Series A Preferred Stock Redeemed.** From and after the close of business on the Redemption Date (unless default shall be made by the Corporation in providing money for the payment of the Redemption Price), dividends on the shares of the Series A Preferred Stock redeemed shall cease to accrue, and the shares of the Series A Preferred Stock redeemed shall no longer be deemed to be outstanding, and all rights of the Holders thereof as stockholders of the Corporation shall cease.

(d) **Status of Redeemed Shares of the Series A Preferred Stock.** Any shares of the Series A Preferred Stock which have been redeemed shall be retired and thereafter have the status of authorized but unissued shares of Series A Preferred Stock.

(e) **Best Efforts by the Corporation.** In the event that the Corporation does not have sufficient cash available to pay the Redemption Price, it shall use its best efforts to undertake such debt and/or equity financings as are necessary to pay the Redemption Price in full.

6. Conversion of Series A Preferred Stock.

(a) Right to Convert.

(i) Each Holder of Series A Preferred Stock shall have the right, at such Holder's option, to convert all or any portion of such Holder's shares of Series A Preferred Stock into such number of fully paid and nonassessable shares of Common Stock, at such Holder's option ("Conversion Stock"), as is equal to the quotient obtained by dividing (A) the Original Purchase Price of shares of Series A Preferred Stock being converted, by (B) the

Conversion Price (as last adjusted and then in effect) for the shares of Series A Preferred Stock being converted, by surrender of the certificates representing the shares of Series A Preferred Stock to be converted in the manner provided in Article IV, Section B6(c) hereof. The initial Conversion Price shall be \$1.91 per share of Series A Preferred Stock, and shall be subject to adjustment as provided in Article IV, Section B7 hereof. The Holder of any shares of Series A Preferred Stock converted in accordance with the provisions of this Section B6 shall be entitled to payment of any declared but unpaid dividends thereon on the Series A Preferred Stock to be converted to the date of issuance by the Corporation of the shares of Conversion Stock. If the Corporation is not permitted under applicable law to pay any portion of the accrued and unpaid dividends on the Series A Preferred Stock being converted, the Corporation shall pay such dividends to the converting Holder as soon thereafter as funds of the Corporation are legally available for such payment. The obligation to pay such dividends shall be evidenced by the Corporation's promissory note and the principal amount thereof shall bear interest at the prime rate on the date the Series A Preferred Stock is converted as announced by The Chase Manhattan Bank.

(ii) The conversion rights of any share of Series A Preferred Stock redeemed hereunder shall terminate on the Redemption Date for such share unless the Corporation has failed to pay to the Holder thereof the Redemption Price of such share.

(b) Automatic Conversion. Upon the consummation of a Qualified Underwritten Public Offering, each share of the Series A Preferred Stock shall be converted at the option of the Corporation into that number of shares of Conversion Stock as is determined by dividing the Original Purchase Price by the Conversion Price in effect on the date of conversion without further action on the part of the Holder, and whether or not the share certificates are surrendered to the Corporation.

(c) Exercise of Conversion Right. The Holder of any shares of Series A Preferred Stock may exercise the conversion right pursuant to Article IV, Section B6(a) hereof by delivering to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Series A Preferred Stock, or at such other place as may be designated by the Corporation, the certificate or certificates for the shares of the shares to be converted, duly endorsed or assigned in blank to the Corporation, accompanied by written notice (a "Conversion Notice") stating that such Holder elects to convert such shares and stating the name or names (with address) in which the certificate or certificates for the shares of Conversion Stock are to be issued and the class or classes of Conversion Stock to be issued; provided, however, that, if such name or names are other than that of the Holder, such issuance of Conversion Stock is permitted by applicable Federal and state securities laws. On a date (the "Conversion Date") to be scheduled as promptly as possible, but in any event within ten (10) Business Days thereafter, the Corporation shall issue and deliver to the Holder, or upon the written order of such Holder, to the place designated by such Holder, (i) a certificate or certificates for the number of full shares of Conversion Stock to which such Holder is entitled (ii) a check or cash in respect of any fractional interest in a share of Common Stock, as provided in Article IV, Section B6(d) hereof, payable with respect to the shares of Series A Preferred Stock so converted up to and including the Conversion Date and (iii) a check or cash representing declared but unpaid dividends, if any, on the Series A Preferred Stock converted in accordance with Article IV, Section B6(a). The person in whose names the certificate or certificates for Conversion Stock are to be issued shall be deemed to have become a Holder of record on the next succeeding date on which the transfer

books are open, but the Conversion Price shall be that in effect on the Conversion Date. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Series A Preferred Stock surrendered for conversion, the Corporation shall issue and deliver to or upon the written order of the Holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Series A Preferred Stock representing the unconverted portion of the certificate so surrendered, which new certificate shall entitle the Holder thereof to declared but unpaid dividends, if any, on the shares of Series A Preferred Stock represented thereby to the same extent as if the certificate therefore covering such unconverted shares had not been surrendered for conversion.

(d) **No Fractional Shares.** No fractional shares of Conversion Stock or scrip shall be issued upon conversion of shares of Series A Preferred Stock. If more than one share of Series A Preferred Stock shall be surrendered for conversion at any one time by the same Holder, the number of full shares of Conversion Stock issuable upon conversion thereof shall be computed using the aggregate number of shares of Series A Preferred Stock so surrendered. Instead of issuing any fractional shares of Conversion Stock that would otherwise be issuable upon conversion of any shares of Series A Preferred Stock, the Corporation shall make payment to such Holder, in cash, of an amount equal to the fraction of a share of Conversion Stock otherwise issuable to such Holder, multiplied by the Market Price on the Business Day immediately prior to conversion.

(e) **Stamp Taxes, Etc.** The Corporation shall pay all documentary, stamp or other transactional taxes attributable to the issuance or delivery of shares of capital stock of the Corporation upon conversion of any shares of Series A Preferred Stock; provided, however, that the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificate of such shares in a name other than that of the Holder of the shares of Series A Preferred Stock in respect of which such shares are being issued.

(f) **Reservation of Common Stock.** The Corporation shall reserve, free from preemptive rights, out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock (assuming a Conversion Price of \$1.91 per share, as such amount is adjusted from time to time as contemplated by Article IV, Section B7 and the conversion, exercise and exchange of all other outstanding Convertible Securities and Options sufficient shares to provide for the conversion of all outstanding shares of Series A Preferred Stock and all other outstanding Convertible Securities and Options. The Corporation shall take all such actions as may be necessary to assure that all such shares of 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 Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action that would cause the number of authorized but unissued shares of Common Stock to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Series A Preferred Stock.

(g) **No Liens.** All shares of Conversion Stock which may be issued in connection with the conversion provisions set forth herein will, upon issuance by the

Corporation, be validly issued, fully paid and nonassessable and free from all taxes, liens or charges with respect thereto created or imposed by the Corporation.

7. **Adjustment of Conversion Price.** The applicable Conversion Price for the Series A Preferred Stock shall be subject to adjustment from time to time as hereinafter provided for in this Article IV, Section B7.

(a) **Stock Dividends.** In case at any time the Corporation shall declare a dividend or make any other distribution upon the Common Stock of the Corporation which is payable in Common Stock or Convertible Securities, the Conversion Price in effect immediately prior to such dividend or other distribution shall be proportionately reduced and the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock immediately prior to such dividend or other distribution shall be proportionately increased.

(b) **Subdivision or Combination of Stock.** In case the Corporation shall at any time subdivide the outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced and the number of shares issuable upon conversion of the Series A Preferred Stock immediately prior to such subdivision shall be proportionately increased, and conversely, in case the outstanding shares of Common Stock shall be combined at any time into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased and the number of shares issuable upon conversion of the Series A Preferred Stock immediately prior to such combination shall be proportionately reduced.

(c) **Adjustments for Consolidation, Merger, Sale of Assets, Reorganization, etc.** In case the Corporation (i) consolidates with or merges into any other corporation and is not the continuing or surviving corporation of such consolidation or merger or (ii) permits any other corporation to consolidate with or merge into the Corporation and the Corporation is the continuing or surviving corporation but, in connection with such consolidation or merger, the Common Stock is changed into or exchanged for stock or other securities of any other corporation or cash or any other assets and or (iii) transfers all or substantially all of its properties and assets to any other corporation, or (iv) effects a capital reorganization or reclassification of the capital stock of the Corporation in such a way that Holders of Common Stock shall be entitled to receive stock, securities, cash or assets with respect to or in exchange for Common Stock, then, and in each such case, proper provision, in form and substance satisfactory to the Holders of at least 66-2/3% of the shares of Series A Preferred Stock then outstanding, shall be made so that, (x) upon the basis and upon the terms and in the manner provided in this Article IV Section B7(c), upon the conversion of the Series A Preferred Stock at any time after the consummation of such consolidation, merger, transfer, reorganization or reclassification, each Holder shall be entitled to receive (at the Conversion Price in effect for shares issuable upon such conversion of the Series A Preferred Stock immediately prior to such consummation), in lieu of shares issuable upon such conversion of the Series A Preferred Stock prior to such consummation, the stock and other securities, cash and assets to which such Holder would have been entitled upon such consummation if such Holder had so converted such Series A Preferred Stock immediately prior thereto (subject to adjustments subsequent to such corporate action as nearly equivalent as possible to the adjustments provided for in this Article IV, Section B7 and (y) the provisions of Article IV, Sections B2, B6 and B7 hereof thereafter shall remain applicable to the Series A Preferred Stock (including, in the case of any such consolidation,

merger or sale in which the successor entity or purchasing entity is other than the Corporation, an immediate adjustment of the Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Conversion Stock acquirable and receivable upon conversion of the Series A Preferred Stock, if the value so reflected is less than the Conversion Price which otherwise would be in effect immediately after such consolidation, merger or sale). The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor entity (if other than the Corporation) resulting from consolidation or merger or the entity purchasing such assets assumes by written instrument (in form and substance reasonably satisfactory to the Holders of at least 66-2/3% of the shares of Series A Preferred Stock then outstanding), the obligation to deliver to each such Holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such Holder may be entitled to acquire.

(d) **Adjustments for Issuances of Additional Stock.** In case the Corporation shall at any time issue either shares of Common Stock or issue Convertible Securities or Options ("**Additional Stock**") that are exercisable at a price below the Conversion Price in effect on the date of and immediately prior to such issuance, the Conversion Price shall be reduced to a price (calculated to five decimal places) determined by multiplying such Conversion Price by a fraction (i) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock which the aggregate consideration received or receivable by the Corporation for the total number of shares of Additional Stock so issued (or deemed to be issued) would purchase at the Conversion Price and (ii) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock issued (or deemed to be issued) as Additional Stock in such issuance. Any adjustment of the Conversion Price that is made pursuant to this Section B7 which relates to any Convertible Securities or Options shall be disregarded if, as, and when such Convertible Securities or Options expire or are cancelled without being exercised, so that the Conversion Price effective immediately upon such cancellation or expiration shall be equal to the Conversion Price that would have been in effect had the expired or cancelled Convertible Securities or Options not been issued.

(e) **Exceptions.** Notwithstanding the provisions of this Article IV, Section B7, no adjustment to the Conversion Price shall be made for issuances of (i) Options to purchase Common Stock pursuant to any employee or management stock option, stock appreciation rights, restricted stock option or any similar plan approved by the Board of Directors and the Corporation's stockholders; (ii) shares of Common Stock issuable upon conversion of the Series A Preferred Stock; or (iii) capital stock (or rights therefor) in connection with acquisitions and mergers approved by the Board of Directors (including the two Preferred Directors); or (iv) warrants issued to Aspen Advisors, L.P. in connection with the issuance of the Company's Series A Preferred Stock and the Series B Preferred Stock.

(f) **Notice of Adjustment.** Whenever the number of shares issuable upon the conversion of the Series A Preferred Stock or the Conversion Price is adjusted, as provided in this Article IV, Section B7, the Corporation shall prepare and mail to each Holder a certificate setting forth (i) the Conversion Price and the number of shares issuable upon the conversion of the Series A Preferred Stock after such adjustment, (ii) a brief statement of the facts requiring such adjustment and (iii) the computation by which such adjustment was made.

(g) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares of Common Stock owned or held by or for the account of the Corporation. The disposition of any shares of Common Stock owned or held by or for the account of the Corporation shall be considered an issue of Common Stock for the purposes of this Article IV, Section B7.

(h) Certain Adjustment Rules.

(i) The provisions of this Article IV, Section B7 shall similarly apply to successive transactions.

(ii) If the Corporation shall declare any dividend referred to in Article IV, Section B7(a) and if any Holder converts all or any part of its Series A Preferred Stock after such declaration, but before the payment of such dividend, the Corporation may elect to defer, until the payment of such dividend, issuing to such Holder the shares of Common Stock issuable upon such conversion over and above the shares issuable upon such conversion on the basis of the Conversion Price in effect prior to such adjustment; provided, however, that the Corporation shall deliver to each such Holder a due bill or other appropriate instrument evidencing such Holder's right to receive such additional shares upon the payment of such dividend.

(iii) If the Corporation shall declare any dividend referred to in Article IV, Section B7(a) and shall legally abandon such dividend prior to payment, then no adjustment shall be made pursuant to this Article IV, Section B7 in respect of such declaration.

8. Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Series A Preferred Stock. Upon the surrender of any certificate representing Series A Preferred Stock at such place, the Corporation shall, at the request of the record Holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the Holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Series A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Series A Preferred Stock represented by the surrendered certificate.

9. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered Holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series A Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the Holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

The Corporation has designated fifteen million (15,000,000) shares of Preferred Stock as Series B Convertible Preferred Stock (the "Series B Preferred Stock"). The rights, preferences, restrictions and other matters relating to the Series B Preferred Stock are as set forth in Article IV, Section C.

C. Rights Preferences and Restrictions of Series B Preferred Stock

1. Definitions for this Article IV, Section C

(a) "Additional Stock" has the meaning specified in Section 7(d) hereof.

(b) "Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise.

(c) "Business Day" shall mean any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the States of Delaware or Texas.

(d) "Capital Stock" shall mean any class or series of capital stock of the Corporation.

(e) "Conversion Date" has the meaning specified in Section 5(b) hereof.

(f) "Conversion Notice" has the meaning specified in Section 5(b) hereof.

(g) "Conversion Stock" has the meaning specified in Section 5(a)(i) hereof.

(h) "Convertible Securities" means any evidences of indebtedness, shares of stock, or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(i) "Employee Plan" means any equity incentive plan, agreement, bonus, award, stock purchase plan, stock option plan or other stock arrangement with respect to any employee, officer or director of the Corporation.

(j) "Equity Securities" means any capital stock or other similar security of the Corporation, including, without limitation, securities containing equity features and securities containing profit participation features, and any debt or equity security convertible or exchangeable, with or without consideration, into or for any stock or similar security, or any security carrying any warrant, option or right to subscribe for or to purchase any of the foregoing.

(k) "Holder" shall mean any holder of shares of Series B Preferred Stock.

(l) "Issue" means to grant, issue, sell, assume, or fix a record date for determining persons entitled to receive, any security (including Options), whichever of the foregoing is the first to occur.

(m) "Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series A Preferred Stock and the Series B Preferred Stock.

(n) "Liquidation Preference" has the meaning specified in Section 3 hereof.

(o) "Market Price" means the average of the closing prices of any security's sales on all securities exchanges on which such security may at the time be listed, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted on the Nasdaq National Market ("NASDAQ") as of 4:00 P.M., New York time, or, if on any day such security is not quoted on NASDAQ, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of twenty-one (21) days consisting of the day as of which "Market Price" is being determined and the twenty (20) consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted on NASDAQ or the over-the counter market, the "Market Price" shall be the fair value thereof determined jointly by the Corporation and the holders of a majority of the Series B Preferred Stock then outstanding. If such parties are unable to reach agreement within thirty (30) days after the date as of which Market Price is being determined, such fair value shall be determined by an independent appraiser experienced in valuing securities jointly selected by the Corporation and the Holders of a majority of the Series B Preferred Stock then outstanding. The determination of such appraiser shall be final and binding upon the parties, and the Corporation shall pay the fees and expenses of such appraiser.

(p) "Notice of Election" has the meaning specified in Section 5(a) hereof.

(q) "Option" means any right, option, or warrant to subscribe for, purchase, or otherwise acquire Common Stock or Convertible Securities.

(r) "Original Issue Date" means the initial date of issuance of the Series B Preferred Stock.

(s) "Original Purchase Price" shall mean \$2.67 per share of Series B Preferred Stock.

(t) "Person" shall mean any corporation, natural person, firm, joint venture, partnership, trust, unincorporated organization, enterprise, government or any department or agency of any government.

(u) "Qualified Underwritten Public Offering" shall mean a firm commitment underwritten public offering of Common Stock by a nationally recognized underwriter reasonably acceptable to the Holders, subsequent to which the Common Stock is listed on a national securities exchange or on NASDAQ, at an offering price to the public (without deduction for underwriting fees, commission or discounts) in an aggregate amount not less than \$40,000,000 and at an offering price per share of not less than three times the Original Purchase Price, pursuant to an effective registration statement under the Securities Act of 1933, as amended.

- (v) "Redemption Date" has the meaning specified in Section 5(b) hereof.
- (w) "Redemption Notice" has the meaning specified in Section 5(b) hereof.
- (x) "Redemption Price" has the meaning specified in Section 5(a) hereof.
- (y) "Series A Preferred Stock" means the Corporation's \$0.001 par value Series A Convertible Preferred Stock.

2. **Voting Rights.** Except to the extent otherwise required by law, the Holders of shares of Series B Preferred Stock shall vote together with the Holders of Common Stock on each matter required to be submitted to a vote of Holders of Common Stock under the Certificate of Incorporation of the Corporation or the DGCL. Each share of Series B Preferred Stock shall be entitled to one vote.

3. **Dividends; Ranking.** Holders of Series B Preferred Stock shall be entitled to receive dividends only as and when the Corporation shall declare and pay dividends in respect of its Common Stock, and absent such a declaration, no dividends shall be payable, accrue or accumulate in respect of shares of Series B Preferred Stock. If the Corporation shall declare a dividend in respect of its Common Stock, each Holder of Series B Preferred Stock shall be paid in an amount equal to the dividend that would be payable if such Holder had converted his shares of Series B Preferred Stock into shares of Common Stock immediately prior to the record date for the payment of such dividend at the Conversion Price then in effect. So long as any Series B Preferred Stock remains outstanding, without the prior written consent of the Holders of at least 66-2/3% of the Series B Preferred Stock then outstanding, the Corporation shall not redeem, purchase or otherwise acquire directly or indirectly any Junior Securities, nor shall the Corporation directly or indirectly pay or declare any dividend or make any distribution upon any Junior Securities.

4. **Liquidation Preference.** In the event of (i) any bankruptcy, liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, (ii) any merger, reorganization or consolidation in which stockholders of the Corporation immediately prior to such transaction possess less than fifty percent (50%) of the outstanding voting power of the Corporation after the transaction, (iii) any sale of all or substantially all of the assets of the Corporation, or (iv) any capital reorganization or reclassification of the capital stock of the Corporation in such a way that the Holders of Common Stock shall be entitled to receive stock, securities, cash or assets with respect to or in exchange for such Common Stock, then each Holder of the Series B Preferred Stock at the time thereof shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of the Common Stock or other Junior Securities, by reason of their ownership of such stock, an amount in cash per share of the Series B Preferred Stock as follows: (A) first, to the holders of the Series B Preferred Stock until each has received an amount equal to \$2.67 per share, (B) second, to the holders of the Series A Preferred Stock until each has received an amount equal to \$1.91 per share, (C) third, to the holders of the Series B Preferred Stock and the Series A Preferred Stock until each has received an aggregate amount, including any payments pursuant to (A) and (B) above, equal to the greater of (x) \$2.67 with respect to the Series B Preferred Stock or \$1.91 with respect to the Series A Preferred Stock times two (2) plus all declared and unpaid

dividends for each share of Series A Preferred Stock or Series B Preferred Stock, as appropriate, if any or (y) the amount per share that would be received with respect to such shares of Series A Preferred Stock or Series B Preferred Stock, as appropriate, in liquidation by a Holder of Series A Preferred Stock or Series B Preferred Stock, as appropriate, following conversion of all of such Holder's outstanding Series A Preferred Stock or Series B Preferred Stock into Common Stock assuming the conversion of all other shares of Series A Preferred Stock or Series B Preferred Stock, as appropriate; provided, however, that if the Conversion Price for the Series B Preferred Stock has been adjusted to \$1.91 pursuant to Section C7(d) hereof, then the payments pursuant to (A) and (B) above shall not be applicable and only the payments pursuant to (C) above shall be applicable. If the assets and funds of the Corporation available for distribution to the Holders of the Series B Preferred Stock upon any event described in this Section C4 shall be insufficient to permit the payment to Holders of the Series B Preferred Stock of the full aforesaid preferential amounts, the Holders of the Series B Preferred Stock shall share ratably (and ratably as to cash, in-kind or other distributions) in any distribution of assets or funds of the Corporation in proportion to the full respective preferential amounts to which they are entitled.

5. Redemption.

(a) Any Holder of the Series B Preferred Stock, at its sole option, may, require the Corporation to redeem any or all of the shares of the Series B Preferred Stock held by such Holder at any time and from time to time after the fifth (5th) anniversary of the Original Issue Date, for a redemption price per share (the "Redemption Price") equal to the greater of (i) \$2.67 (the Original Purchase Price) times two (2) plus all declared and unpaid dividends for each share of Series B Preferred Stock, if any, to and including the Redemption Date (as defined below) or (ii) the amount per share that would be received with respect to such shares of Series B Preferred Stock in liquidation by a Holder of Series B Preferred Stock following conversion of all of such Holder's outstanding Series B Preferred Stock into Common Stock assuming the conversion of all other shares of Series B Preferred Stock. A Holder who wishes to redeem its Series B Preferred Stock shall give sixty (60) days written notice to the Corporation of such election (the "Notice of Election"), whereupon the Corporation shall be obligated to repurchase such shares of Series B Preferred Stock on such date (the "Redemption Date") as shall be determined by the Corporation, but in any event not earlier than ten (10) days and not later than twenty (20) days after the date on which the Notice of Election is delivered to the Corporation. The Corporation shall pay the Redemption Price in full on the Redemption Date.

(b) Redemption Closing. The closing of the Corporation's redemption of the Series B Preferred Stock pursuant to the preceding paragraph shall take place on the Redemption Date at the Corporation's principal executive office or place of business. Promptly (but in no event later than five (5) days) after the delivery of the Notice of Election, the Corporation shall send written notice (the "Redemption Notice") to the redeeming Holders of the Series B Preferred Stock specifying the Redemption Date and the location of the Corporation's principal executive office or place of business where the closing will occur. At the closing, the Corporation shall pay the redeeming Holders of the Series B Preferred Stock, against the Corporation's receipt from such Holders of the certificate or certificates representing the shares of Series B Preferred Stock to be redeemed, an amount equal to the Redemption Price by wire transfer of immediately available funds, or, if a redeeming Holder shall not have specified wire

transfer instructions to the Corporation prior to the closing, by certified or official bank check made payable to the order of such Holder.

(c) **Cessation of Dividends on Shares of Series B Preferred Stock Redeemed.**

From and after the close of business on the Redemption Date (unless default shall be made by the Corporation in providing money for the payment of the Redemption Price), dividends on the shares of the Series B Preferred Stock redeemed shall cease to accrue, and the shares of the Series B Preferred Stock redeemed shall no longer be deemed to be outstanding, and all rights of the Holders thereof as stockholders of the Corporation shall cease.

(d) **Status of Redeemed Shares of the Series B Preferred Stock.**

Any shares of the Series B Preferred Stock which have been redeemed shall be retired and thereafter have the status of authorized but unissued shares of Series B Preferred Stock.

(e) **Best Efforts by the Corporation.**

In the event that the Corporation does not have sufficient cash available to pay the Redemption Price, it shall use its best efforts to undertake such debt and/or equity financings as are necessary to pay the Redemption Price in full.

6. **Conversion of Series B Preferred Stock.**

(a) **Right to Convert.**

(i) Each Holder of Series B Preferred Stock shall have the right, at such Holder's option, to convert all or any portion of such Holder's shares of Series B Preferred Stock into such number of fully paid and nonassessable shares of Common Stock, at such Holder's option ("Conversion Stock"), as is equal to the quotient obtained by dividing (A) the Original Purchase Price of shares of Series B Preferred Stock being converted, by (B) the Conversion Price (as last adjusted and then in effect) for the shares of Series B Preferred Stock being converted, by surrender of the certificates representing the shares of Series B Preferred Stock to be converted in the manner provided in Article IV, Section C6(c) hereof. The initial Conversion Price shall be \$2.67 per share of Series B Preferred Stock, and shall be subject to adjustment as provided in Article IV, Section C7 hereof. The Holder of any shares of Series B Preferred Stock converted in accordance with the provisions of this Section C6 shall be entitled to payment of any declared but unpaid dividends thereon on the Series B Preferred Stock to be converted to the date of issuance by the Corporation of the shares of Conversion Stock. If the Corporation is not permitted under applicable law to pay any portion of the accrued and unpaid dividends on the Series B Preferred Stock being converted, the Corporation shall pay such dividends to the converting Holder as soon thereafter as funds of the Corporation are legally available for such payment. The obligation to pay such dividends shall be evidenced by the Corporation's promissory note and the principal amount thereof shall bear interest at the prime rate on the date the Series B Preferred Stock is converted as announced by The Chase Manhattan Bank.

(ii) The conversion rights of any share of Series B Preferred Stock redeemed hereunder shall terminate on the Redemption Date for such share unless the Corporation has failed to pay to the Holder thereof the Redemption Price of such share.

(b) **Automatic Conversion.** Upon the consummation of a Qualified Underwritten Public Offering, each share of the Series B Preferred Stock shall be converted at the option of the Corporation into that number of shares of Conversion Stock as is determined by dividing the Original Purchase Price by the Conversion Price in effect on the date of conversion without further action on the part of the Holder, and whether or not the share certificates are surrendered to the Corporation.

(c) **Exercise of Conversion Right.** The Holder of any shares of Series B Preferred Stock may exercise the conversion right pursuant to Article IV, Section C6(a) hereof by delivering to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Series B Preferred Stock, or at such other place as may be designated by the Corporation, the certificate or certificates for the shares of the shares to be converted, duly endorsed or assigned in blank to the Corporation, accompanied by written notice (a "Conversion Notice") stating that such Holder elects to convert such shares and stating the name or names (with address) in which the certificate or certificates for the shares of Conversion Stock are to be issued and the class or classes of Conversion Stock to be issued; provided, however, that, if such name or names are other than that of the Holder, such issuance of Conversion Stock is permitted by applicable Federal and state securities laws. On a date (the "Conversion Date") to be scheduled as promptly as possible, but in any event within ten (10) Business Days thereafter, the Corporation shall issue and deliver to the Holder, or upon the written order of such Holder, to the place designated by such Holder, (i) a certificate or certificates for the number of full shares of Conversion Stock to which such Holder is entitled (ii) a check or cash in respect of any fractional interest in a share of Common Stock, as provided in Article IV, Section C6(d) hereof, payable with respect to the shares of Series B Preferred Stock so converted up to and including the Conversion Date and (iii) a check or cash representing declared but unpaid dividends, if any, on the Series B Preferred Stock converted in accordance with Article IV, Section C6(a). The person in whose names the certificate or certificates for Conversion Stock are to be issued shall be deemed to have become a Holder of record on the next succeeding date on which the transfer books are open, but the Conversion Price shall be that in effect on the Conversion Date. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Series B Preferred Stock surrendered for conversion, the Corporation shall issue and deliver to or upon the written order of the Holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Series B Preferred Stock representing the unconverted portion of the certificate so surrendered, which new certificate shall entitle the Holder thereof to declared but unpaid dividends, if any, on the shares of Series B Preferred Stock represented thereby to the same extent as if the certificate therefore covering such unconverted shares had not been surrendered for conversion.

(d) **No Fractional Shares.** No fractional shares of Conversion Stock or scrip shall be issued upon conversion of shares of Series B Preferred Stock. If more than one share of Series B Preferred Stock shall be surrendered for conversion at any one time by the same Holder, the number of full shares of Conversion Stock issuable upon conversion thereof shall be computed using the aggregate number of shares of Series B Preferred Stock so surrendered. Instead of issuing any fractional shares of Conversion Stock that would otherwise be issuable upon conversion of any shares of Series B Preferred Stock, the Corporation shall make payment to such Holder, in cash, of an amount equal to the fraction of a share of Conversion Stock

otherwise issuable to such Holder, multiplied by the Market Price on the Business Day immediately prior to conversion.

(e) **Stamp Taxes, Etc.** The Corporation shall pay all documentary, stamp or other transactional taxes attributable to the issuance or delivery of shares of capital stock of the Corporation upon conversion of any shares of Series B Preferred Stock; provided, however, that the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificate of such shares in a name other than that of the Holder of the shares of Series B Preferred Stock in respect of which such shares are being issued.

(f) **Reservation of Common Stock.** The Corporation shall reserve, free from preemptive rights, out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series B Preferred Stock (assuming a Conversion Price of \$2.67 per share, as such amount is adjusted from time to time as contemplated by Article IV, Section C7 and the conversion, exercise and exchange of all other outstanding Convertible Securities and Options sufficient shares to provide for the conversion of all outstanding shares of Series B Preferred Stock and all other outstanding Convertible Securities and Options. The Corporation shall take all such actions as may be necessary to assure that all such shares of 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 Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action that would cause the number of authorized but unissued shares of Common Stock to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Series B Preferred Stock.

(g) **No Liens.** All shares of Conversion Stock which may be issued in connection with the conversion provisions set forth herein will, upon issuance by the Corporation, be validly issued, fully paid and nonassessable and free from all taxes, liens or charges with respect thereto created or imposed by the Corporation.

7. **Adjustment of Conversion Price.** The applicable Conversion Price for the Series B Preferred Stock shall be subject to adjustment from time to time as hereinafter provided for in this Article IV, Section C7.

(a) **Stock Dividends.** In case at any time the Corporation shall declare a dividend or make any other distribution upon the Common Stock of the Corporation which is payable in Common Stock or Convertible Securities, the Conversion Price in effect immediately prior to such dividend or other distribution shall be proportionately reduced and the number of shares of Common Stock issuable upon conversion of the Series B Preferred Stock immediately prior to such dividend or other distribution shall be proportionately increased.

(b) **Subdivision or Combination of Stock.** In case the Corporation shall at any time subdivide the outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately

reduced and the number of shares issuable upon conversion of the Series B Preferred Stock immediately prior to such subdivision shall be proportionately increased, and conversely, in case the outstanding shares of Common Stock shall be combined at any time into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased and the number of shares issuable upon conversion of the Series B Preferred Stock immediately prior to such combination shall be proportionately reduced.

(c) Adjustments for Consolidation, Merger, Sale of Assets, Reorganization, etc. In case the Corporation (i) consolidates with or merges into any other corporation and is not the continuing or surviving corporation of such consolidation or merger or (ii) permits any other corporation to consolidate with or merge into the Corporation and the Corporation is the continuing or surviving corporation but, in connection with such consolidation or merger, the Common Stock is changed into or exchanged for stock or other securities of any other corporation or cash or any other assets and or (iii) transfers all or substantially all of its properties and assets to any other corporation, or (iv) effects a capital reorganization or reclassification of the capital stock of the Corporation in such a way that Holders of Common Stock shall be entitled to receive stock, securities, cash or assets with respect to or in exchange for Common Stock, then, and in each such case, proper provision, in form and substance satisfactory to the Holders of at least 66-2/3% of the shares of Series B Preferred Stock then outstanding, shall be made so that, (x) upon the basis and upon the terms and in the manner provided in this Article IV Section C7(c), upon the conversion of the Series B Preferred Stock at any time after the consummation of such consolidation, merger, transfer, reorganization or reclassification, each Holder shall be entitled to receive (at the Conversion Price in effect for shares issuable upon such conversion of the Series B Preferred Stock immediately prior to such consummation), in lieu of shares issuable upon such conversion of the Series B Preferred Stock prior to such consummation, the stock and other securities, cash and assets to which such Holder would have been entitled upon such consummation if such Holder had so converted such Series B Preferred Stock immediately prior thereto (subject to adjustments subsequent to such corporate action as nearly equivalent as possible to the adjustments provided for in this Article IV, Section C7 and (y) the provisions of Article IV, Sections C2, C6 and C7 hereof thereafter shall remain applicable to the Series B Preferred Stock (including, in the case of any such consolidation, merger or sale in which the successor entity or purchasing entity is other than the Corporation, an immediate adjustment of the Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Conversion Stock acquirable and receivable upon conversion of the Series B Preferred Stock, if the value so reflected is less than the Conversion Price which otherwise would be in effect immediately after such consolidation, merger or sale). The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor entity (if other than the Corporation) resulting from consolidation or merger or the entity purchasing such assets assumes by written instrument (in form and substance reasonably satisfactory to the Holders of at least 66-2/3% of the shares of Series B Preferred Stock then outstanding), the obligation to deliver to each such Holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such Holder may be entitled to acquire.

(d) Adjustments for Issuances of Additional Stock. In case the Corporation shall at any time issue shares of Common Stock, Convertible Securities or Options ("Additional Stock") that are sold, convertible or exercisable, as appropriate, at a price less than the

Conversion Price in effect on the date of and immediately prior to such issuance, the Conversion Price shall be reduced to a price (calculated to five decimal places) determined by multiplying such Conversion Price by a fraction (i) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock which the aggregate consideration received or receivable by the Corporation for the total number of shares of Additional Stock so issued (or deemed to be issued) would purchase at the Conversion Price and (ii) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock issued (or deemed to be issued) as Additional Stock in such issuance (the "Weighted Adjustment"); provided, however, that until such time as the Corporation has issued an aggregate of \$30,000,000 of Additional Stock that does not cause the operation of the adjustment contained in this proviso, the Conversion Price shall be reduced to \$1.91 if the Corporation shall either (A) issue shares of Additional Stock on or before August 15, 2002 that are sold, convertible or exercisable, as appropriate, at a price greater than \$1.91 per share but less than the product of two (2) times the Original Purchase Price or (B) issue shares of Additional Stock after August 15, 2002 that are sold, convertible or exercisable, as appropriate, at a price greater than \$1.91 per share but less than the product of three (3) times the Original Purchase Price; further provided, however, that in the event of an adjustment in the Conversion Price pursuant to the foregoing proviso, there shall be no further adjustment in the Conversion Price pursuant to the Weighted Adjustment, unless the Corporation shall issue shares of Additional Stock that are sold, convertible or exercisable, as appropriate, at a price less than \$1.91 per share. Any adjustment of the Conversion Price that is made pursuant to this Section B7 which relates to any Convertible Securities or Options shall be disregarded if, as, and when such Convertible Securities or Options expire or are cancelled without being exercised, so that the Conversion Price effective immediately upon such cancellation or expiration shall be equal to the Conversion Price that would have been in effect had the expired or cancelled Convertible Securities or Options not been issued.

(e) **Exceptions.** Notwithstanding the provisions of this Article IV, Section C7, no adjustment to the Conversion Price shall be made for issuances of (i) Options to purchase Common Stock pursuant to any employee or management stock option, stock appreciation rights, restricted stock option or any similar plan approved by the Board of Directors and the Corporation's stockholders; (ii) shares of Common Stock issuable upon conversion of the Series B Preferred Stock; or (iii) capital stock (or rights therefor) in connection with acquisitions and mergers approved by the Board of Directors (including the two Preferred Directors); or (iv) warrants issued to Aspen Advisors, L.P. in connection with the issuance of the Company's Series A Preferred Stock and the Series B Preferred Stock.

(f) **Notice of Adjustment.** Whenever the number of shares issuable upon the conversion of the Series B Preferred Stock or the Conversion Price is adjusted, as provided in this Article IV, Section C7, the Corporation shall prepare and mail to each Holder a certificate setting forth (i) the Conversion Price and the number of shares issuable upon the conversion of the Series B Preferred Stock after such adjustment, (ii) a brief statement of the facts requiring such adjustment and (iii) the computation by which such adjustment was made.

(g) **Treasury Shares.** The number of shares of Common Stock outstanding at any given time shall not include shares of Common Stock owned or held by or for the account of

the Corporation. The disposition of any shares of Common Stock owned or held by or for the account of the Corporation shall be considered an issue of Common Stock for the purposes of this Article IV, Section C7.

(h) **Certain Adjustment Rules.**

(i) The provisions of this Article IV, Section C7 shall similarly apply to successive transactions.

(ii) If the Corporation shall declare any dividend referred to in Article IV, Section C7(a) and if any Holder converts all or any part of its Series B Preferred Stock after such declaration, but before the payment of such dividend, the Corporation may elect to defer, until the payment of such dividend, issuing to such Holder the shares of Common Stock issuable upon such conversion over and above the shares issuable upon such conversion on the basis of the Conversion Price in effect prior to such adjustment; provided, however, that the Corporation shall deliver to each such Holder a due bill or other appropriate instrument evidencing such Holder's right to receive such additional shares upon the payment of such dividend.

(iii) If the Corporation shall declare any dividend referred to in Article IV, Section C7(a) and shall legally abandon such dividend prior to payment, then no adjustment shall be made pursuant to this Article IV, Section C7 in respect of such declaration.

8. **Registration of Transfer.** The Corporation shall keep at its principal office a register for the registration of Series B Preferred Stock. Upon the surrender of any certificate representing Series B Preferred Stock at such place, the Corporation shall, at the request of the record Holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the Holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Series B Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Series B Preferred Stock represented by the surrendered certificate.

9. **Replacement.** Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered Holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series B Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the Holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series B Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

The text of Article V of the Certificate of Incorporation is hereby amended in its entirety to read as follows:

DIRECTORS

The number of persons comprising the Board of Directors of the Corporation shall be as provided in the Bylaws of the Corporation, as the same may be amended from time to time, but shall consist of not less than three (3) nor more than nine (9) members. Election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide. Each director shall hold office for the full term for which such director is elected and until such director's successor shall have been duly elected and qualified or until his earlier death, resignation or removal in accordance with the Bylaws.

The Holders of record of the Series B Preferred Stock shall have the right, voting separately as a class, to elect two (2) directors of the Corporation. The initial directors elected by the Holders of record of the Series B Preferred Stock pursuant to the preceding sentence (the "Preferred Directors") shall be designated by the Holders of a majority of the Series B Preferred Stock. Thereafter the Preferred Directors shall be elected by a plurality of the votes of the Holders of Series B Preferred Stock. The Preferred Directors may be removed by, and may not be removed except by, the vote of the Holders of record of a majority of the shares of Series B Preferred Stock. The Preferred Directors shall serve until each such director's successor is duly appointed and qualified or until each such director's earlier removal, death or resignation. In the event of any Preferred Director's removal, death or resignation, a replacement director shall be appointed by the Holders of the Series B Preferred Stock in accordance herewith. The Corporation shall reimburse the Preferred Directors for all reasonable out-of-pocket expenses incurred in connection with Board of Directors meetings and/or activities. A Preferred Director shall be represented on any committee established by the Board of Directors.

IN WITNESS WHEREOF, the undersigned has executed this Fourth Certificate of Amendment this 14th day of February, 2001.


Michael S. Swayer
President and Chief Operating Officer

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RECORDED: 06/20/2001

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