

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Douwantit.com, Inc. 1.7.04
Individual(s) Association
General Partnership Limited Partnership
Corporation-State
Other Delaware
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Comerxia, Inc.
Internal Address: 1900 Tyler Street
Street Address: Suite 200
City: Hollywood State: FL Zip: 33020-4517
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State Delaware
Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other
Execution Date: 06/09/2003

4. Application number(s) or registration number(s):
A. Trademark Application No.(s) 78/026916 and 76/444209
B. Trademark Registration No.(s)
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Cristina Carvalho
Internal Address: Arent Fox Kintner Plotkin & Kahn, PLLC
Street Address: 1050 Connecticut Avenue, NW
City: Washington State: DC Zip: 200365339

6. Total number of applications and registrations involved: 2
7. Total fee (37 CFR 3.41): \$ 65.00
Enclosed
Authorized to be charged to deposit account
8. Deposit account number: 01-2300

DO NOT USE THIS SPACE

9. Signature.
Cristina Carvalho
Name of Person Signing
Signature
Date: 01/07/2004

Total number of pages including cover sheet, attachments, and document: 23

01/16/2004 ECOOPER 00000081 78026916

Mall documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

01 FC:8521 40.00 OP
02 FC:8522 25.00 OP

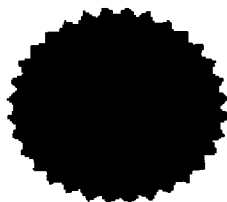
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "DOUWANTIT.COM, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF JUNE, A.D. 2003, AT 1:19 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

3162370 8100

AUTHENTICATION: 2460567

030378179

DATE: 06-09-03

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:55 PM 06/09/2003
FILED 01:19 PM 06/05/2003
SRV 03037A170 - 2162970 FILE

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
DoUWantU.com, Inc.**

(Under Sections 242 and 245 of the General Corporation Law of the State of Delaware)

It is hereby certified that:

1. The original name of the corporation (hereinafter called the "*Corporation*") is DoUWantU.com, Inc. and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 19, 2000.

2. A Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on August 20, 2001 and amended by that certain Certificate of Amendment filed with the Secretary of State of the State of Delaware on April 11, 2002 and that certain Certificate of Amendment filed with the Secretary of State of the State of Delaware dated on May 20, 2003 (as amended, the "*Certificate of Incorporation*").

3. This Second Amended and Restated Certificate of Incorporation of the Corporation (the "*Second Amended and Restated Certificate of Incorporation*") amends and restates the Certificate of Incorporation by deleting from such Certificate of Incorporation all of the provisions thereof and substituting in lieu of such provisions the text of this Second Amended and Restated Certificate of Incorporation.

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

5. This Second Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors of the Corporation in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

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

NYC 2641822

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
COMERXIA, INC.**

FIRST: Name: The name of the corporation (herein referred to as the "*Corporation*") is:

COMERXIA, INC.

SECOND: Registered Office and Agent: The address of the corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, New Castle County, Delaware 19810. The name of its registered agent at such address is the Corporation Service Company.

THIRD: Purposes: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

FOURTH: Authorized Capital: The total number of shares that the Corporation shall have authority to issue is One Hundred Forty Million (140,000,000) divided into Ninety Seven Million Three Hundred Twenty Six Thousand Seven Hundred Eleven (97,326,711) shares of common stock, \$0.001 par value per share (the "*Common Stock*") and Forty Two Million Six Hundred Seventy Three Thousand Two Hundred Eighty Nine (42,673,289) shares of preferred stock, \$0.001 par value per share (the "*Preferred Stock*"). The Preferred Stock shall be designated into series as set forth in Article FOURTH, Section B.1 below.

The following is a statement of the powers, privileges and rights, and the qualifications, limitations or restrictions thereof, in respect of each the Corporation's classes of capital stock.

A. COMMON STOCK.

General. The voting, dividend and liquidation rights of the holders of shares of Common Stock are subject to, and qualified by, the rights of the holders of the Preferred Stock of any series.

Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as, if and when determined by the Board of Directors of the Corporation (the "*Board of Directors*") and subject to any preferential dividend rights of any then outstanding Preferred Stock.

NYC 264382-2

Liquidation. Upon the voluntary or involuntary liquidation, sale, merger, consolidation, dissolution or winding up of the Corporation, holders of shares of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

Voting. The holders of the Common Stock are entitled to one vote for each share held at each meeting of the Corporation's stockholders (and written actions in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. There shall be no cumulative voting and, at any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of Common Stock then outstanding shall constitute a quorum of the Common Stock for the purpose of electing directors by holders of the Common Stock.

R. PREFERRED STOCK.

1. Designation of the Series.

Thirty Million Four Hundred Eighty Thousand Nine Hundred Twenty One (30,480,921) shares of the authorized Preferred Stock of the Corporation are hereby designated as Series A Convertible Preferred Stock (the "*Series A Preferred Stock*"); and Twelve Million One Hundred Ninety Two Thousand Three Hundred Sixty Eight (12,192,368) shares of the authorized Preferred Stock of the Corporation are hereby designated as Series A-1 Convertible Preferred Stock (the "*Series A-1 Preferred Stock*"). Except where specific and separate reference is made herein to the Series A-1 Preferred Stock, all references herein to the Series A Preferred Stock shall be deemed not to include Series A-1 Preferred Stock. The original issuance price of the Preferred Stock shall be \$0.1640370 per share (the "*Preferred Original Issue Price*"). The Preferred Stock shall have the rights, preferences, powers, privileges and restrictions, qualifications and limitations set forth below.

2. Dividends.

(a) The holders of shares of Preferred Stock shall be entitled to receive dividends in any fiscal year, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor. Except as otherwise provided herein, dividends on each share of the Preferred Stock shall accrue on a daily basis at the rate of 7% per annum, compounded quarterly, of the sum of the Preferred Liquidation Amount (as defined below) plus all accumulated and unpaid dividends thereon.

(b) The Corporation shall not declare or pay any cash dividends on shares of Common Stock until each of the holders of the Preferred Stock then outstanding shall have first received, or there shall have been declared and set aside for payment, a cash dividend on each outstanding share of such Preferred Stock in an amount at least equal to the product of (i) the per share amount, if any, of the dividends or other

distributions to be declared, paid or set aside for the Common Stock, multiplied by (ii) the number of whole shares of Common Stock into which such share of Preferred Stock is then convertible.

3. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (each a "*Liquidation Event*"), the holders of shares of the Series A Preferred Stock and Series A-1 Preferred Stock then outstanding shall, for each share so held, be entitled to be paid, *pari passu*, out of the assets of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Preferred Stock, an amount equal to \$0.1640370 per share (the "*Preferred Liquidation Amount*") (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares (a "*Recapitalization*")), plus any dividends declared, but unpaid on such shares. Furthermore, upon the occurrence of a Liquidation Event, the holders of Series A Preferred Stock shall be entitled to either (i) an additional amount of one time (1X) the Preferred Liquidation Amount, or (ii) in the event that the Corporation does not meet each of the Stage 1 Performance Milestones and the Stage 2 Performance Milestones, as such are set forth in Exhibit B to the Corporation's Series A Preferred Stock Purchase Agreement, an additional amount of two times (2X) the Preferred Liquidation Amount (for clarification purposes, a total liquidation amount of two times (2x) or three times (3x) the Preferred Liquidation Amount, as applicable) (in either case, (in addition to the payment of the Preferred Liquidation Amount plus any dividends declared, but unpaid on such shares) the "*Series A Liquidation Preference*"); provided, however, that if the aggregate value of the Common Stock that holders of Series A Preferred Stock would have received as if they had both (x) converted to Common Stock immediately prior to the Liquidation Event, and (y) received the Preferred Liquidation Amount exceeds the aggregate value of the Series A Liquidation Preference then, upon such Liquidation Event, the holders of Series A Preferred Stock shall receive the Preferred Liquidation Amount plus any dividends declared but unpaid on such shares (rather than the Series A Liquidation Preference) and the Series A Preferred Stock shall receive payment as holders of Common Stock (on an as-converted basis) in accordance with subsection B(3)(c), below. The payment of the Preferred Liquidation Amount, plus any dividends declared but unpaid on such shares to the holders of Series A-1 Preferred Stock as set forth at the start of this paragraph shall be referred to herein as the "*Series A-1 Liquidation Preference*", and together with the Series A Liquidation Preference shall be referred to herein as the "*Liquidation Preference*."

(b) If upon the occurrence of a Liquidation Event the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of the Preferred Stock the full amount to which they shall be entitled, respectively, the holders of the Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Preferred Stock shall share ratably in accordance with the

liquidation preferences set forth in Section B(3)(a) above in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(c) After the payment of all preferential amounts required to be paid to the holders of Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Preferred Stock upon the dissolution, liquidation or winding up of the Corporation, any remaining assets and funds of the Corporation available for distribution shall be distributed among the holders of the then outstanding Series A-1 Preferred Stock (on an as converted basis) and Common Stock (including the holders of the Series A Preferred Stock on an as converted basis, if applicable in accordance with the provision of Section B(3)(a) above), pro rata according to the number of shares of Common Stock held by such holders.

(d) A merger or consolidation in which the Corporation is a constituent party (except such merger or consolidation involving the Corporation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation at least 50% by voting power of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such resulting or surviving corporation), or the sale, conveyance, mortgage, pledge or lease of all or substantially all of the assets of the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Section B.3 unless the holders of at least a majority of the then outstanding shares of Preferred Stock elect otherwise by giving written notice thereof to the Corporation at least two (2) days before the effective date of such event. If no such notice is given, such event shall be deemed to be a liquidation, dissolution or winding up for the purposes of this Section B.3. The amount deemed distributed to the holders of Preferred Stock or Common Stock in connection with a transaction referred to in this Section B.3(d) shall be the cash or the value of the property, rights or other securities distributed to such holders by the acquiring person, firm or other entity. The value or property, rights or other securities shall be determined by and in the good faith discretion of the Board of Directors. After payment of preferential amounts required to be paid to the holders of Preferred Stock, such shares of Preferred Stock shall cease to be outstanding for any purpose. The Corporation shall promptly provide to the holders of shares of Preferred Stock such information concerning the terms of any such merger, consolidation or asset sale and the value of the assets of the Corporation as may reasonably be requested by the holders of Preferred Stock in order to assist them in determining whether to make such an election. If the holders of the Preferred Stock elect to convert their shares into Common Stock immediately prior to a liquidation, the Corporation shall use its best efforts to amend the agreement or plan of merger or consolidation to adjust the rate at which the shares of capital stock of the Corporation are converted into or exchanged for cash, new securities or other property to give effect to such election.

4. Voting.

(a) Each holder of outstanding shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are then convertible (as adjusted from time to time pursuant to Section 5 hereof), at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of subsections 4(b), 4(c) or 4(d) below or by the provisions establishing any other series of Preferred Stock, holders of the Preferred Stock shall vote together with the holders of Common Stock as a single class on any actions to be taken by the stockholders of the Corporation.

(b) Effective as of the date of filing this Certificate of Incorporation, the Board of directors shall consist of five (5) directors. The holders of record of a majority of the outstanding shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the "*Preferred Directors*"). The holders of record of a majority of the outstanding shares of Common Stock and the holders of the Series A-1 Preferred Stock, voting together as a single class, shall be entitled to elect two (2) directors of the Corporation. The fifth director shall be elected by the holders of the Preferred Stock and the holders of the Common Stock voting together as a class. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of Series A Preferred Stock then outstanding shall constitute a quorum of the Series A Preferred Stock for the purpose of electing directors by holders of the Series A Preferred Stock. A vacancy in any directorship filled by the holders of the Series A Preferred Stock shall be filled only by vote or written consent in lieu of a meeting of the holders of the Series A Preferred Stock or by any remaining director elected by the holders of the Series A Preferred Stock pursuant to this Subsection 4(b).

(c) The Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Preferred Stock so as to affect adversely the Preferred Stock or the holders thereof, without the written consent or affirmative vote of the holders of not less than a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a separate class. For this purpose, without limiting the generality of the foregoing, the authorization or issuance of any shares of capital stock with preference or priority over or on parity with either series of the Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall be deemed to affect adversely the Preferred Stock. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares then outstanding) by the directors of the Corporation pursuant to Section 151 of the General Corporation Law of Delaware or by the affirmative vote of the holders of at least a majority of the then outstanding shares of the Common Stock, Preferred Stock and all other classes or series of stock of the Corporation entitled to vote

thereon, voting as a single class, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

(d) In addition to any other rights provided by law, the Corporation shall not, without the prior written consent or affirmative vote of the holders of not less than a majority of the then outstanding shares of Series A Preferred Stock, voting together as a separate class:

(i) pay or declare any dividend or distribution on any shares of its capital stock, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of its capital stock, except for the repurchase by the Corporation of Preferred Stock pursuant to the terms of Section B.7 herein, and the repurchase of the Company's capital stock pursuant to the Company's Third Amended and Restated Investor Rights Agreement, and the repurchase of Common Stock of employees and consultants holding 5% or less of the outstanding capital stock of the Corporation upon termination of their association with the Corporation and pursuant to vesting arrangements with such persons in effect as of the Series A Original Issue Date;

(ii) amend, alter, or repeal any provision of the Certificate of Incorporation of the Corporation (including any filing of a Certificate of Designations) or, notwithstanding Article Fourth, Section B, the Bylaws of the Corporation;

(iii) increase or decrease the authorized number of shares of Preferred Stock;

(iv) authorize or any designate, whether by reclassification or otherwise, any new class or series of stock or any other securities convertible into equity securities of the Corporation ranking on a parity with or senior to the Series A Preferred Stock in right of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of such new class or series;

(v) merge, consolidate or effect any other similar business combination, sell all or substantially all of the assets of the Corporation, or voluntarily liquidate, wind up, dissolve or reorganize the Corporation;

(vi) increase or decrease the authorized number of members of the Corporation's Board of Directors such that the Board size greater than 7 or less than 5 members;

(vii) issue any shares of Common Stock (or Common Stock equivalents therefore) to employees, consultants or management other than pursuant to the Corporation's approved stock option plan;

(viii) create any new subsidiary of the Corporation;

(ix) authorize individual capital expenditures in any fiscal year in excess of the approved budget by a majority of the Board of Directors, including the Preferred Directors;

(x) incur additional indebtedness, individually or in the aggregate, in excess of \$200,000;

(xi) make any changes in members of senior management (other than interim appointments for a period not to exceed 45 days in the event of the resignation, death, disability or incapacity of existing members of senior management);

(xii) approve annual budgets; or

(xiii) approve changes in senior management compensation.

(e) In addition to any other rights provided by law, the Corporation shall not, without the prior written consent or affirmative vote of the holders of not less than a majority of the then outstanding shares of Series A-1 Preferred Stock, voting together as a separate class:

(i) amend, alter, or repeal any provision of the Certificate of Incorporation of the Corporation (including any filing of a Certificate of Designations) or, notwithstanding Article Fourth, Section B, the Bylaws of the Corporation so as to adversely affect the rights, preferences or privileges of the holders of Series A-1 Preferred Stock in a manner different than the holders of any other series of Preferred Stock; or

(ii) authorize or any designate, whether by reclassification or otherwise, any new class or series of stock or any other securities convertible into equity securities of the Corporation ranking on a parity with or senior to the Series A-1 Preferred Stock in right of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of such new class or series.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable Conversion Price (as defined below) in effect for such share of Preferred Stock at the time of conversion. The Conversion Price for the Preferred Stock shall initially be \$0.1640370 (the "Preferred Conversion Price" or the "Conversion Price"). The applicable Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment, as provided below.

In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 7 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the full day preceding the date fixed for redemption, unless the redemption price is not paid when due, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation of the Corporation, the Conversion Rights shall terminate at the close of business on the second full day preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Preferred Stock.

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

(c) Mechanics of Conversion.

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

(ii) The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. Before taking any action which would cause an adjustment reducing the applicable Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of any shares of Preferred Stock, the Corporation will use its best efforts to take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) Upon any such conversion, no adjustment to the applicable Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(iv) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 5. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of this Subsection 5(d), the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) "Series A Original Issue Date" shall mean the date on which the first share of Preferred Stock was issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock (including, but not limited to the Preferred Stock).

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 5(d)(ii) below, deemed to be issued) by the Corporation after the Series A Original Issue Date other than:

(I) shares of Common Stock issued or issuable upon conversion of any Convertible Securities or exercise of any Options outstanding on the Series A Original Issue Date;

(II) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock;

(III) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 5(e) or 5(f) below;

(IV) up to 10,241,590 shares of Common Stock issued or issuable to employees, directors, advisory board members of, or consultants to, the Corporation pursuant to the Corporation's 2003 Stock Option Plan or similar plans or arrangements approved by a majority of the Board of Directors (which majority must include the Preferred Directors);

(V) shares of Common Stock issued or issuable to financial institutions or lessors in connection with commercial credit agreements, equipment financings or similar transactions, provided that such transaction, and the issuance of shares in connection therewith, has been approved by a majority of the Board of Directors (which majority must include the Preferred Directors); or

(VI) shares of Common Stock issued or issuable in connection with strategic transactions involving the Corporation and other entities, including (i) joint ventures, and manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements, provided that such strategic transactions, and the issuance of shares in connection therewith, has been approved by a majority of the Board of Directors (which majority must include the Preferred Directors).

(VII) shares of Common Stock issued or issuable upon conversion or exercise of any warrants issued to holders of Series A Preferred Stock as a result of their purchasing additional shares of Series A Preferred Stock prior to the satisfaction of mutually agreed upon Corporation performance milestones.

(VIII) shares of Common Stock issued or issuable pursuant to antidilution provisions contained in this Certificate of Incorporation or in any Convertible Security obligations outstanding on the Series A Original Issue Date.

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which the Preferred Stock is convertible shall be made pursuant to Subsection 5(d)(iv) below, by adjustment in the applicable Conversion Price thereof: (a) unless the consideration per share (determined pursuant to Subsection 5(d)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price for such Preferred Stock in effect immediately prior to the issue of such Additional Shares, or (b) if prior to such issuance, the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Preferred Stock, agreeing that no such

adjustment shall be made as the result of the issuance of such Additional Shares of Common Stock.

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

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

(A) No further adjustment in the applicable Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration or termination of any unexercised Option, the affected applicable Conversion Price shall be readjusted to the Conversion Price that would be in effect had such Option never been issued, and the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option shall not be deemed issued for the purposes of any subsequent adjustment of the affected applicable Conversion Price;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the applicable Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

(E) No readjustment pursuant to clause (B), (C) or (D) above shall have the effect of increasing the applicable Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price on the original adjustment date, or (ii) the applicable Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the Series A Original Issue Date, amends the terms of any such Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Series A Original Issue Date or were issued after the Series A Original Issue Date), then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Series A Original Issue Date and the provisions of this Subsection 5(d)(i) shall apply.

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

(A) Adjustment of Conversion Price.

(I) In the event the Corporation shall at any time on or prior to the first year anniversary of the Series A Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 5(d)(iii), but excluding shares issued as a stock split or combination as provided in Subsection 5(e) or upon a dividend or distribution as provided in Subsection 5(f)), without consideration or for a consideration per share less than the Preferred Conversion Price in effect immediately prior to such issue, then and in such event, the Preferred Conversion Price for all outstanding shares of Preferred Stock shall be reduced, concurrently with such issue, to a price equal to the lowest price per share at which any such Additional Share of Common Stock has been issued or sold.

(II) In the event the Corporation shall, at any time after the one year anniversary of the Series A Original Issue Date, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 5(d)(iii), but excluding shares issued as a stock split or combination as provided in Subsection 5(e) or upon a dividend or distribution as provided in Subsection 5(f)), without consideration or for a consideration per share that is less than the Preferred Conversion Price in effect immediately prior to such issue, then and in such

event, the Preferred Conversion Price for all outstanding shares of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Preferred Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue (calculated assuming conversion of all issued and outstanding shares of Preferred Stock and the exercise, exchange or conversion of all then outstanding Options) plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Preferred Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (calculated assuming conversion of all issued and outstanding shares of Preferred Stock and the exercise, exchange or conversion of all then outstanding Options) plus the number of such Additional Shares of Common Stock so issued, provided that, the number of shares of Common Stock deemed issuable upon exercise or conversion of such outstanding Options and Convertible Securities shall not give effect to any adjustments to the conversion price or conversion rate of such Options or Convertible Securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

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

(A) Cash and Property: Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

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

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

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

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

(c) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issue Date effect a subdivision of the outstanding Common Stock, the applicable Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Series A Original Issue Date combine the outstanding shares of Common Stock, the applicable Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the applicable Conversion Price then in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date (calculated assuming conversion of issued and outstanding shares of Preferred Stock and the exercise, exchange or conversion of all then outstanding Options), and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date (calculated assuming conversion of issued and outstanding shares of Preferred Stock and the exercise, exchange or conversion of all then outstanding Options) plus the number of shares of Common Stock issuable in

payment of such dividend or distribution; provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had the Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Preferred Stock; provided, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) Adjustment for Reclassification, Exchange, or Substitution. If the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable, upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(i) Adjustment for Merger or Reorganization, etc. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale which is covered by Subsection 3(c)), each share of Preferred Stock shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Preferred Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 5 set forth with respect to the rights and interest thereafter of the holders of shares of Preferred Stock to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of such shares of Preferred Stock.

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

(k) Certificates as to Adjustments. Upon the occurrence of such adjustment or readjustment of an applicable Conversion Price pursuant to this Section 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the Preferred Stock affected by such adjustment or readjustment a certificate setting forth the adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) any and all adjustments and readjustments to the Conversion Price of such holder's shares of Preferred Stock, (ii) the Conversion Price then in effect for such holder's shares of Preferred Stock, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of such holder's Preferred Stock.

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

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation:

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another corporation, or of the sale of all or substantially all of the assets of the Corporation; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation; then the Corporation shall use reasonable efforts to cause to be filed at its principal office or at the office of the transfer agent of the Preferred Stock, and shall cause to be mailed to the holders of the Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the date specified in (A) below or twenty days before the date specified in (B) below, a notice stating

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

(B) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up: provided, however, that the Corporation's failure to provide any notice required under this Section 5(l) after using reasonable efforts shall not be deemed a default, breach or violation of this Section 5(l).

6. Mandatory Conversion.

(a) Upon (i) the closing of the sale of shares of Common Stock, at a price to the public of at least \$5.00 per share (subject to appropriate adjustment for Recapitalizations), in a firm underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$40,000,000 of proceeds (after deducting underwriter discounts and commissions) to the Corporation or (ii) a vote of the holders of at least a majority of the Series A Preferred Stock (each a "Mandatory Conversion Date"). (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock that had been designated as Preferred Stock in this Certificate of Incorporation, and all provisions for and references to the Preferred Stock shall be deleted from this Certificate of Incorporation and shall be of no further force or effect.

(b) All holders of record of shares of Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 6. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 6. On the Mandatory Conversion Date, all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 5(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and

cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Preferred Stock may not be reissued, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

7. Redemption.

(a) Right of Redemption.

1. Subject to the Corporation having funds legally available therefor, the holders of Preferred Stock shall have the right, at the election of the holders of at least a majority of the Preferred Stock (including a majority of the Series A Preferred Stock), and upon delivery of written notice by each of such holders (a "Holder Notice") to the Board of Directors, to have the Corporation redeem, and the Corporation shall thereby be obligated to so redeem, all or any portion of the outstanding shares of Preferred Stock held by such holders as further described herein. The right to deliver a Holder Notice to the Corporation as described in this Section B.7(a) shall accrue to the benefit of such holders of the Preferred Stock on or after the fifth (5th) year anniversary of the Series A Original Issue Date. A holder of Preferred Stock, having delivered a Holder Notice to the Board of Directors, shall have the right to select (and the Holder Notice shall set forth) the date upon which the Corporation shall redeem the shares, such date being no fewer than 180 days after the delivery of said Holder Notice (each such date, a "Redemption Date"). Such redemption of the Preferred Stock shall be at a redemption price (the "Redemption Price") per share, which is the greater of (A) an amount equal to the Series A Liquidation Preference or Series A-1 Liquidation Preference, as the case may be, or (B) the Preferred Liquidation Amount, plus a price per share equal to the product obtained by multiplying (i) the fully diluted per share (giving effect to the conversion into Common Stock of all convertible securities of the Corporation that are then outstanding and convertible, directly or indirectly, into shares of Common Stock) "Fair Market Value" of the Corporation (as determined in Section B.7(d), below) by (ii) a fraction, the numerator of which shall be the number of shares of Common Stock then issuable upon conversion of all then outstanding shares of Preferred Stock, and the denominator of which shall be the number of shares of Common Stock then outstanding (after giving effect to the conversion into Common Stock of all convertible securities of the Corporation that are then outstanding and convertible, directly or indirectly, into shares of Common Stock). On a Redemption Date, the Corporation shall redeem shares of Preferred Stock that are the subject of the Holder Notice by paying to each requesting holder the Redemption Price in cash.

2. If the funds of the Corporation legally available for any redemption pursuant to Section B.7(a)(1) on a Redemption Date are insufficient to redeem such shares of Preferred Stock, each holder of Preferred Stock who has elected to redeem pursuant to this Section B.7 shall either (A) exercise its Preferred Default Rights (as set forth in Section B.8, below) or, (B) request that the Corporation, to the extent that it has

cash legally available for such purpose, redeem the number of shares of Preferred Stock of such holders that legally may be redeemed from such holders on a *pro rata* basis.

(h) Corporation Redemption Notice. At least 30 days but no more than 60 days prior to a Redemption Date, the Corporation shall mail written notice first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Preferred Stock, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the Redemption Date, the Redemption Price (and a statement regarding the split form of payment of such Redemption Price as described in Section B.7(a)(1) above), the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the certificate or certificates representing the shares of Preferred Stock to be redeemed (the "Corporation Redemption Notice").

(c) Mechanics of Redemption. Any holder of shares of Preferred Stock that elects to have its shares of Preferred Stock redeemed pursuant to this Section B.7 shall surrender to the Corporation at its principal office, on or before the date of the first payment of all or a portion of the Redemption Price, the certificates evidencing the shares of Preferred Stock to be redeemed duly endorsed for transfer. The Corporation may withhold the Redemption Price to the holder and no interest shall accrue thereon until the certificates representing such shares shall have been surrendered to the Corporation properly endorsed for transfer. All shares of Preferred Stock redeemed by the Corporation shall immediately be canceled and restored to the status of authorized but unissued shares.

(d) Fair Market Value Determination. The "Fair Market Value" of the Corporation shall be equal to the fair market value per share of Corporation's capital stock, determined in each case as if all of the shares of Corporation's capital stock were being sold by a willing seller to a willing buyer, neither of whom is under any compulsion to buy or sell, in each case without any discount or premium for minority or majority interest positions of the shares of Corporation's capital stock, and shall be determined as follows:

(1) Upon delivery of the Holder Notice, the holders of Series A Preferred Stock on the one hand, and non-interested directors of the Corporation (the "Non-Interested Directors") on the other hand, shall commence negotiations in good faith to determine the Fair Market Value. If, within ten (10) days following the commencement of such negotiations, (the "Negotiation Period"), the parties shall have agreed upon a Fair Market Value, such Fair Market Value shall be binding upon the parties.

(2) If, during the Negotiation Period the parties shall not have been able to agree upon the Fair Market Value, then the parties shall promptly and mutually select an investment banking firm which has not performed or agreed to perform services for the parties or any of their respective affiliates during the previous five-year period (the "Independent Appraiser") to determine the Fair Market Value. The holders of the Series

A Preferred Stock and the Non-Interested Directors shall promptly furnish to the Independent Appraiser such information concerning the Corporation's history, operations, products, research and development, sales and marketing, management, regulatory compliance, assets and properties, financial condition, earnings, capitalization, business prospects and sales of its capital stock (collectively, the "*Corporation's Background and Industry Prospects*"), and any offers or indications of interest received by the holders of the Series A Preferred Stock or the Non-Interested Directors, as the Independent Appraiser may request or the holders of the Series A Preferred Stock or the Non-Interested Directors may deem relevant. The Fair Market Value as determined by the Independent Appraiser (which determination the Independent Appraiser shall be instructed to render in writing within thirty (30) days following the selection of such Independent Appraiser) shall be binding upon the parties. The fees and expenses of the Independent Appraiser shall be borne one-half by the holders of the Preferred Stock and one-half by the Corporation.

(3) If, within fifteen (15) days following the expiration of the Negotiation Period, the parties shall not have been able to mutually select the Independent Appraiser, then the holders of the Series A Preferred Stock on the one hand, and the Non-Interested Directors on the other hand, shall each appoint a nationally recognized investment banking firm which has not performed or agreed to perform services for such party or any of their respective affiliates during the previous five-year period as its appraiser (such party's "*Appraiser*"), and the holders of the Series A Preferred Stock and the Non-Interested Directors shall promptly furnish to the two Appraisers so appointed such information concerning the Corporation's Background and Industry Prospects, and any offers or indications of interest received by any of the holders of Series A Preferred Stock or by the Corporation, as either Appraiser may request, or the holders of the Series A Preferred Stock or the Non-Interested Directors may deem relevant. Each Appraiser shall, within thirty (30) days following its appointment, render in writing to each of the holders of Preferred Stock (with a copy to the Corporation) a report (the "*Report*") which shall set forth the Fair Market Value as determined by such Appraiser, together with the calculation thereof in reasonable detail. If the difference between the Fair Market Value determined by the two Appraisers is less than or equal to an amount equal to fifteen percent (15%) of the average of such Fair Market Value, then the average of such Fair Market Value estimates, rounded to the nearest whole \$0.01, shall be the Fair Market Value, and such Fair Market Value shall be binding upon the parties. The fees and expenses of the Appraiser appointed by the holders of Series A Preferred Stock shall be borne by the holders of Preferred Stock, and the fees and expenses of the Appraiser appointed by the Non-Interested Directors shall be borne by the Corporation.

(4) If the difference between the Fair Market Value estimates determined by the two Appraisers is greater than an amount equal to fifteen percent (15%) of the average of such Fair Market Value estimates, then the two Appraisers shall promptly and mutually select a nationally recognized investment banking firm which has not performed or agreed to perform services for the parties or any of their respective Affiliates during the previous five-year period (the "*Third Appraiser*") to determine the Fair Market Value.

The Third Appraiser shall receive copies of the Reports of the two Appraisers, and the holders of the Series A Preferred Stock and the Non-Interested Directors shall promptly furnish to the Third Appraiser such additional information concerning the Corporation's Background and Industry Prospects, and any offers or indications of interest received by the holders of the Series A Preferred Stock or the Corporation, as the Third Appraiser may request or the holders of the Series A Preferred Stock or the Non-Interested Directors may deem relevant. The Third Appraiser shall, within thirty (30) days following its appointment, render in writing to each of the holders of Series A Preferred Stock (with a copy to the Corporation) its independent determination of the Fair Market Value, together with the calculation thereof in reasonable detail, and shall select as the Fair Market Value the Fair Market Value estimate of the two Appraisers which is closest to the Third Appraiser's own independent determination of the Fair Market Value, and such closest Fair Market Value estimate shall be binding upon the parties. The fees and expenses of the Third Appraiser shall be borne one half by the holders of Preferred Stock and one-half by the Corporation.

8. Preferred Default Rights. In the event that the Corporation (x) fails to redeem its Preferred Stock as required by Section B.7, above, or (y) otherwise breaches or defaults on any of the material protective provisions set forth in Section B.4(c), Section B.4(d) or Section B.4(e) above, or any material covenant, representation or warranty in the Corporation's Series A Convertible Preferred Stock Purchase Agreement and any of the Ancillary Agreements (as defined therein), and fails to promptly cure the same within 20 days after receipt of notice from the holders of the Series A Preferred Stock, the holders of the majority of the Series A Preferred Stock may elect to take any one or more of the following actions on behalf of those holders of Preferred Stock who elect to participate in such action (in addition to any and all other remedies at law or in equity available to the holders, all of which each holder shall retain the right to exercise of its own volition):

(a) Upon the written request of such holders of Preferred Stock, convert all of such Preferred Stock into promissory notes (each, a "Note", collectively, the "Notes") in a form reasonably acceptable to the holder, in an original principal amount equal to the applicable Liquidation Preference plus any dividends declared but unpaid thereon, payable on the date that is six months after the such event of default. The Notes shall accrue interest at a per annum rate equal to the Prime Rate plus 3%, or if such rate is determined to be usurious, the highest rate allowable under applicable law (the "Interest Rate"). The Notes shall be secured by a lien on all assets of the Corporation, and shall provide, among other things, that upon the occurrence and continuation of an event of default thereunder, all obligations under the Notes shall become immediately due and payable. As used herein, "Prime Rate" shall mean the Prime Rate quote set forth in The Wall Street Journal on the applicable date; notwithstanding anything to the contrary in this Certificate of Incorporation, if the Corporation is not legally permitted to issue Notes to the holders of Preferred Stock in accordance with this Section B.8(a) in an amount equal to such holders' full applicable Liquidation Preferences because such an issuance or payment, in the opinion of independent legal counsel to the holders of such Preferred

Stock, would constitute an impairment of the Corporation's capital in violation of Delaware General Corporate Law, then the Corporation shall issue Notes to the holders of Preferred Stock, pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent legally permissible. The Corporation shall then use its best efforts to take whatever actions necessary, including the sale of its assets, to raise additional funds so that it becomes legally permissible for the Corporation to issue additional Notes in an amount required to pay such holders an amount equal to the unpaid balance of such holders' Liquidation Preference;

(b) Notwithstanding the voting provisions set forth in Section B.4. above, and any other agreement to which the Corporation may be bound, elect a majority of the members of the Board of Directors; and

(c) Notwithstanding any other provision herein or agreement to which the Corporation may be bound, immediately initiate the sale of the Corporation in the manner set forth in the Drag-Along Agreement by and among the Corporation and the stockholders who are parties thereto, as such agreement may be amended from time to time.

C. CHANGE IN NUMBER OF SHARES.

Except as otherwise provided in this Certificate of Incorporation, the number of authorized shares of any class or classes of capital stock may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation, voting together as a single class.

FIFTH: Board of Directors. In furtherance of and not in limitation of powers conferred by statute, it is further provided:

(a) Election of directors need not be by written ballot.

(b) Except as otherwise provided in this Certificate of Incorporation, the Board is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation subject to the provisions of the Fourth Article, Section B.4 hereof.

SIXTH: Limitation on Liability. No director of the Corporation shall be personally liable to the Corporation or to any stockholder of the Corporation for monetary damages for breach of fiduciary duty as a director, provided that this provision shall not limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit

If the General Corporation Law of Delaware or any other statute of the State of Delaware hereafter is amended to authorize the further elimination or limitation of the liability of directors of the Corporation, then the liability of a director of the Corporation shall be limited to the fullest extent permitted by the statutes of the State of

Delaware, as so amended, and such elimination or limitation of liability shall be in addition to, and not in lieu of, the limitation on the liability of a director provided by the foregoing provisions of this Fifth Article.

Any repeal of or amendment to this Fifth Article shall be prospective only and shall not adversely affect any limitation on the liability of a director of the corporation existing at the time of such repeal or amendment.

SEVENTH: Indemnification. To the extent permitted by law, the Corporation shall fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) (each, an "Action") because that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise (each, a "Related Enterprise"), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding (collectively, "*Reasonable Costs and Expenses*").

To the extent permitted by law, the Corporation may fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed Action because such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of a Related Enterprise, against Reasonable Costs and Expenses.


The Corporation may advance expenses (including attorneys' fees) incurred by a director or officer in defending any Action in advance of the final disposition of such Action upon the receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that such director or officer is not entitled to indemnification. The Corporation may advance expenses (including attorneys' fees) incurred by an employee or agent in defending any Action in advance of the final disposition of such Action upon such terms and conditions, if any, as the Board deems appropriate.

EIGHTH: Amendment. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

[Signature page follows]

IN WITNESS WHEREOF, the Corporation has caused its corporate seal to be affixed hereto and this Second Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 9th day of June, 2003.

DoUWantIt.com, Inc.

By: 
Name: James Simpson
Title: Chief Executive Officer

(SIGNATURE PAGE TO SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION)
NYC 2003273