

Division of Corporations

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BASIC AMENDMENT
ENGAGE TECHNOLOGIES, INC.

Certificate of Status	0
Certified Copy	1
Page Count	17
Estimated Charge	\$43.75

Amendment

5/15/01

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ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
ENGAGE TECHNOLOGIES, INC.

The undersigned, on behalf of Engage Technologies, Inc., a Florida corporation (the "Corporation"), hereby files the following Articles of Amendment to the Corporation's Articles of Incorporation:

1. The name of the Corporation is Engage Technologies, Inc.
2. The Corporation's Articles of Incorporation are hereby amended by deleting the first sentence of Article V in its entirety and replacing it with the following:

The aggregate number of shares of all classes of stock which the Corporation shall have the authority to issue is 3,001,500 shares, consisting of (a) 3,000,000 shares of common stock, par value \$0.01 per share (the "Common Stock"), and (b) 1,500 shares of preferred stock, par value \$0.01 per share (the "Preferred Stock").

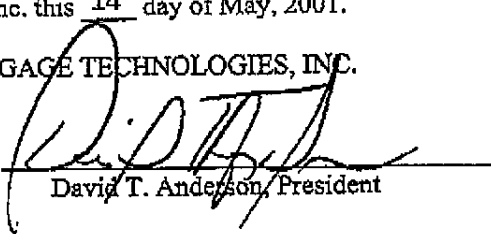
3. The Corporation's Articles of Incorporation are hereby further amended by deleting in its entirety the Designation of Relative Rights and Preferences of the Corporation's Series A Cumulative Nonconvertible Preferred Stock, par value \$0.01 per share, which was filed as an exhibit to an amendment to the Corporation's Articles of Incorporation that was filed with the Secretary of State of the State of Florida on November 30, 2000.
4. The Corporation's Articles of Incorporation are hereby further amended to include the Certificate of the Powers, Designations, Preferences and Rights of the Corporation's Series B Convertible Preferred Stock, par value \$0.01 per share, which is attached hereto as *Exhibit I.I*.
5. Except as hereby amended, the Articles of Incorporation of the Corporation shall remain the same.
6. The amendments hereby made to the Articles of Incorporation of the Corporation were duly adopted by a written consent executed by the sole member of the Board of Directors of the Corporation on May 14, 2001, and were duly approved by a written consent executed by the shareholders of the Corporation on May 14, 2001. The number of votes cast for the amendments by the shareholders was sufficient for approval.

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IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment to the Articles of Incorporation of Engage Technologies, Inc. this 14 day of May, 2001.

ENGAGE TECHNOLOGIES, INC.

By: 

David T. Anderson, President

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Exhibit 1.1 - Series B Certificate**ENGAGE TECHNOLOGIES, INC.****CERTIFICATE OF THE POWERS, DESIGNATIONS,
PREFERENCES AND RIGHTS OF
SERIES B CONVERTIBLE PREFERRED STOCK**

The Board of Directors of Engage Technologies, Inc. (the "Corporation"), on May 14, 2001, approved the issuance of a new series of its authorized but undesignated preferred stock, which the Board of Directors has been designated as the "Series B Preferred Stock," which series has the following rights and preferences. The Corporation had previously authorized a "Series A Preferred Stock" and issued shares of its Series A Preferred Stock, however, all of those shares have been redeemed and the Series A Preferred Stock designation has been cancelled pursuant to the amendment to the Corporation's Articles of Incorporation to which this Certificate is attached.

1. Number of Shares; Stated Value.

The Series B Preferred Stock shall consist of 1,500 shares, par value \$.01. The stated value of each issued share of Series B Preferred Stock shall be \$1,000 (the "Stated Value"), and each share thereof shall be validly issued, and shall be deemed fully paid and nonassessable, upon receipt by the Corporation of legal consideration in an amount determined by the Corporation's Board of Directors to be at least equal to such Stated Value.

2. Relative Seniority; Definition of Common Stock. The Series B Preferred Stock shall rank senior to shares of the Corporation's existing single class of authorized common stock, \$.01 par value (the "Common Stock") and to any other class or series of capital stock with respect to the right to receive distributions made upon any dissolution or winding up of the Corporation's legal existence and associated liquidation of its assets, or as otherwise set forth herein. "Common Stock" shall mean all shares of the Corporation's common stock authorized at the date of the initial issuance of shares of the Series B Preferred Stock or, in the case of any future reclassification or exchange of such common stock, shares of the Corporation's capital stock into or for which such common stock shall be reclassified or exchanged, and all provisions of this Certificate shall be applied appropriately thereto.

3. Voting Rights. Each issued and outstanding share of Series B Preferred Stock shall entitle the registered holder thereof to fully participate in all meetings of the Corporation's shareholders and to cast that number of votes, on each matter with respect to which shareholders of the Corporation have the right or are asked to vote or provide their written consent, equal to the number of shares of Common Stock into which it is convertible on the record date for determining shareholders eligible to vote on such matter or, if no such record date is established, on the date such vote is taken or any written consent of shareholders is solicited; provided, however, that at no time following the initial issuance of the Series B Preferred Stock shall any action be taken without the prior consent of the record owners of a majority in interest of such shares, which affects such shares or the powers, preferences or rights thereof.

4. Dividends. Each holder of one or more shares of Series B Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, if at all, dividends on a parity with each holder

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of one or more shares of Common Stock. Any dividend or other distribution shall be payable per share of Series B Preferred Stock in an amount equal to the dividend per share payable on the number of shares of Common Stock into which each share of Series B Preferred Stock is convertible on the record date for determining eligibility to receive such dividends, or if no such record date is established, on the date such dividends are actually paid. The capital return directed by Section 8 below shall not be deemed a dividend for purposes of this Section 4.

5. **Redemption Rights.** The Corporation shall have no unilaterally exercisable right to repurchase or redeem any shares of Series B Preferred Stock. Upon not less than six months prior notice furnished on or after May 15, 2006 (the "Repurchase Notice") and containing a proposed closing date (the "Redemption Date"), any holder of shares of Series B Preferred Stock may require the Corporation to repurchase all, or any portion, of such shares as are owned of record by such holder both on the date of the Repurchase Notice and the Redemption Date. The repurchase price to be paid by the Corporation for any such shares shall be equal to the greater of: (a) the product of the Stated Value times the number of such shares then being tendered for repurchase by a particular holder; or (b) the fair market value of such shares as determined as of the date which precedes the Redemption Date by six months (the "Valuation Date"), by agreement of the Corporation and such holder or, if requested by any holder within the 45 day period following the date of the Repurchase Notice, by the appraisal process described in the succeeding paragraphs of this Section (which, if requested, may cause the date for the repurchase to be extended as reasonably necessary to accommodate the completion of the appraisal process); and, in either case, together with any dividend accrued and unpaid with respect to such shares as of the Redemption Date. On the Redemption Date, each holder whose shares of Series B Preferred Stock are being redeemed shall tender such shares for cancellation by the Corporation and against payment of the redemption price. Upon the consummation of any such redemption, each holder of shares of Series B Preferred Stock whose shares have been redeemed shall cease to be a shareholder with respect to such shares, shall have no interest in or claim against the Corporation by virtue thereof and shall have no voting or other rights with respect to such shares as are redeemed, and those shares shall resume the status of authorized but unissued shares of the Corporation's authorized preferred stock.

If a holder furnishes notice of its, his or her desire to have the fair market value of the shares of Series B Preferred Stock to be repurchased determined by appraisal, then such holder shall, in the notice, furnish the Corporation with the names of at least three appraisers (each of whom shall be independent of such holder) that the holder is willing to have engaged to perform the appraisal services herein described. Within ten days following expiration of the period within which such notification may be made by any holder of Series B Preferred Stock, the Corporation shall select one of the three appraisers most frequently identified by all such holders and shall confirm thereto such identity and that the engagement has been completed.

Upon appointment, the Corporation shall be required promptly to furnish the appraiser with all material information then available concerning its (a) financial condition as of the end of each of the completed fiscal quarters within the current year of the Corporation's operations, and its three preceding fiscal years of operation; (b) a profit and loss statement and a separate cash flow statement for each of the periods ending with the identified financial condition dates; (c) a statement of the Corporation's product and service order backlog as of the end of the calendar month preceding the date of the Repurchase Notice, and a comparison of such number with the backlog figure existing as of the end of the same month in each of the three prior years; (d) a statement reflecting all sales of its capital stock within the previous three year period; and (e) such other financial information as the appraiser may reasonably request. The appraiser shall be

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required to determine faithfully, fairly and within 90 days of the engagement date its estimate of the fair market value of each share of Series B Preferred Stock, as of the Valuation Date, and such determination, as long as effected in accordance with the requirements of this Section, shall be final and binding on the parties and shall be specifically enforceable in a court having jurisdiction over the parties and subject matter hereof.

If (i) the Corporation fails to timely engage an appraiser from the list furnished by the holder; or (ii) the appraiser so engaged dies, fails to act in a timely manner, resigns or is found not to meet the minimum professional qualifications described below, and the Corporation fails to select and engage a substitute appraiser from the holder's list within ten days after being requested to do so by the holder, then the holder may apply to a court of proper jurisdiction in and for Hillsborough County, Florida, for the appointment of such substitute appraiser by judicial order. All fees and costs charged by the appraiser engaged to perform the valuation service herein identified shall be shared equally by the holder and the Corporation.

Any appraiser engaged hereunder shall provide to the holder and the Corporation a certification of qualifications which, at a minimum, shall reflect its independence from the holder and its status as an appraiser of closely held, profit seeking corporations for a continuous period of no fewer than 15 years and its involvement with the appraisal, within the preceding two year period, of no fewer than ten separate businesses. No appraiser shall have the power to expand, modify or delete any of the procedures set forth herein.

6. Voluntary Conversion of Preferred Stock into Common Stock.

a. **In General:** Subject to the provisions of this Section 6, each holder of record of one or more shares of Series B Preferred Stock shall have the continuing right, exercisable from time to time at its option, to convert each share of Series B Preferred Stock then held by it into 37.28 fully paid and non-assessable shares of Common Stock (in its unadjusted or any subsequently adjusted form, the "Conversion Factor"). To ensure, however, that the relative value of the shares of Common Stock to be issued in connection with each such conversion shall not have been diluted, by actions of the Corporation hereinafter described, from the value which would exist were the conversion of all shares of Series B Preferred Stock effected as of the date of the initial issuance of the Series B Preferred Stock, the Stated Value of each share of Series B Preferred Stock shall, in connection with each conversion, be divided by \$1,000, as adjusted in accordance with the provisions of Section 6.c(3) below (whether in its unadjusted or any adjusted form, the "Divisor"); the resulting quotient, calculated to the nearest 1/1,000th, shall be multiplied by the Conversion Factor (as adjusted in accordance with the provisions of Section 6.c(1) and (2)); and the product of that latter calculation shall constitute the new Conversion Factor. In turn, the product of the new Conversion Factor multiplied by the number of shares of Series B Preferred Stock that are made the subject of the conversion election shall constitute the number of fully paid and non-assessable shares of Common Stock that shall be issued upon such conversion.

b. **Procedure:** In order to convert shares of Series B Preferred Stock into shares of Common Stock, a holder shall (i) notify the Corporation of its election to convert shares of Series B Preferred Stock and of the number of such shares to be converted; (ii) surrender each

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certificate evidencing the shares of Series B Preferred Stock to be converted, duly endorsed to the Corporation or in blank and accompanied by proper instruments of transfer, at the executive office of the Corporation or such other location as may reasonably be designated by the Corporation, and (iii) state in writing the name or names in which the holder wishes each certificate for shares of Common Stock to be issued. The date upon which the holder satisfies the last of such requirements is herein referred to as the "Conversion Date." Within five business days after the Conversion Date, the Corporation shall deliver one or more certificates, registered in the name(s) of the person(s) identified by the converting holder of Series B Preferred Stock, for the number of full shares of Common Stock issuable upon the conversion, together with, as applicable, a new certificate representing any unconverted portion of the shares of Series B Preferred Stock represented by the certificate(s) surrendered for conversion, and cash in lieu of any fraction of a share as provided in Section 6.h below. The person(s) in whose name(s) the certificate(s) for the Common Stock are registered shall become shareholder(s) of record of Common Stock on the Conversion Date. If the Common Stock issuable upon conversion is to be registered in a name other than the holder exercising the conversion privilege, such holder shall also deliver, on or before the Conversion Date, such evidence of authorization for the transfer and of the transferee's compliance with the provisions of any agreements restricting further transfer and any applicable securities laws as the Corporation may reasonably request.

c. Adjustments: Except as (i) provided in clauses (1) through (6) of this subsection c, (ii) contemplated elsewhere in this Certificate, or (iii) otherwise authorized hereafter by unanimous action of all members of the Corporation's Board of Directors, who shall be required, promptly upon receipt of a Purchaser (as defined herein in Section 8) request, to (A) consider and determine whether an adjustment is equitable and appropriate notwithstanding the lack of any specific direction therefore in this Certificate, (B) act reasonably, in good faith and in accordance with their fiduciary obligations to shareholders, (C) memorialize, in the form of resolution(s), the basis of their consideration and determination, and (D) provide Purchaser with a copy of such resolution(s), no adjustment in the Conversion Price shall be made because the Corporation issues, in exchange for cash, property or services, Common Stock, or any securities convertible into or exchangeable for Common Stock, or securities carrying the right to purchase Common Stock or such convertible or exchangeable securities. Furthermore, no adjustment in the Conversion Price need be made under this Section 6 solely as a result of the par value of the Common Stock being changed or eliminated or subsequently reinstated.

(1) If, prior to any conversion, the outstanding shares of Common Stock are subdivided into a greater number or combined into a smaller number of shares (by way of reclassification, forward or reverse split or in any other manner), then, although no adjustment will be required to be made to the Divisor, the Conversion Factor shall be increased or reduced to an amount equal to the product of (A) a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately after the subdivision or combination and the denominator of which shall be the number of such shares outstanding immediately prior thereto, times (B) the pre-existing Conversion Factor.

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(2) If, prior to any conversion, there is legally paid with respect to the Common Stock, but not with respect to the Series B Preferred Stock, any dividend or other distribution in the form of shares of Common Stock, then, although no adjustment will be required to be made to the Divisor, the Conversion Factor shall be increased to an amount equal to the product of (A) a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately after the payment of such dividend and the denominator of which shall be the number of such shares outstanding immediately prior thereto, times (B) the pre-existing Conversion Factor.

(3) If, prior to any conversion, the Corporation shall issue or sell shares of Common Stock (except as provided in clause (4) below) without consideration or for a consideration per share less than the then existing "Conversion Price" of the Common Stock, (which Conversion Price shall be deemed to constitute the quotient of (a) the product of the Stated Value of each share of Series B Preferred Stock times the aggregate number of such shares, divided by (b) the number of shares of Common Stock issuable upon conversion of all shares of Series B Preferred Stock [which number is, itself, the product of the Conversion Factor, as adjusted, times the aggregate number of shares of Series B Preferred Stock], initially \$26.82), then the Divisor shall be decreased to that percentage of itself constituting the quotient (also stated as a percentage) of (i) the sum of (x) the number of shares of Common Stock outstanding immediately prior to such issuance or sale, plus (y) the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of such shares of Common Stock so issued or sold would purchase at the Conversion Price, divided by (ii) the number of shares of Common Stock outstanding immediately after such issuance or sale; and the Conversion Price, from and after the date of such issuance and sale (and subject to further adjustment as provided herein), shall be the product of the Conversion Price in effect immediately prior to such issuance and sale multiplied by the same percentage to which the Divisor shall be decreased.

As an example of the manner in which the preceding paragraph is intended to operate in concert with Section 6.a, assume that at the time of issuance of the Series B Preferred Stock there are issued and outstanding 100,000 shares of Common Stock, and thereafter (but prior to the conversion of any of the Series B Preferred Stock) the Corporation issues 50,000 shares of Common Stock at a per share selling price of \$10.00. To determine whether an adjustment will thereafter be required to be made to the Divisor, the Corporation must first determine whether the \$10.00 per share selling price of the newly issued Common Stock is less than the then existing Conversion Price of the Series B Preferred Stock. The Conversion Price is determined by the following formula:

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$$\frac{SV \times PS}{CF \times PS} = CP$$

where SV = the Stated Value of a single share of Series B Preferred Stock, or in its unadjusted form, \$1,000;

PS = the number of shares of Series B Preferred Stock, or 1,500;

CF = the Conversion Factor, or 37.28 in its unadjusted form; and

CP = the Conversion Price of a single share of Series B Preferred Stock

or

$$\frac{\$1,000 \times 1,500}{37.28 \times 1,500} = \$26.82$$

Since the Conversion Price, at its then existing level, is higher than the selling price of the newly issued Common Stock, the Divisor must be decreased to that percentage of itself which is determined by the following formula:

$$\frac{C/S + N/S}{A/S}$$

where C/S = the number of shares of Common Stock outstanding immediately prior to the new issue;

N/S = the number of shares of Common Stock that the aggregate consideration received by the Corporation for the shares actually issued would have purchased at the Conversion Price; and

A/S = the number of shares of Common Stock outstanding immediately after the new issue

or

$$\frac{100,000 + (\$500,000 \div \$26.82)}{150,000} = .7910$$

or, stated as a percentage, 79.1%

Accordingly, the Divisor must be decreased to 79.1% of its former level, or from \$1,000 to \$791, such that if any of the shares of Series B Preferred Stock are thereafter converted the New Conversion Factor to be applied to each, so as to calculate the number of shares of Common Stock to be issued, will be determined under Section 6.a by reference to the following formula:

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$$\frac{\text{Stated Value}}{\text{Divisor}} \times \text{CF} = \text{New Conversion Factor}$$

or

$$\frac{\$1.000 \times 37.28}{\$791} = 47.130$$

and from the date of the new issuance and sale of Common Stock the Conversion Price, subject to subsequent adjustment, will be decreased to 79.1% of its former level.

For the purpose of this clause (3) the following provisions shall be applicable:

(i) In the case of any issuance or sale for cash, the consideration shall be deemed to be the cash proceeds received by the Corporation for such shares (or if such shares are offered by the Corporation for subscription, the subscription price, or, if such shares are sold to underwriters or dealers for public offering without a subscription offering, the public offering price), without deducting therefrom any compensation or discount in the sale, subscription or underwriting thereof by underwriters, dealers or others performing similar services, or for any expenses reasonably incurred in connection therewith. In the case of any issuance or sale (otherwise than upon conversion or exchange of securities by their terms convertible or exchangeable into Common Stock) for a consideration other than cash, the amount of such consideration shall be deemed to be the fair value thereof as determined by the unanimous action of all members of the Corporation's Board of Directors, irrespective of the accounting treatment thereof, which determination shall be made at any time on or prior to the date of issuance or sale irrespective of the fact that definitive agreements providing for the issuance may have been previously approved by the Corporation's Board of Directors or shareholders.

(ii) If the Corporation issues options (including capital stock purchase warrants) or rights to subscribe, upon exercise, for shares of Common Stock or issues securities convertible into, exchangeable for, or carrying rights of purchase of, shares of Common Stock, and if the consideration per share of the Common Stock deliverable upon any such exercise, conversion or exchange (determined by dividing the aggregate consideration received or receivable by the Corporation as consideration for the granting of such options or rights or the issue or sale of such convertible or exchangeable securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange

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thereof, by the total maximum number of shares of Common Stock issuable upon such exercise, conversion or exchange), is less than the Conversion Price of the Common Stock:

(A) In the case of options or rights, the shares of Common Stock deliverable upon their exercise shall be deemed to have been issued at the time of issuance of such options or rights and the aggregate consideration shall be the minimum purchase price payable to the Corporation upon exercise of such options or rights plus any additional consideration received by it for such options or rights at the time of their issuance.

(B) In the case of convertible or exchangeable securities, the maximum number of shares of Common Stock initially deliverable upon their conversion or exchange shall be deemed to be issued at the time of issuance or sale of such securities, and the aggregate consideration shall be the consideration received by the Corporation for such securities, before deducting any discounts, commissions or other expenses in connection with the issuance and sale of such securities, plus the minimum additional consideration, if any, receivable by the Corporation upon the conversion or exchange thereof.

(C) No further adjustment of the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted shall be made, upon the actual issue of such Common Stock, upon the exercise of such rights or options or upon the conversion or exchange of such convertible or exchangeable securities.

(D) Upon the expiration of such options or rights, or the termination of such right to convert or exchange, the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted shall forthwith be readjusted to such number as would have obtained had the adjustment made upon the issuance of such options, rights or convertible or exchangeable securities been made upon the basis of the issuance or sale of only the number of shares of Common Stock actually issued upon the exercise of such options or rights or upon the conversion or exchange of such securities.

(E) In the event that, prior to the expiration of such options or rights or the termination of such right to convert or exchange, the consideration payable on the issuance, sale or delivery of the shares of Common Stock shall change, or the number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable

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security shall change, the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted shall forthwith be readjusted to such number as would have obtained had the adjustment made upon the issuance of such options, rights or convertible or exchangeable securities been made (except with respect to options or rights exercised or securities converted or exchanged prior to such readjustment) upon the basis of such consideration then payable or number of shares then deliverable.

(F) Options or rights issued or granted pro rata to shareholders without consideration and securities convertible into, exchangeable for, or carrying rights of purchase of, shares of Common Stock, which securities are issuable by way of dividend or other distribution to shareholders, shall be deemed to have been issued or granted at the close of business on the date fixed for the determination of shareholders entitled thereto and shall be deemed to have been issued without consideration.

(G) In the case of any options or rights which expire by their terms not more than 45 days after the date of issue, sale or grant thereof, no adjustment of the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted shall be made until the expiration or exercise of all such options or rights, whereupon such adjustment shall be made in the manner provided in clause (D) above; provided that if a conversion of any shares of Series B Preferred Stock is effected hereunder subsequent to the date of issuance, sale or grant of any such options or rights but prior to its date of exercise, any adjustment subsequently required as a result of such exercise shall be deemed made retroactively as of the date of issuance, sale or grant so as to be considered in determining the Conversion Factor or Conversion Price applicable to such conversion.

(H) Shares of Common Stock issued or deemed to be issued pursuant to clauses (A) or (B) above with respect to which any adjustment in the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted is required to be made shall be deemed to be outstanding as of and after the date on which such adjustment is made and until any readjustment is made with respect thereto pursuant to clause (D) or (E) above, in which case the shares with respect to which such readjustment is made shall no longer be deemed to be outstanding as of the date of such readjustment.

(4) No adjustment in the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted shall be made by reason of the issuance and sale of (i) Common Stock pursuant to stock purchase agreements, stock

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option plans or agreements in effect on the date of issuance of the Series B Preferred Stock, as amended from time to time; (ii) options to acquire Common Stock granted under a plan referenced in (i) above; (iii) the Series B Preferred Stock created hereby, or any shares of Common Stock issued upon conversion of the shares of such Series; or (iv) Common Stock to a director of the Corporation who shall have no other association therewith, as authorized by the Compensation Committee of the Corporation's Board of Directors.

(5) In case of any capital reorganization or any reclassification of the capital stock of the Corporation, or the consolidation or merger of the Corporation with another corporation, or any sale or conveyance of all or substantially all of the property of the Corporation, each share of Series B Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or cash or other property receivable upon such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance, as the case may be, by a holder of the number of shares of Common Stock into which such share of Series B Preferred Stock shall have been convertible immediately prior to such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance.

(6) No adjustment in the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted, as a result of the application of the foregoing provisions, is to be given effect unless, by making such adjustment, the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted would be changed by 1% or more, but any adjustment which would change the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted by less than 1% is to be carried forward and given effect in making future adjustments; provided that the Corporation's Board of Directors may make an adjustment of less than 1% to avoid a deemed stock distribution to holders of the Common Stock.

d. **Notification to Holders:** Whenever the number of shares of Common Stock into which each share of Series B Preferred Stock may be converted shall be adjusted pursuant to the provisions hereof, the Corporation shall promptly furnish each holder of Series B Preferred Stock, in the manner contemplated by Section 9 below, with a statement, signed by its Chief Executive and Chief Financial Officer(s), describing the adjusted number of shares of Common Stock into which each share of Series B Preferred Stock may be converted and setting forth in reasonable detail the method of calculation and the facts requiring such adjustment and upon which such calculation is based. Each adjustment shall remain in effect until a subsequent adjustment hereunder is required.

e. **Reservation:** The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, the full number of shares of Common Stock deliverable upon the conversion of all outstanding shares of Series B Preferred Stock and all other outstanding

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shares and other securities which are convertible into Common Stock, and upon exercise of any outstanding rights or options to purchase Common Stock.

f. **Replacement Certificates:** As promptly as practicable after the surrender for conversion of any Series B Preferred Stock, the Corporation shall deliver or cause to be delivered at the principal office of the Corporation (or such other place as may be designated by the Corporation), to or upon the written order of the holder of such Series B Preferred Stock, one or more certificates representing the shares of Common Stock issuable upon such conversion, issued in such name or names as such holder may reasonably direct.

g. **Payment of Accrued Dividends:** At the time of such conversion, to the extent it is legally able to do so, the Corporation shall pay to the holder of record of any share of Series B Preferred Stock being converted any dividends accrued but unpaid with respect thereto. Except to the extent limited by any applicable provision of Section 4 above (Dividends), the holder shall be entitled to elect to receive such dividend in the form of shares of Common Stock, with each being valued at its then existing fair market value as determined by the Corporation's Board of Directors.

h. **No Fractional Shares:** The Corporation shall not be required to issue any fractions of shares of Common Stock upon conversions of Series B Preferred Stock. If any interest in a fractional share of Common Stock would otherwise be deliverable upon the conversion of any Series B Preferred Stock, the Corporation shall make adjustment for such fractional share interest by payment to the converting shareholder of cash in an amount bearing the same ratio to the fair market value of a whole share of Common Stock of the Corporation, as determined by the Corporation's Board of Directors, as the fractional interest to which the shareholder would otherwise be entitled bears to a whole share of Common Stock.

i. **Validly Issued:** All shares of Common Stock which may be issued upon conversion of the shares of Series B Preferred Stock will upon issuance by the Corporation be validly issued, fully paid, nonassessable and free from all taxes, liens, and charges with respect to the issuance thereof.

j. **Expenses:** The issuance of certificates representing shares of Common Stock upon conversion of the Series B Preferred Stock shall be made to each applicable shareholder without charge for any documentary tax in respect of such issuance. However, if any certificate is to be issued in a name other than that of the holder of record of the Series B Preferred Stock so converted, the person or persons requesting the issuance thereof shall pay to the Corporation the amount of any tax which may be payable in respect of any transfer involved in such issuance, or shall establish to the satisfaction of the Corporation that such tax has been paid or is not due and payable.

k. **Status of Converted Stock:** In case any shares of Series B Preferred Stock shall be converted, the shares so converted shall resume the status of authorized but unissued shares of preferred stock.

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7. **Mandatory Conversion.** Any Series B Preferred Stock then outstanding shall be converted into Common Stock contemporaneously with the consummation of the Corporation's first fully underwritten, firm commitment public offering, by way of an effective registration statement under the Securities Act of 1933, as amended, of shares of Common Stock, pursuant to which the aggregate price paid by the public for the purchase of all shares of Common Stock sold by the Corporation subject thereto shall be at least \$15,000,000, and the per share selling price is at a figure which, when multiplied by the number of shares of Common Stock outstanding on the effective date of such registration statement, determined on a "Fully Diluted Basis" (but excluding from such determination any of the shares of Common Stock made the subject of such registration statement), results in the Company's market capitalization, on a "pre-money" basis, totaling at least \$30,000,000 (the "Qualified IPO"). Consummation, as referenced in the preceding sentence, shall be deemed to have occurred once the Corporation is in receipt of the net proceeds derived from such Qualified IPO. The provisions of this Certificate regarding the number of shares of Common Stock which shall be issuable upon the conversion of Series B Preferred Stock into Common Stock shall be applicable to such mandatory conversion. The Corporation shall give notice of the date of consummation of the Qualified IPO (the "Mandatory Conversion Date") to each holder of record of Series B Preferred Stock, no later than one business day after the Mandatory Conversion Date, specifying that the shares have been converted and calling upon such holder to surrender to the Corporation each certificate representing its shares of Series B Preferred Stock, duly endorsed or accompanied by proper instruments of transfer. For purposes of this paragraph, the term, "Fully Diluted Basis," shall be deemed to mean (a) with respect to any shares of capital stock of the Corporation the aggregate of all of such shares which consist of Common Stock, and (b) with respect to any other securities which are not Common Stock, the number of shares of Common Stock into which such securities are convertible at the time of determination of such Fully Diluted Basis, and (c) with respect to any options, warrants or other rights to acquire shares of Common Stock (or securities convertible into or exchangeable for Common Stock) the maximum number of shares of Common Stock issuable at the time of such determination in connection with the exercise of any such options, warrants or other rights to subscribe, convert or exchange.

Within 10 days after the Mandatory Conversion Date, each holder of shares of Series B Preferred Stock shall present and surrender its, his or her share certificate(s) to the Corporation, at its principal executive office, and within 30 days after such presentation shall be issued new certificates representing the shares of Common Stock issuable upon such conversion. Upon the Mandatory Conversion Date, each holder of Series B Preferred Stock shall be deemed to have become the holder of the Common Stock to be issued on conversion and not of the Series B Preferred Stock being converted, and all rights of such holder shall cease with respect to such Preferred Stock except for rights in connection therewith which have become matured obligations to such holder prior to such conversion and the right to receive the certificates representing the shares of Common Stock to be issued upon such conversion.

8. **Sale of Assets; Merger; Change in Control; Etc.** Upon and contemporaneously with the consummation of (a) a sale or other transfer for value (including a lease or license entered into outside the

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normal course of its business affairs) by the Corporation (excluding a distribution effected in accordance with the provisions of Section 9 below) of more than 50.0% in value of its consolidated assets (an "Asset Sale"); (b) a sale by David T. Anderson (the "Common Shareholder") of more than 50.0% of the voting stock then owned by the Common Shareholder to persons other than the Corporation; (c) a corporate reorganization contemplated by §368(a)(1)(A)-(C) of the Internal Revenue Code of 1986, as amended (the "Code") in which the surviving or acquiring entity is not owned at least 50.1% by the Purchaser and the Common Shareholder immediately prior thereto; by Code §368(a)(1)(D) in which more than 50.0% of the Corporation's consolidated assets are, following such transaction, no longer owned, directly or indirectly, by the Corporation; or by Code §368(a)(1)(E) in which the value of the equity ownership interests of the Common Shareholder is reduced by more than 50.0% (a "Reorganization Transaction"); or (d) the acquisition, directly or indirectly, after the date hereof, by any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as in effect on the date hereof, but excluding any institutional underwriter who makes an acquisition directly from the Corporation in accordance with the conditions of a registration statement theretofore filed with and declared effective by the United States Securities and Exchange Commission), of voting power over voting shares of the Corporation that would entitle the holder(s) thereof to cast more than 50.0% of the votes that all shareholders would be entitled to cast in the election of directors of the Corporation (a "Stock Sale"); each holder of Series B Preferred Stock shall be entitled to receive from the Corporation a cash payment (provided it has not previously received such payment by application of Section 10 below), equal to the sum of (a) the product of \$1,000 times the number of shares of Series B Preferred Stock then held of record by the holder (such amount constituting a return to the holder of its original capital investment in each such share), and (b) any dividend then accrued and unpaid with respect to such shares. Upon the tender of payment provided for in this Section, each then outstanding share of Series B Preferred Stock shall automatically be converted, subject to the adjustment provisions of Section 6 above, into 37.28 shares of Common Stock.

Additionally, if a bona fide offer is presented to the Corporation by other than a holder of Series B Preferred Stock which, upon its consummation, would result in an Asset Sale, Reorganization Transaction or Stock Sale and such transaction is either rejected or not considered, whether by the Corporation's Board of Directors or its shareholders, and whether formally or informally, then, if the offer is first presented within the two year period following the first issuance of shares of Series B Preferred Stock authorized hereunder and, as initially presented or thereafter negotiated, would, upon its consummation, result in the receipt by the "Purchaser" of value equal to at least three times the "Purchase Price," as those quoted term are defined in that certain Securities Purchase Agreement, dated as of May 15, 2001, by and between, among others, the Corporation and Engage Investment Partners, LLC (the "Purchase Agreement"), or if such offer is first presented following the expiration of such two year period and would, upon consummation, involve the Purchaser's receipt of any value, then, under either circumstance, the Corporation shall be required, within the 30 day period following the date of such rejection or decision not to consider the same, to notify the Purchaser of its offer to acquire all of the Purchaser's then owned shares of Series B Preferred Stock for the same price, upon the same terms and subject to the same conditions (as they relate to payment of such price), as shall have been included in the offer, at a closing to occur no later than 60 days following the date of such notice, and to provide Purchaser with 30 days, measured from the date of the notice, within which to accept or reject the same. The Purchaser's failure to timely notify the Corporation of its acceptance of the offer shall be treated as a decision to reject the same.

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9. **Priority in the Event of Liquidation or Dissolution.** In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and before any distribution shall be made to the holders of Common Stock or any other class or series of the Corporation's capital stock, each holder of Series B Preferred Stock shall, subject to the limitation imposed by the succeeding sentence, be entitled to receive, out of the net assets of the Corporation and in exchange for the tender and cancellation for each share of Series B Preferred Stock so held, the lesser of: (a) the then existing Stated Value (together with an amount equal to all dividends accrued and unpaid on each such share up to the date fixed for distribution); or (b) that portion of all remaining net assets of the Corporation which bears the same ratio to such net assets as the number of shares owned by the holder bears to all then issued and outstanding shares of Series B Preferred Stock. The above described monetary sum shall not be payable, however, to the extent that it shall have been previously paid to such holder in accordance with the provisions of Section 8 above or Section 10 below. After any such required payment shall have been made to the holders of Series B Preferred Stock under the provisions of clause (a) above, or funds necessary for such payment shall have been set aside in trust for the exclusive benefit of such holders, any excess balance of the Corporation's net assets shall be paid to or set aside for the holders of shares of Common Stock in an amount per share equal to the quotient of such excess balance divided by the aggregate number of shares of Common Stock then outstanding, provided that, for purposes of such calculation, allocation and distribution, each then outstanding share of Series B Preferred Stock shall be deemed to have been converted into Common Stock, in accordance with all applicable terms of this Certificate.

10. **Material Transactions.** Within the 30 day period succeeding the earlier of the date (a) of an independent auditor's report prepared with respect to the Corporation's financial condition as of the end of an annual fiscal period which reflects, in any accompanying or referenced balance sheet, the Corporation's retained earnings as equaling or exceeding \$5,000,000; or (b) as of which the Corporation receives an equity capital contribution which, when combined with all such contributions received by the Corporation subsequent to the consummation of the Securities Purchase Agreement, equals or exceeds \$10,000,000, and provided that there shall then have not been paid to the holders of Series B Preferred Stock either of the payments contemplated under the requirements of Sections 8 or 9 above, the Corporation shall distribute, out of its net assets, to each holder of shares of Series B Preferred Stock then outstanding, an amount equal to the sum of (i) the Stated Value of each such share so held, and (ii) an amount equal to all dividends accrued and unpaid on each such share up to the date fixed for distribution. Upon the tender of payment provided for in this Section, each then outstanding share of Series B Preferred Stock shall automatically be converted, subject to the adjustment provisions of Section 6 above, into one share of Common Stock.

11. **Notices.** All notices, consents, elections, requests, waivers and other communications required or permitted under the terms of this Certificate shall be in writing and shall be deemed to have been duly given or made the third business day after the date of mailing, if delivered by registered or certified mail, postage prepaid and return receipt required; upon delivery, if sent by hand delivery; upon delivery, if sent by prepaid courier and a record of receipt is generated and

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furnished to the sender; or the next day after the date of transmission, if sent by facsimile transmission (with a copy simultaneously sent by registered or certified mail, postage prepaid, return receipt required) and evidence of receipt is generated at the time of transmission. Each such communication shall be transmitted, if to the Corporation, at its principal business address, and if to a holder of Series B Preferred Stock, at the address set forth in the shareholder records as maintained by the Corporation, or to such other address as any such shareholder may have designated by like notice forwarded to the Corporation. Notice of any change in any such address shall also be given in the manner set forth above. Whenever the giving of notice is required, the giving of such notice may be waived by the party entitled to receive such notice.

12. **Amendment.** The Corporation shall not authorize or issue additional shares of Series B Preferred Stock, reissue shares of Series B Preferred Stock redeemed or repurchased by the Corporation, alter the preferences, special rights or powers of the Series B Preferred Stock so as to adversely affect the Series B Preferred Stock, or create a separate class or series of preferred stock or other equity securities (including, without limitation, instruments convertible into, exchangeable for or otherwise carrying rights to acquire equity securities) having priority (including, without limitation, any priority as to dividends or liquidation rights) over or on a parity with the Series B Preferred Stock, unless there is first obtained the affirmative consent (furnished in writing or at a meeting duly called for that purpose) of the holders of a majority of the aggregate number of shares of Series B Preferred Stock then outstanding; or, alternatively, a waiver of the application thereof in any particular instance; provided, however, that no such change shall be effective as to any holder of Class B Preferred Stock which increases the Conversion Price (as defined in Section 6.c(3) above), decreases the number or modifies the character of the shares into which Series B Preferred Stock may be converted, or adversely affects the rights and preferences set forth in Sections 7, 8, 9 and 10 of this Certificate, in each case without such holder first voting in favor of or consenting to such change.

13. **Integration with Purchase Agreement.** This Certificate is intended to establish the Series B Preferred Stock in such a manner as will cause its future issuance to and subsequent ownership by the Purchaser or any of its legal successors in interest (expressly including, without limitation, any of its equity owners and Affiliates) or other transferees to be effected in accordance with and subject to each of the applicable terms of the Purchase Agreement. Accordingly, for such period as any shares of Series B Preferred Stock are outstanding, the Corporation shall take no action otherwise required, permitted or contemplated hereunder, and whether affirmative or by omission, which shall, in any manner, conflict with the provisions of the Purchase Agreement unless the Corporation shall first have obtained the consent of a majority in interest of the then existing holder(s) of the Series B Preferred Stock.

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