

Division of Corporations

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P94000021354

Florida Department of State
Division of Corporations
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BASIC AMENDMENT
LEARNSOMETHING.COM, INC.

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Page Count	26
Estimated Charge	\$43.75

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Art.

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FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State

November 21, 2003

LEARNSOMETHING.COM, INC.
2457 CARE DRIVE
TALLAHASSEE, FL 32308

SUBJECT: LEARNSOMETHING.COM, INC.
REF: P94000021354

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

A certificate must accompany the Restated Articles of Incorporation setting forth either of the following statements: (1) The restatement was adopted by the board of directors and does not contain any amendment requiring shareholder approval. OR (2) If the restatement contains an amendment requiring shareholder approval, the date of adoption of the amendment and a statement setting forth the following: (a) the number of votes cast for the amendment by the shareholders was sufficient for approval (b) If more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

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Division of Corporations - P.O. BOX 6327 -Tallahassee, Florida 32314

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION**

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OF

LEARNSOMETHING.COM, INC.

LearnSomething.com, Inc. (the "Corporation"), a corporation organized and existing under the Florida Business Corporation Act (the "Act"), does hereby certify as follows:

(a) The name of the Corporation was LearnSomething.com, Inc. The Corporation was originally incorporated under the name F.M. Video Solutions, Inc. The original articles of incorporation of the Corporation were filed with the office of the Secretary of State of the State of Florida on March 18, 1994, were subsequently amended, were then amended and restated on November 12, 1999, and have been subsequently amended six (6) times since.

(b) These Second Amended and Restated Articles of Incorporation were duly adopted on November 7, 2003 by the Board of Directors and approved by the shareholders of the Corporation holding the requisite number of shares sufficient for approval in accordance with the provisions of Sections 607.1003 and 607.1007 of the Act.

(c) These Second Amended and Restated Articles of Incorporation restate and integrate and further amend the articles of incorporation of the Corporation, as heretofore amended or supplemented.

(d) The text of the Articles of Incorporation is amended and restated in its entirety as follows:

ARTICLE I

The name of the corporation is LearnSomething, Inc. (the "Corporation").

ARTICLE II

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the Florida Business Corporation Act (the "Act") as set forth in Section 607.0101 of the Act.

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ARTICLE III.

The address of the current registered office in the State of Florida is 103 N. Meridian St. Tallahassee, Florida 32301. The name of the current registered agent at such address is National Corporate Research LTD. Inc. The mailing address of the registered office of the Corporation is the same as its street address.

ARTICLE IV.

Effective immediately upon the filing of these Second Amended and Restated Articles of Incorporation (the "Effective Time"), each one hundred (100) shares of the Corporation's issued Common Stock, par value \$0.01 per share issued and outstanding immediately prior to such Effective Time (the "Old Common Stock") shall, without any action on the part of the holder thereof, be converted and reclassified into, and immediately represent, one (1) validly issued, fully paid and non-assessable share of the Corporation's Common Stock, par value \$0.01 per share (the "Common Stock"). Any fraction of a share of Common Stock that would otherwise result pursuant to the reverse stock split as set forth in the preceding sentence (after aggregating all fractional shares held by each stockholder) shall be paid in cash by the Corporation to each such stockholder. Each certificate representing shares of Old Common Stock shall represent that number of shares of Common Stock determined in the previous sentences; provided, however, that each person holding of record a stock certificate or certificates representing shares of Old Common Stock shall receive, upon surrender of such certificates or certificates, a new certificate or certificates evidencing and representing the number of shares of Common Stock to which such person is entitled except for those shares as to which such person is to receive cash in accordance with the preceding sentence. In addition, any options, warrants, convertible securities or other rights to acquire shares of Old Common Stock (each, a "Right") outstanding immediately prior to the Effective Time shall, without any action on the part of the holder thereof or the Corporation, be adjusted as follows: (i) the number of shares of Old Common Stock subject to such Right shall be divided by 100; and (ii) the per share exercise or conversion price set forth in such Right shall be multiplied by 100.

ARTICLE V.

The Corporation is authorized to issue a total of One Hundred Fifty Million (150,000,000) shares, \$0.01 par value per share. One Hundred Million (100,000,000) of such shares are designated "Common Stock," and Fifty Million (50,000,000) of such shares are designated "Preferred Stock," of which: (i) Eight Million (8,000,000) are designated "Series A Convertible Preferred Stock," (ii) One Million Five Hundred Fifty Eight Thousand Four Hundred Forty Two (1,558,442) shares are designated "Series B Convertible Preferred Stock," (iii) One Million Seven Hundred Ninety Eight Thousand Three Hundred Ten (1,798,310) shares are designated "Series C Convertible Preferred Stock," (iv) Two Million One Hundred Thirty Three Thousand Three Hundred Thirty Four (2,133,334) shares are designated "Series D Convertible Preferred Stock," and (v) Seven Million (7,000,000) shares are designated "Series E Convertible Preferred Stock." The Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock, Series D Convertible Preferred Stock, and Series E Convertible Preferred Stock collectively may be referred to herein from time to time as the "Preferred Stock." The Preferred Stock shall have the rights, preferences, privileges,

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qualifications, limitations, and restrictions set forth in the succeeding provisions of this Article V.

I. Dividend Rights.

(a) Dividends on the Preferred Stock. No distributions shall be declared or paid with respect to any series of Preferred Stock without there being contemporaneously declared and paid a dividend on all other series of Preferred Stock (with the same record and payment date) so that each share of Preferred Stock shall receive a dividend *pro rata* based on the relative number of shares of Common Stock into which each such share of Preferred Stock is convertible. For the purpose of this Section 1, unless the context otherwise requires, "distribution" shall mean the transfer of cash or property by the Corporation without consideration, whether by way of dividend or otherwise, or the purchase or redemption of shares of the Corporation for cash or property, including any such transfer, purchase or redemption by a subsidiary of the Corporation.

(b) Limitations on Dividends on Common Stock. As long as any shares of the Series E Convertible Preferred Stock remain outstanding, the Corporation shall not directly or indirectly pay or declare any dividends or make any distribution on the Common Stock or Preferred Stock or purchase, redeem or acquire any shares of capital stock other than the Series E Preferred Stock, and no funds shall be paid into or set aside or made available for a sinking fund for the purchase, redemption, or acquisition thereof. The provisions of this Section 1(b) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) any repurchase of any outstanding securities of the Corporation that is approved by a majority of the Corporation's Board of Directors with the director elected by the holders of Series B Convertible Preferred Stock to be included in such majority; or (iii) the purchase of shares of Common Stock from former employees (other than executive officers) of the Corporation, if each such purchase is approved by the Corporation's Board of Directors, is made in connection with the termination of employment of such former employee and the purchase price does not exceed the original issue price paid by such former employee to the Corporation for such shares.

2. Liquidation Rights.

(a) Liquidation (i) For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, any of the following (a "Sale, Merger, or Reorganization"): (x) the merger or consolidation of the Corporation into or with another corporation or entity (other than a merger into a wholly-owned subsidiary thereof), reorganization or sale of the Corporation, or sale of capital stock by the Corporation, in which the shareholders of the Corporation immediately preceding such merger, consolidation, or reorganization (solely by virtue of their shares or other securities of the Corporation) shall own less than fifty percent (50%) of the voting securities of the surviving corporation (but not including a Qualified Public Offering); (y) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions or plan, of fifty percent (50%) or more of the assets of the Corporation, based on the fair market value of the Corporation's assets as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Series E Convertible Preferred Stock, which assets shall include for these purposes fifty percent (50%) or more of the outstanding voting capital stock of

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any subsidiaries of the Corporation, the assets of which constitute all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole; or (z) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions, of all or substantially all of the assets of the subsidiaries of the Corporation, the assets of which constitute all or substantially all of the assets of the Corporation and such subsidiaries taken as a whole.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Series E Convertible Preferred Stock.

(iii) The "Original Series E Issuance Date" shall be defined as November 24, 2003. The "Original Series D Issuance Date" shall be defined as January 16, 2002. The "Original Series C Issuance Date" shall be defined as July 24, 2001. The "Original Series B Issuance Date" shall be defined as May 19, 2000. The "Original Series A Issuance Date" shall be defined as December 9, 1999. Each of the Original Series A Issuance Date, Original Series B Issuance Date, Original Series C Issuance Date, Original Series D Issuance Date, and Original Series E Issuance Date may be referred to herein individually as an applicable "Original Issuance Date".

(b) Series E Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of Series E Convertible Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock or the Preferred Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the sum of (x) \$1.00 for each outstanding share of Series E Convertible Preferred Stock (the "Original Series E Issue Price") as adjusted for changes in the Series E Preferred Stock by stock split, stock dividend, or the like occurring after the Original Series E Issuance Date, plus (y) an amount equal to accrued but unpaid dividends on each such share, plus (z) an amount equal to fifteen percent (15%) per annum (accrued and compounded on a daily basis from the Original Series E Issuance Date) of the Original Series E Issue Price; or (ii) the amount that such holders of Series E Convertible Preferred Stock would receive if they had converted their shares of Series E Convertible Preferred Stock into Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series E Convertible Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series E Convertible Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) Series D Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and upon the completion of the distribution required by subparagraph (b) of this Section 2, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of Series D Convertible Preferred Stock in an amount per share equal to the greater of (i) the sum of (x) \$0.75 for each outstanding share of Series D Convertible Preferred Stock issued on the Original Series D Issuance Date (the "Original Series D Issue Price") as adjusted for

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changes in the Series D Convertible Preferred Stock by stock split, stock dividend, or the like occurring after the Original Series D Issuance Date, plus (y) an amount equal to accrued but unpaid dividends on each such share, plus (z) an amount equal to fifteen percent (15%) per annum (accrued and compounded on a daily basis from the Original Series D Issuance Date) of the Original Series D Issue Price; or (ii) the amount that such holders of Series D Convertible Preferred Stock would receive if they had converted their shares of Series D Convertible Preferred Stock into Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series D Convertible Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series D Convertible Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(d) Series C Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and upon the completion of the distribution required by subparagraph (c) of this Section 2, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of Series C Convertible Preferred Stock in an amount per share equal to the greater of (i) the sum of (x) \$1.50 for each outstanding share of Series C Convertible Preferred Stock issued on the Original Series C Issuance Date (the "Original Series C Issue Price") as adjusted for changes in the Series C Convertible Preferred Stock by stock split, stock dividend, or the like occurring after the Original Series C Issuance Date, plus (y) an amount equal to accrued but unpaid dividends on each such share, plus (z) an amount equal to fifteen percent (15%) per annum (accrued and compounded on a daily basis from the Original Series C Issuance Date) of the Original Series C Issue Price; or (ii) the amount that such holders of Series C Convertible Preferred Stock would receive if they had converted their shares of Series C Convertible Preferred Stock into Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series D Convertible Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Convertible Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(e) Series B Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and upon the completion of the distribution required by subparagraph (d) of this Section 2, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of Series B Convertible Preferred Stock in an amount per share equal to the greater of (i) the sum of (x) \$1.925 for each outstanding share of Series B Convertible Preferred Stock issued on the Original Series B Issuance Date (the "Original Series B Issue Price") as adjusted for changes in the Series B Convertible Preferred Stock by stock split, stock dividend, or the like occurring after the Original Series B Issuance Date, plus (y) an amount equal to accrued but unpaid dividends on each such share, plus (z) an amount equal to fifteen percent (15%) per annum (accrued and compounded on a daily basis from the Original Series B Issuance Date) of the Original Series B Issue Price; or (ii) the amount that such holders of Series B Convertible Preferred Stock would receive if they had converted their shares of Series B Convertible

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Preferred Stock into Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Convertible Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Convertible Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(f) Series A Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and upon the completion of the distribution required by subparagraph (e) of this Section 2, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of Series A Convertible Preferred Stock in an amount per share equal to the greater of (i) \$1.75 for each outstanding share of Series A Convertible Preferred Stock issued on the Original Series A Issuance Date (the "Original Series A Issue Price") as adjusted for changes in the Series A Convertible Preferred Stock by stock split, stock dividend, or the like occurring after the Original Series A Issuance Date or (ii) the amount that such holders of Series A Convertible Preferred Stock would receive if they had converted their shares of Series A Convertible Preferred Stock into Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Convertible Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Convertible Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(g) Common Stock. Upon the completion of the distributions required by subparagraphs (b) through (f) of this Section 2, the remaining assets of the Corporation available for distribution to shareholders shall be distributed ratably among the holders of Common Stock.

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3. **Voting Rights.** Except as set forth specifically below, the holder of each share of the Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock would be convertible under the circumstances described in the following Section 4 on the record date for the vote or consent of shareholders, and shall otherwise have voting rights and powers equal to the voting rights and powers of the Common Stock. Each holder of a share of Preferred Stock shall be entitled to receive the same prior notice of any shareholders' meeting as provided to the holders of Common Stock in accordance with the Bylaws of the Corporation, as well as prior notice of all shareholder actions to be taken by legally available means in lieu of meeting, and shall vote with holders of the Common Stock upon any matter submitted to a vote of shareholders, except those matters required by law, or by the terms hereof, to be submitted to a class vote of the holders of Preferred Stock or any series thereof. Fractional shares shall be permitted, and any fractions shall be counted in computing voting rights.

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

(a) **Optional.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into the number of shares of Common Stock into which each share of the Preferred Stock may be converted shall be determined: (i) in the case of the Series A Convertible Preferred Stock, by dividing the Original Series A Issue Price by the Series A Conversion Price (as defined herein) then in effect (the "**Series A Conversion Rate**"); (ii) in the case of the Series B Convertible Preferred Stock, by dividing the Original Series B Issue Price by the Series B Conversion Price (as defined herein) then in effect (the "**Series B Conversion Rate**"); (iii) in the case of the Series C Convertible Preferred Stock, by dividing the Original Series C Issue Price by the Series C Conversion Price (as defined herein) then in effect (the "**Series C Conversion Rate**"); (iv) in the case of the Series D Convertible Preferred Stock, by dividing the Original Series D Issue Price by the Series D Conversion Price (as defined herein) then in effect (the "**Series D Conversion Rate**"); and (v) in the case of the Series E Convertible Preferred Stock, by dividing the Original Series E Issue Price by the Series E Conversion Price (as defined herein) then in effect (the "**Series E Conversion Rate**"). The Series A Conversion Rate, the Series B Conversion Rate, the Series C Conversion Rate, the Series D Conversion Rate, and the Series E Conversion Rate may be referred to herein as an applicable "**Conversion Rate**". Each such conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of the shares of Preferred Stock to be converted in accordance with the procedures described in Section 4(d) below.

(b) **Automatic.**

(i) The Corporation shall notify each holder of Preferred Stock at least thirty (30) days prior to the anticipated effective date of a registration statement filed by the Corporation under the federal Securities Act of 1933, as amended, with respect to a Qualified Public Offering. Upon the closing of, but effective immediately prior to, the first sale in a Qualified Public Offering, each and every share of outstanding Preferred Stock shall automatically be converted into Common Stock at the then effective applicable Conversion Rate for each such series of Preferred Stock. Such conversion shall be automatic, without need for any further action by the holders of shares of Preferred Stock and regardless of whether the

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certificates representing such shares are surrendered to the Corporation or its transfer agent, *provided, however*, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Preferred Stock so converted are surrendered to the Corporation in accordance with the procedures described in Section 4(d) below. Upon the conversion of the Preferred Stock pursuant to this Section 4(b)(i), the Corporation shall promptly send written notice thereof, by registered or certified mail return receipt requested and postage prepaid, by hand delivery or by overnight delivery, to each holder of record of Preferred Stock at his or its address then shown on the records of the Corporation, which notice shall state that certificates evidencing shares of Preferred Stock must be surrendered at the office of the Corporation (or of its transfer agent for the Common Stock, if applicable) in the manner described in Section 4(d) below.

(ii) No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock, and any shares of Preferred Stock surrendered for conversion that would otherwise result in a fractional share of Common Stock shall be redeemed at the then effective Conversion Price per share of the applicable series of Preferred Stock, payable as promptly as possible when funds are legally available therefor.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to receive certificates representing the shares of Common Stock into which shares of Preferred Stock are converted in accordance with Sections 4(a) or 4(b) above, such holder shall surrender the certificate or certificates for such shares of Preferred Stock duly endorsed at (or in the case of any lost, mislaid, stolen or destroyed certificate(s) for such shares, deliver an affidavit as to the loss of such certificate(s), in such form as the Corporation may reasonably require) the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office of the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued, if different from the name shown on the books and records of the Corporation. Said conversion notice shall also contain such representations as may reasonably be required by the Corporation to the effect that the shares to be received upon conversion are not being acquired and will not be transferred in any way that might violate the then applicable securities laws. The Corporation shall, as soon as practicable thereafter and in no event later than thirty (30) days after the delivery of said certificates, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder as provided in such notice, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, as aforesaid. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion pursuant to Sections 4(a) or 4(b) shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of the effective date of conversion specified in such section. All certificates issued upon the exercise or occurrence of the conversion shall contain a legend governing restrictions upon such shares imposed by law or agreement of the holder or his or its predecessors.

(d) Adjustment for Subdivisions or Combinations of Common Stock. In the event the Corporation at any time or from time to time after the applicable Original Issuance Date effects a subdivision or combination of the outstanding Common Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of the outstanding Preferred Stock, then and in each such event the applicable Conversion Price

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(and the corresponding applicable Conversion Rate) shall be increased or decreased proportionately.

(c) Adjustments for Distributions and Common Stock Equivalents. In the event that (subject to Section 4(f)(iv) immediately below), the Corporation at any time or from time to time after the applicable 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, or other securities or rights convertible into or entitling the holder thereof to receive additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents"), without payment of any consideration by such holder of such Common Stock Equivalents or the additional shares of Common Stock, and without a proportionate and corresponding dividend or other distribution to holders of Preferred Stock, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents shall be deemed, for purposes of this Section 4(e), to be issued and outstanding 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. In each such event each of the respective Conversion Prices 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 each of the respective Conversion Prices by a fraction,

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding or deemed pursuant to the terms hereof to be issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(ii) the denominator of which shall be the total number of shares of Common Stock (x) issued and outstanding or deemed pursuant to the terms hereof to be issued and outstanding (not including any shares described in clause (y) immediately below), immediately prior to the time of such issuance or the close of business on such record date, plus (y) the number of shares of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents;

provided, however, that (A) 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 respective Conversion Prices (and the corresponding respective Conversion Rates) shall be recomputed accordingly as of the close of business on such record date and thereafter the respective Conversion Prices (and the corresponding respective Conversion Rates) shall be adjusted pursuant to this Section 4(e) as of the time of actual payment of such dividend or distribution; or (B) if such Common Stock Equivalents provide, with the passage of time or otherwise, for any decrease in the number of shares of Common Stock issuable upon conversion or exercise thereof (or upon the occurrence of a record date with respect thereto), the respective Conversion Prices (and the corresponding respective Conversion Rates) 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 decrease becoming effective, be recomputed to reflect such

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decrease insofar as it affects the rights of conversion or exercise of the Common Stock Equivalents then outstanding; or (C) upon the expiration of any rights of conversion or exercise under any unexercised Common Stock Equivalents, the respective Conversion Prices (and the corresponding respective Conversion Rates) 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 such expiration, be recomputed as if the only additional shares of Common Stock issued were the shares of such stock, if any, actually issued upon the conversion or exercise of such Common Stock Equivalents; or (D) in the event of issuance of Common Stock Equivalents that expire by their terms not more than sixty (60) days after the date of issuance thereof, no adjustments of the respective Conversion Prices (or the corresponding respective Conversion Rates) shall be made until the expiration or exercise of all such Common Stock Equivalents, whereupon the adjustment otherwise required by this Section 4(e) shall be made in the manner provided herein.

(f) Adjustment of Conversion Rate for Diluting Issues. Immediately after the Effective Time and after the effectiveness of the reclassification set forth in Article IV herein, and except as otherwise adjusted as provided in this Section 4, the "*Series B Conversion Price*" shall initially be \$2.00. Immediately after the Effective Time and after the effectiveness of the reclassification set forth in Article IV herein, and except as otherwise adjusted as provided in this Section 4, the "*Series C Conversion Price*" shall initially be \$2.00. Immediately after the Effective Time and after the effectiveness of the reclassification set forth in Article IV herein, and except as otherwise adjusted as provided in this Section 4, the "*Series D Conversion Price*" shall initially be \$2.00. Immediately after the Effective Time and after the effectiveness of the reclassification set forth in Article IV herein, and except as otherwise adjusted as provided in this Section 4, the "*Series E Conversion Price*" shall initially be \$1.00. Immediately after the Effective Time and after the effectiveness of the reclassification set forth in Article IV herein, and except as otherwise adjusted as provided in this Section 4, the "*Series A Conversion Price*" shall initially be \$175.00 (collectively, the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series E Conversion Price, and Series A Conversion Price may each be referred to herein as a respective "*Conversion Price*" and collectively as the "*Conversion Prices*"). Except as otherwise provided in this Section 4(f), in the event, and each time as, the Corporation sells or issues any Common Stock or Common Stock Equivalents following the applicable Original Issue Date, at a per share consideration (as defined below) less than any of the respective Conversion Prices then in effect, then such Conversion Prices shall be adjusted as provided in this Section 4(f), and the applicable Conversion Rate shall be appropriately adjusted. For purposes of the foregoing, the per share consideration with respect to the sale or issuance of a share of Common Stock shall be the price per share received by the Corporation, prior to the payment of any expenses, commissions, discounts and other applicable costs. With respect to the sale or issuance of Common Stock Equivalents that are convertible into or exchangeable for Common Stock without further consideration, the per share consideration shall be determined by dividing the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents. With respect to the issuance of other Common Stock Equivalents, the per share consideration shall be determined by dividing the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock

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Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents plus the total consideration receivable by the Corporation upon the conversion or exercise of such Common Stock Equivalents. The issuance of Common Stock or Common Stock Equivalents for no consideration shall be governed by Section 4(e) immediately above. In connection with the sale or issuance of Common Stock and/or Common Stock Equivalents for non-cash consideration, the amount of consideration shall be the fair market value of such consideration determined by the Board of Directors of the Corporation in good faith.

As used herein, "*Additional Shares of Common Stock*" shall mean either shares of Common Stock issued subsequent to the applicable Original Issuance Date, or, with respect to the issuance of Common Stock Equivalents, the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable in exchange for, upon conversion of, or upon exercise of such Common Stock Equivalents.

(i) Upon each issuance of Common Stock for a per share consideration less than any of the respective Series E Conversion Price, Series D Conversion, Series C Conversion Price, or Series B Conversion Price (collectively, the "*Senior Preferred Conversion Prices*") as in effect on the date of such issuance, such applicable Senior Preferred Conversion Prices as in effect on such date shall be reduced to the lowest price per share at which any such share of Common Stock has been issued or sold or is deemed to have been issued or sold in such issuance or sale.

(ii) Upon each issuance of Common Stock Equivalents that are exchangeable without further consideration into Common Stock for a per share consideration less than any of the respective Senior Preferred Conversion Prices as in effect on the date of such issuance, such applicable Senior Preferred Conversion Prices shall be adjusted as provided in paragraph (i) of this Section 4(f) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of the Common Stock Equivalents, and the aggregate consideration received by the Corporation for such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(iii) Upon each issuance of Common Stock Equivalents other than those described in paragraph (ii) of this Section 4(f) for a per share consideration less than any of the respective Senior Preferred Conversion Prices as in effect on the date of such issuance, such applicable Senior Preferred Conversion Prices shall be adjusted as provided in paragraph (i) of this Section 4(f) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of such Common Stock Equivalents, and the aggregate consideration received and receivable by the Corporation on conversion or exercise of such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(iv) The foregoing notwithstanding, no adjustment of any Conversion Price or the corresponding Conversion Rate shall be made pursuant to this Section 4(f) as a result of the issuance of the following (collectively, the "*Excluded Issuances*"):

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(A) any shares of Common Stock upon the conversion of shares of Series E Convertible Preferred Stock;

(B) any shares of Common Stock upon the conversion of shares of Series D Convertible Preferred Stock;

(C) any shares of Common Stock upon the conversion of shares of Series C Convertible Preferred Stock;

(D) any shares of Common Stock upon the conversion of shares of Series B Convertible Preferred Stock;

(E) any shares of Common Stock upon the conversion of shares of Series A Convertible Preferred Stock;

(E) any shares of Common Stock deemed issued pursuant to Subparagraphs (d) and (e) of this Section 4;

(F) any shares of Common Stock issued pursuant to the exchange, conversion or exercise of any Common Stock Equivalents that have previously been incorporated into adjustment computations hereunder on the date when such Common Stock Equivalents were issued;

(G) a number of shares of Common Stock equal to twenty percent (20%) of the Corporation's capital stock on a fully diluted, as converted basis, measured after the issuance of all Series E Convertible Preferred Stock (which number shall be appropriately adjusted for any stock splits, stock dividends or recapitalizations, and any increases approved by the Board of Directors including the director or directors elected by the holders of Series B Convertible Preferred Stock serving on the Board of Directors), issued pursuant to options, warrants or rights that may be granted at any time before or after the Original Series E Issuance Date to purchase shares of Common Stock in favor of employees, directors, officers or consultants of the Corporation or any subsidiary thereof pursuant to bona fide employee stock option plans created in accordance with Section 422 of the Internal Revenue Code of 1986, as amended, or similar subsequent legislation or pursuant to a non-statutory stock option plan or non-statutory stock option agreements (any such stock option plan or agreement described in this clause (G) being referred to as an "Authorized Option Plan or Agreement");

(H) 12,098 shares of Common Stock upon the exercise of other options issued and outstanding prior to the Original Series E Issuance Date;

(I) 3,937 shares of Common Stock upon the exercise of warrants issued to Liberty Street Capital, its successors and assigns;

(J) any shares issued as a dividend on any series of Preferred Stock or in connection with a subdivision or combination of any series of Preferred Stock;

(K) the sale or issuance of shares of Common Stock or Common Stock Equivalents to financial institutions or lessors in connection with credit or equipment financing

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arrangements, provided that such sale or issuance is approved in advance by a majority of the members of the Board of Directors, including the Series B Director;

(L) the sale or issuance of Common Stock or Common Stock Equivalents to vendors or customers in connection with commercial arrangements, provided that such sale or issuance is approved in advance by a majority of the members of the Board of Directors, including the Series B Director;

(M) the issuance of Common Stock or Common Stock Equivalents in connection with acquisitions or mergers approved by the Board of Directors, including the Series B Director;

(N) the sale or issuance of Common Stock or Common Stock Equivalents in connection with establishing strategic partnerships and alliances, provided that such sale or issuance is approved in advance by a majority of the members of the Board of Directors, including the Series B Director; and

(O) shares of Common Stock issued or issuable in a Qualified Public Offering registered under the Securities Act of 1933 in which all outstanding shares of Preferred Stock will be converted into Common Stock or shares of Common Stock issued or issuable upon exercise of options, warrants or rights granted to underwriters in connection with a Qualified Public Offering, provided that the Corporation shall have complied with Section 4(b) immediately above.

(g) De Minimis Adjustments. No adjustment to the applicable Conversion Price (and, thereby, the applicable Conversion Rate) shall be made if such adjustment would result in a change in the applicable Conversion Price of less than \$.01. Any adjustment of less than \$.01 that is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment that, on a cumulative basis, amounts to an adjustment of \$.01 or more in the applicable Conversion Price.

(h) No Impairment. The Corporation shall not, by amendment of its Articles of Incorporation or Bylaws 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 shall at all times in good faith assist in the carrying out of all the provisions of this Section 4 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 Preferred Stock against impairment.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of an applicable Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and cause the Corporation's independent public accountants to verify such computation and prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth

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(A) such adjustments and readjustments; (B) the applicable Conversion Price and the applicable Conversion Rate at that time in effect; and (C) the number of shares of Common Stock and the amount, if any, of other property that at that time would be received upon the conversion of such shares of Preferred Stock.

(j) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of Common Stock for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any Common Stock Equivalents or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or rights, and the amount and character of such dividend, distribution or rights.

(k) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall be insufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. **Redemption of Preferred Stock.** If the Corporation shall not have consummated a Qualified Public Offering or a Sale, Merger or Reorganization prior to the Initial Redemption Exercise Date, the Corporation shall at any time on or after the Initial Redemption Exercise Date:

(a) Series E Redemption. Upon the receipt of written notice or notices (the "Series E Election Notice") delivered to the Corporation by the holders of a majority of the then outstanding Series E Convertible Preferred Stock electing to cause a redemption of such holders' shares of Series E Convertible Preferred Stock (the "Electing Series E Holders"), redeem all of the then outstanding shares of Series E Convertible Preferred Stock by paying in cash to the holders thereof in respect of each such share the Series E Redemption Price (defined below), in two (2) equal installments over two (2) years, with the initial payment due within ninety (90) days after receipt of such notice of redemption, and the second payment due one year after payment of the first installment. Upon receipt of the Series E Election Notice, the Corporation will so notify all other persons holding Series E Convertible Preferred Stock. Upon receipt of the Series E Election Notice, the Corporation shall fix the date for redemption (the "Series E Redemption Date"), provided that such Series E Redemption Date shall occur within forty-five (45) days after receipt of the Series E Election Notice. The price payable for each redeemed share of Series E Convertible Preferred Stock (the "Series E Redemption Price") shall be equal to the greater of (i) the Appraised Value (as defined below) of each such share as of the date of the request for redemption; or (ii) the Original Series E Issue Price (as adjusted for stock splits, dividends, and the like) plus all accrued but unpaid dividends, if any, plus an amount equal to fifteen percent (15%) per annum (accrued and compounded on a daily basis, from the date of purchase of each such share from the Corporation) of the Original Series E Issue Price (as adjusted for stock splits, dividends, and the like).

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(b) **Series D Redemption.** Upon the receipt of written notice or notices (the "**Series D Election Notice**") delivered to the Corporation by the holders of a majority of the then outstanding Series D Convertible Preferred Stock electing to cause a redemption of such holders' shares of Series D Convertible Preferred Stock (the "**Electing Series D Holders**"), redeem all of the then outstanding shares of Series D Convertible Preferred Stock by paying in cash to the holders thereof in respect of each such share the Series D Redemption Price (defined below), in two (2) equal installments over two (2) years, with the initial payment due within ninety (90) days after receipt of such notice of redemption, and the second payment due one year after payment of the first installment. Upon receipt of the Series D Election Notice, the Corporation will so notify all other persons holding Series D Convertible Preferred Stock. Upon receipt of the Series D Election Notice, the Corporation shall fix the date for redemption (the "**Series D Redemption Date**"), provided that such Series D Redemption Date shall occur within forty-five (45) days after receipt of the Series D Election Notice. The price payable for each redeemed share of Series D Convertible Preferred Stock (the "**Series D Redemption Price**") shall be equal to the greater of (i) the Appraised Value (as defined below) of each such share as of the date of the request for redemption; or (ii) the Original Series D Issue Price (as adjusted for stock splits, dividends, and the like) plus all accrued but unpaid dividends, if any, plus an amount equal to fifteen percent (15%) per annum (accrued and compounded on a daily basis, from the date of purchase of each such share from the Corporation) of the Original Series D Issue Price (as adjusted for stock splits, dividends, and the like).

(c) **Series C Redemption.** Upon the receipt of written notice or notices (the "**Series C Election Notice**") delivered to the Corporation by the holders of a majority of the then outstanding Series C Convertible Preferred Stock electing to cause a redemption of such holders' shares of Series C Convertible Preferred Stock (the "**Electing Series C Holders**"), redeem all of the then outstanding shares of Series C Convertible Preferred Stock by paying in cash to the holders thereof in respect of each such share the Series C Redemption Price (defined below), in two (2) equal installments over two (2) years, with the initial payment due within ninety (90) days after receipt of such notice of redemption, and the second payment due one year after payment of the first installment. Upon receipt of the Series C Election Notice, the Corporation will so notify all other persons holding Series C Convertible Preferred Stock. Upon receipt of the Series C Election Notice, the Corporation shall fix the date for redemption (the "**Series C Redemption Date**"), provided that such Series C Redemption Date shall occur within forty-five (45) days after receipt of the Series C Election Notice. The price payable for each redeemed share of Series C Convertible Preferred Stock (the "**Series C Redemption Price**") shall be equal to the greater of (i) the Appraised Value (as defined below) of each such share as of the date of the request for redemption; or (ii) the Original Series C Issue Price (as adjusted for stock splits, dividends, and the like) plus all accrued but unpaid dividends, if any, plus an amount equal to fifteen percent (15%) per annum (accrued and compounded on a daily basis, from the date of purchase of each such share from the Corporation) of the Original Series C Issue Price (as adjusted for stock splits, dividends, and the like).

(d) **Series B Redemption.** Upon the receipt of written notice or notices (the "**Series B Election Notice**") delivered to the Corporation by the holders of a majority of the then outstanding Series B Convertible Preferred Stock electing to cause a redemption of such holders' shares of Series B Convertible Preferred Stock (the "**Electing Series B Holders**"), redeem all of the then outstanding shares of Series B Convertible Preferred Stock by paying in cash to the holders thereof in respect of each such share the Series B Redemption Price (defined below), in

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two (2) equal installments over two (2) years, with the initial payment due within ninety (90) days after receipt of such notice of redemption, and the second payment due one year after payment of the first installment. Upon receipt of the Series B Election Notice, the Corporation will so notify all other persons holding Series B Convertible Preferred Stock. Upon receipt of the Series B Election Notice, the Corporation shall fix the date for redemption (the "*Series B Redemption Date*"), provided that such Series B Redemption Date shall occur within forty-five (45) days after receipt of the Series B Election Notice. The price payable for each redeemed share of Series B Convertible Preferred Stock (the "*Series B Redemption Price*") shall be equal to the greater of (i) the Appraised Value (as defined below) of each such share as of the date of the request for redemption; or (ii) the Original Series B Issue Price (as adjusted for stock splits, dividends, and the like) plus all accrued but unpaid dividends, if any, plus an amount equal to fifteen percent (15%) per annum (accrued and compounded on a daily basis, from the date of purchase of each such share from the Corporation) of the Original Series B Issue Price (as adjusted for stock splits, dividends, and the like).

(e) The Series A Convertible Preferred Stock is not redeemable.

(f) The Appraised Value shall be the fair market value of each applicable series of Preferred Stock, as established by the vote of a majority of the members of the Board of Directors, at least one of whom shall be a Series B Director, in good faith, following any request for redemption as provided herein (which Appraised Value shall not include a discount for minority ownership interest or illiquidity), and each Series E Electing Holder, Series D Electing Holder, Series C Electing Holder, or Series B Electing Holder (each an "*Electing Holder*") shall be notified in writing of such value upon receipt by the Corporation of a request for redemption. If, however, the holders of at least two-thirds of the then-outstanding shares of any series of Preferred Stock shall give the Corporation written notice prior to the scheduled redemption that he, it or they disagree with the value placed upon such series of Preferred Stock, then the holders of such series of Preferred Stock and the Corporation shall attempt to agree upon an Appraised Value for such series of Preferred Stock. Should the holders of such series of Preferred Stock and the Corporation be unable to agree during the twenty (20) day period immediately following the giving of the written notice of such disagreement as to the Appraised Value of such series of Preferred Stock without the employment of appraisers, then they shall each select an appraiser experienced in the business of evaluating or appraising the market value of stock. The two (2) appraisers so selected (the "*Initial Appraisers*") shall, on or prior to the scheduled redemption, appraise such shares to be redeemed as of the date of the scheduled redemption. The appraisers shall not discount the shares of such series of Preferred Stock for minority ownership interest or illiquidity. If the difference between the resulting appraisals is not greater than ten percent (10%), then the average of the appraisals shall be deemed the Appraised Value; otherwise, the Initial Appraisers shall select an additional appraiser (the "*Additional Appraiser*"), who shall be experienced in a manner similar to the Initial Appraisers. If they fail to select such Additional Appraiser as provided above, then either the holders of the applicable series of Preferred Stock or the Corporation may apply, after written notice to the other, to any judge of any court of general jurisdiction for the appointment of such Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of the applicable series of Preferred Stock, and such value shall be the Appraised Value. The Additional Appraiser shall forthwith give written notice of his determination to the Corporation and the holders of the applicable series of Preferred Stock. Each party shall pay the expenses and fees of the appraiser selected by him or it,

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and, if an Additional Appraiser is employed, the party who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

(g) On or before the Series E Redemption Date, Series D Redemption Date, Series C Redemption Date, or Series B Redemption Date (each, a "*Redemption Date*"), each holder of shares required to be redeemed shall surrender the certificate representing such shares to the Corporation and shall receive payment of the applicable Series Redemption Price, Series D Redemption Price, Series C Redemption Price, or Series B Redemption Price (each, a "*Redemption Price*"), as applicable, in cash. After the close of business on the applicable Redemption Date, all rights of holders of shares of the series of Preferred Stock so redeemed (except the right to receive the applicable Redemption Price) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(h) The right to redemption established by this Section 5 shall be deemed absolute and vested upon the occurrence of the conditions specified herein; however, actual redemption under this Section 5 shall be subject to the legal availability of funds and, to the extent delayed, shall occur as soon thereafter as and when funds are legally available therefor, which funds will immediately be used to redeem the balance of the shares that the Corporation has become obliged to redeem pursuant to this Section 5 but has not redeemed, with interest at the per annum rate announced by Wachovia Bank, N.A. in Atlanta, Georgia, as its prime lending rate plus two percent (2%) per annum for the period of each delay.

6. **Preemptive Rights.** The holders of Preferred Stock shall have the right of first refusal to purchase any New Securities (as defined in this Section 6) that the Corporation may, from time to time, propose to sell and issue. This right shall be subject to the following provisions:

(a) *New Securities Defined.* "*New Securities*" shall mean any Common Stock or Preferred Stock of the Corporation, whether now authorized or not, and rights, options or warrants to purchase said Common Stock or Preferred Stock, and securities of any type whatsoever that are, or may become, convertible into said Common Stock or Preferred Stock; provided that "*New Securities*" does not include: (i) any, shares of Common Stock issuable upon the conversion of shares of Preferred Stock; (ii) a number of shares of Common Stock equal to twenty percent (20%) of the Corporation's capital stock on a fully diluted, as converted basis, measured after the issuance of all Series E Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations and any increases approved by the Board of Directors, including the director or directors elected by the holders of the Series B Convertible Preferred Stock serving on the Board of Directors), issued pursuant to options or rights that may be granted at any time before or after the Original Series E Issue Date to purchase shares of Common Stock in favor of employees, directors, officers or consultants of the Corporation or any subsidiary thereof pursuant to an Authorized Option Plan or Agreement; (iii) up to [1,209,879] shares of Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events) issued and outstanding pursuant to options or rights granted prior to the Original Series E Issue Date to purchase shares of Common Stock; (iv) 393,728 shares of Common Stock upon the exercise of warrants issued to Liberty Street Capital, its successors and assigns; (v) securities offered to the public pursuant to a

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registration statement under the Federal Securities Act of 1933, as amended; (vi) securities issued pursuant to the acquisition by the Corporation of any product, technology, know-how or another corporation or entity by merger, purchase of all or substantially all of the assets, or any other reorganization whereby the Corporation owns over fifty percent (50%) of the voting power of such corporation or entity, provided that such sale or issuance was approved in advance by a majority of the members of the Board of Directors, including the Series B Director; (vii) shares of the Common Stock or the Preferred Stock issued in connection with any stock split, stock dividend or recapitalization by the Corporation; (viii) the sale or issuance of shares of capital stock of the Corporation (or rights thereto) to vendors or customers in connection with commercial arrangements, provided that such sale or issuance was approved in advance by a majority of the members of the Board of Directors, including the Series B Director; (ix) the issuance of capital stock of the Corporation (or rights thereto) in connection with establishing strategic partnerships and alliances, provided such issuance is approved in advance by a majority of the members of the Board of Directors, including the Series B Director; and (x) the issuance of capital stock of the Corporation (or rights thereto), if approved by the holders of at least a majority of the issued and outstanding shares of each of the Series E Convertible Preferred Stock, Series D Convertible Preferred Stock, Series C Convertible Preferred Stock, and Series B Convertible Preferred Stock, each voting as separate classes.

(b) In the event the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of Preferred Stock written notice of its intention, describing the type of New Securities, the price, the closing date of the offering thereof, and the general terms upon which the Corporation proposes to issue the same (the "*Corporation Notice*"). Upon receipt of the Corporation Notice, each holder of Preferred Stock shall have the right to elect to purchase some or all of his or its *pro rata* portion of such New Securities, at the price and on the terms stated in the Corporation Notice. Such election is to be made by each holder of Preferred Stock by giving written notice to the Corporation (the "*Preemptive Rights Election Notice*") within ten (10) days after receiving the Corporation Notice. Within five (5) days after receiving the Preemptive Rights Election Notices, the Corporation shall give to each holder of Preferred Stock who has elected to purchase his or its *pro rata* share (a "*Fully Participating Holder*") written notice indicating the number of remaining New Securities not elected for purchase by the other holders of Convertible Preferred Stock (the "*Second Corporation Notice*"). Each Fully Participating Holder of Preferred Stock shall have the option, exercisable by so specifying in a subsequent written notice to the Corporation (the "*Second Preemptive Rights Election Notice*"), given to the Corporation within five (5) days after receiving the Second Corporation Notice, to purchase such Fully Participating Holder's *pro rata* portion of any remaining New Securities not purchased by other holders of Preferred Stock pursuant to this Section 6. The Corporation may offer and sell any remaining New Securities not elected to be purchased as evidenced by Preemptive Rights Election Notices and Second Preemptive Rights Election Notices timely received by the Corporation, at a price and upon terms not more favorable than those stated in the Corporation Notice. For purposes of this Section 6, except with respect to purchases of remaining New Securities pursuant to a Second Corporation Notice, each holder's *pro rata* portion of New Securities shall be equal to a fraction, the numerator of which is the sum of

(i) the number of shares of Common Stock into which shares of Preferred Stock held by such holder immediately prior to such issuance have been converted since the Original Issuance Date, and

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(ii) the number of shares of Common Stock into which such holder's shares of Preferred Stock could be converted if fully converted immediately prior to such issuance and the denominator of which is the sum of:

(x) the number of shares of Common Stock actually outstanding immediately prior to such issuance, (y) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if fully converted immediately prior such issuance, and (z) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options, warrants and convertible securities immediately prior to such issuance that are then currently exercisable or convertible.

With respect to purchases of remaining New Securities pursuant to a Second Corporation Notice, each Fully Participating Holder's *pro rata* portion of any New Securities offered in the Second Corporation Notice shall be equal to a fraction, the numerator of which is the sum of (i) and (ii), above, with respect to shares held by such Fully Participating Holder, and the denominator of which is the sum of (i) and (ii), above, with respect to shares held by all Fully Participating Holders.

(c) Any offer by the Corporation of securities in addition to those specified in the Corporation Notice, whether on the same or different terms as are specified therein, shall again require compliance by the Corporation with the terms of this Section 6.

(d) The rights granted in this Section 6 shall terminate immediately prior to, and shall not apply to, a Qualified Public Offering.

7. Protective Provisions.

(a) Actions Requiring Majority Approval of Preferred Stock. In addition to any other rights provided by law, so long as any shares of Preferred Stock are then outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles of Incorporation, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the total number of shares of Preferred Stock on an as-converted to Common Stock basis, voting together as a single class, the Corporation shall not:

(i) amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws, or file any articles of amendment designating the preferences, limitations and relative rights of any series of Preferred Stock, or engage in any other action that would alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Preferred Stock;

(ii) create or increase, or authorize the creation or increase of the authorized amount of any additional class or series of shares of stock, or any obligation or security convertible into any additional class or series of shares of stock, unless the same ranks junior to the Preferred Stock as to dividends, redemption and the distribution of assets on the liquidation, dissolution or winding up of the Corporation; regardless of whether any such creation, authorization or increase shall be by means of amendment to the Articles of Incorporation, or by merger, consolidation or otherwise;

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

(iv) purchase, redeem or otherwise acquire for value any shares of any class of its capital stock or cause or permit any employee stock ownership plan, including any Employee Stock Ownership Plan as defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, to purchase shares of any class of its capital stock, except for (A) shares of Preferred Stock pursuant to the terms of the Articles of Incorporation, (B) shares of capital stock pursuant to the provisions of that certain Second Amended and Restated Shareholders' Agreement dated November 24, 2003, among the Corporation and certain holders of capital stock of the Corporation, and (C) purchases of shares of Common Stock permitted by Section 1 (b)(iii) hereof;

(v) merge or consolidate into or with any other corporation or sell, assign, lease, pledge, encumber or otherwise dispose of all or substantially all of its assets or those of any subsidiary;

(vi) voluntarily or involuntarily liquidate, dissolve or wind up the Corporation or its business;

(vii) pay dividends on any capital stock other than the Preferred Stock;

(viii) acquire the stock, assets or business of any other entity in any form of transaction;

(ix) issue any Additional Shares of Common Stock or Common Stock Equivalents for a per share consideration less than \$1.00, except in connection with one or more Excluded Issuances;

(x) own, or permit any subsidiary of the Corporation to own, any stock or other securities of any company, partnership, association or other form of business entity except the securities of wholly owned subsidiaries of the Corporation or one of such subsidiaries;

(xi) create or commit the Corporation to enter into a joint venture, licensing agreement or exclusive marketing or other distribution agreement with respect to the Corporation's products, other than in the ordinary course of business; or

(xii) amend the provisions of this Section 7(a).

(b) Termination. The rights granted in Section 7 shall terminate immediately upon the consummation of a Qualified Public Offering.

8. Events of Noncompliance.

(a) An "Event of Noncompliance" shall have occurred if:

(i) the Corporation breaches or otherwise fails to perform in any material respect any of the covenants or any of its obligations to the holders of Preferred Stock and fails

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to cure such breach or failure after holders of at least a majority of the Preferred Stock then issued and outstanding provide written notice of such breach or failure and the Corporation had had a reasonable opportunity (but not in any event more than thirty (30) days) to cure such failure or breach, or

(ii) the Corporation or any subsidiary of the Corporation makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the Corporation or any subsidiary bankrupt or insolvent; or any order for relief with respect to the Corporation or any subsidiary is entered under the Federal Bankruptcy Code; or the Corporation or any subsidiary petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any subsidiary or of any substantial part of the assets of the Corporation or any subsidiary, or commences any proceeding (other than a proceeding for the voluntary liquidation and dissolution of a subsidiary) relating to the Corporation or any subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or any such petition or application is filed, or any such proceeding is commenced, against the Corporation or any subsidiary and either (A) the Corporation or any such subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein or (B) such petition, application or proceeding is not dismissed within sixty (60) days.

(b) If an Event of Noncompliance has occurred, the number of directors constituting the Corporation's Board of Directors shall, at the request of the holders of a majority of the Preferred Stock then outstanding, be increased by such number which shall constitute a minimum majority of the Board of Directors, and the holders of Preferred Stock shall have the special right, voting together as a single class (with each share being entitled to one vote) and to the exclusion of all other classes of directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships; provided, however, that the special right of the holders of Preferred Stock to elect a majority of the members of the Board of Directors shall exist only after such Event of Noncompliance has continued and remained in effect for ninety (90) days after written notice to the Corporation as provided in Subsection (a) above. Such special right may be exercised at the special meeting called pursuant to this subparagraph (b), at any annual or other special meeting of shareholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a shareholder meeting. Such special right shall continue until such time as there is no longer any Event of Noncompliance in existence, at which time such special right shall terminate subject to restarting upon the occurrence and continuation of any Event of Noncompliance which gives rise to such special right hereunder.

At any time when such special right has vested in the holders of Preferred Stock, a proper officer of the Corporation shall, upon the written request of the holders of at least a majority of the Preferred Stock then outstanding, addressed to the secretary of the Corporation, call a special meeting of the holders of Preferred Stock for the purpose of electing directors pursuant to this subparagraph. Such meeting shall be held at the earliest legally permissible date at the principal office of the Corporation, or at such other place designated by the holders of at least ten a majority of the Preferred Stock then outstanding who first requested the meeting. If such meeting has not been called by a proper officer of the Corporation within ten (10) days after personal service of such written request upon the secretary of the Corporation or within twenty

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(20) days after mailing the same to the secretary of the Corporation at its principal office, then the holders of at least a majority of the Preferred Stock then outstanding may designate in writing one of their numbers to call such meeting at the expense of the Corporation, and such meeting may be called by such person or entity so designated upon the notice required for annual meetings of shareholders and shall be held at the Corporation's principal office, or at such other place designated by such person. Any holder of Preferred Stock so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of shareholders to be called pursuant to this subparagraph.

At any meeting or at any adjournment thereof at which the holders of Preferred Stock have the special right to elect directors, the presence, in person or by proxy, of the holders of a majority of the Preferred Stock then outstanding shall be required to constitute a quorum for the election or removal of any director by the holders of Preferred Stock exercising such special right. The vote of a majority of such quorum shall be required to elect or remove any such director.

Any director so elected by the holders of Preferred Stock shall continue to serve as a director until the expiration of the lesser of (i) a period of six months following the date on which there is no longer any Event of Noncompliance in existence or (ii) the remaining period of the full term for which such director has been elected. After the expiration of such six-month period or when the full term for which such director has been elected ceases (provided that the special right to elect directors has terminated), as the case may be, the number of directors constituting the board of directors of the Corporation shall decrease to such number as constituted the whole board of directors of the Corporation immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to the special right to elect directors.

If any Event of Noncompliance exists, each holder of Preferred Stock shall also have any other rights which such holder is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

9. **Notices.** Any notice required by the provisions hereof to be given to the holders of shares of Preferred Stock shall be deemed given on the third business day following (and not including) the date on which such notice is deposited in the United States Mail first-class, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation. Notice by any other means shall not be deemed effective until actually received.

10. **Definitions.** The following terms shall have the meanings specified below. Other capitalized terms used in these Second Amended and Restated Articles of Incorporation and not defined below shall have the meanings otherwise assigned to such terms in these Second Amended and Restated Articles of Incorporation:

"Authorized Option Plan or Agreement" shall have the meaning provided in Section 4(f)(iv)(D) hereof.

"Board of Directors" shall mean the board of directors of the Corporation.

"Excluded Issuances" shall have the meaning provided in Section 4(f)(iv) hereof.

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"Initial Redemption Exercise Date" shall mean January 11, 2007.

"Qualified Public Offering" shall mean the underwritten offer on a firm commitment basis and sale of Common Stock to the public at a public offering price, prior to underwriters' commissions and expenses, of not less than \$4.00 per share (as such amount may from time to time be adjusted to reflect stock splits, stock dividends, recapitalizations or the like) and having aggregate net proceeds to the Corporation of not less than \$20,000,000.

"Sale, Merger or Reorganization" shall have the meaning provided in Section 2(c)(i) hereof.

ARTICLE VI.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors.

B. Except as otherwise provided in these Second Amended and Restated Articles of Incorporation, the Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; provided, however, that the shareholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation (considered for this purpose as one class), except as otherwise provided in these Second Amended and Restated Articles of Incorporation. No amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

C. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

D. Following the effectiveness of the registration of any class of securities of the Corporation pursuant to the requirements of the Securities Exchange Act of 1934, as amended, no action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws and no action shall be taken by the stockholders by written consent.

E. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

ARTICLE VII.

Meetings of stockholders may be held within or without the State of Florida, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision

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contained in the Act) outside the State of Florida at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE VIII

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

ARTICLE IX

A. The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article IX shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

B. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article IX to directors and officers of the Corporation.

C. The rights to indemnification and to the advance of expenses conferred in this Article IX shall not be exclusive of any other right which any person may have or hereafter acquire under these Second Amended and Restated Articles of Incorporation, the Bylaws of the Corporation, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

D. Any repeal or modification of this Article IX by the stockholders of the Corporation shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

E. A member of the Board of Directors of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for any action taken, or any failure to taken any action, as a director, except liability:

- (a) For any appropriation, in violation of his or her duties, of any business opportunity of the corporation;
- (b) For acts or omissions that involve intentional misconduct or a knowing violation of law;

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- (c) For the types of liability set forth in §607.0834 of the Act, as it may be amended from time to time, pertaining to the extent of liability of directors for assenting to distributions made by the Corporation when it is, or would thereby be rendered, insolvent;
- (d) For any transaction from which the director received an improper personal benefit.

ARTICLE X

The Corporation shall indemnify and hold harmless, to the fullest extent permitted by §607.0850 of the Act, as it may be amended from time to time, any director or shareholders who is made, or is threatened to be made, a party to any proceeding because he or she is or was a director or shareholder.

[Signatures on Following Page]

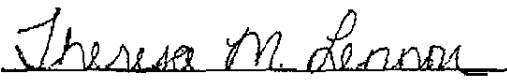
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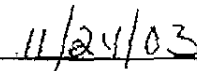
IN WITNESS WHEREOF, the Corporation has caused these Second Amended and Restated Articles of Incorporation to be signed and attested to by its duly authorized officer this 2^{1st} day of November, 2003.

LEARNSOMETHING.COM, INC.

By: 
William J. Crumpacker, III
its Chief Executive Officer

Having been named as registered agent to accept service of process for the above stated corporation at the place designated in this certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity.


Theresa M. Lennon, Assistant Secretary


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