

P94000053736

Robert McDonald
Requestor's Name

GreenbergTraurig P.A. 101 E. College Ave
Address

Tallahassee FL 32301 850
City/State/Zip Phone # 222-6891

Call when ready

Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

- 1. Payformence Corporation
(Corporation Name) (Document #)
- 2. _____
(Corporation Name) (Document #)
- 3. _____
(Corporation Name) (Document #)
- 4. _____
(Corporation Name) (Document #)

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 TALLAHASSEE, FLORIDA

NEW FILINGS	
<input type="checkbox"/>	Profit
<input type="checkbox"/>	NonProfit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS	
<input type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A., Officer/ Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

OTHER FILINGS	
<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION/ QUALIFICATION	
<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

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C. Coulliette MAY 23 2002

Examiner's Initials	
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EXECUTION COPY

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
PAYFORMANCE CORPORATION**

FILED
2002 MAY 28 9M 3:04
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The following Amended and Restated Articles of Incorporation of Payformance Corporation (the "Corporation") were duly adopted by the Board of Directors and Stockholders of the Corporation on May 21, 2002.

**ARTICLE I.
NAME OF CORPORATION**

The name of the Corporation is Payformance Corporation.

**ARTICLE II.
COMMENCEMENT AND DURATION OF CORPORATE EXISTENCE**

Corporate existence shall commence on the date the Articles were filed by the Department of State and shall exist perpetually thereafter until dissolved according to law.

**ARTICLE III.
CORPORATE PURPOSE**

This Corporation is organized for the purpose of transacting any and all lawful business permitted under the laws of the United States and the State of Florida.

**ARTICLE IV.
CAPITAL STOCK**

The authorized number of shares of stock of the Corporation is 100,000,000 shares of stock, of which 60,000,000 are classified as shares of common stock, \$0.001 par value per share (the "Common Stock") and 40,000,000 are classified as shares of Preferred Stock, \$0.001 par value per share (the "Preferred Stock"), of which 1,828,132 shares shall be designated and known as the Series B-1 Convertible Preferred Stock (the "Series B-1 Stock"), 3,185,657 shares shall be designated and known as the Series B-2 Convertible Preferred Stock (the "Series B-2 Stock"), and 21,666,667 shares shall be designated and known as the Series C Convertible Preferred Stock (the "Series C Stock"). Each share of Series B Convertible Preferred Stock, \$0.001 par value per share, issued and outstanding immediately prior to the date that this Amended and Restated Articles of Incorporation is accepted for filing with the Department of State of the State of Florida (such date of acceptance, the "Effective Date" and such shares, the "Outstanding Preferred Stock") shall be converted and changed automatically upon the Effective Date into the number and series of shares calculated as follows (and in accordance with the next

succeeding sentence): (i) each share of Outstanding Preferred Stock with a Deemed Investment Amount Per Share (such term as used herein shall have the meaning set forth in the Articles of Incorporation in effect immediately prior to the Effective Date) of \$1.50571 shall be converted and changed into one (1) share of Series B-2 Stock, (ii) each share of Outstanding Preferred Stock with a Deemed Investment Amount Per Share of \$1.15206 shall be converted and changed into one (1) share of Series B-1 Stock, (iii) each share of Outstanding Preferred Stock with a Deemed Investment Amount Per Share of \$1.38014 shall be converted and changed such that (a) each such share purchased or acquired upon conversion at \$1.15206 per share (or issued upon adjustment of such shares) shall be converted and changed into one (1) share of Series B-1 Stock and (b) each such share purchased at \$1.50571 (or issued upon adjustment of such shares) shall be converted and changed into one (1) share of Series B-2 Stock and (iv) each share of Outstanding Preferred Stock with a Deemed Investment Amount Per Share of \$1.41859 shall be converted and changed such that (x) each such share purchased or acquired upon conversion at \$1.15206 per share (or issued upon adjustment of such shares) shall be converted and changed into one (1) share of Series B-1 Stock and (y) each such share purchased at \$1.50571 (or issued upon adjustment of such shares) shall be converted and changed into one (1) share of Series B-2 Stock. As a result of the foregoing, as of the Effective Date (i) no shares of Outstanding Preferred Stock shall be authorized, issued or outstanding, (ii) an aggregate of 1,828,132 shares of Series B-1 Stock shall be issued and outstanding and owned of record by the holders and in the respective amounts set forth below under the heading "Initial Series B-1 Holders" and (iii) an aggregate of 3,185,657 shares of Series B-2 Stock shall be issued and outstanding and owned of record by the holders and in the respective amounts set forth below under the heading "Initial Series B-2 Holders":

<u>Initial Series B-1 Holders</u>	<u>Initial Number of Shares</u>
Banc One Capital Partners, LLC	1,371,098
T. Wayne Davis, Jr.	274,220
David R. Dent	<u>182,814</u>
Total Series B-1 Stock Issued and Outstanding at Effective Date	1,828,132

<u>Initial Series B-2 Holders</u>	<u>Initial Number of Shares</u>
Stonehenge Opportunity Fund, LLC	1,853,354
BOCF, LLC	524,534
T. Wayne Davis, Jr.	152,393
William D. Meadow	169,559
Fredric W. Baggett	99,621
David R. Dent	332,069
Neal G. Anderson	<u>54,127</u>
Total Series B-2 Stock Issued and Outstanding at Effective Date	3,185,657

As a result of the foregoing reclassification, the stock certificates representing shares of Outstanding Preferred Stock shall be null, void and of no further force or effect. From and after the Effective Date, each holder of shares of Outstanding Preferred Stock shall be entitled to receive a stock certificate representing that number of shares of Preferred Stock into which the shares of Outstanding Preferred Stock owned by such holder shall have been so converted and changed.

**ARTICLE V.
DESIGNATION OF TERMS OF
PREFERRED STOCK**

A description of the respective classes of stock and a statement of the designations, preferences, voting powers, relative, participating, optional or other special rights and privileges and the qualifications, limitations and restrictions of the Series B-1 Stock, the Series B-2 Stock and the Series C Stock are as follows:

- A. SERIES B-1 STOCK**
- 1. Dividend Rights.**

Each holder of shares of the Series B-1 Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefor, dividends on a parity with each holder of shares of Common Stock. Such dividends shall be payable per share of Series B-1 Stock in an amount equal to the dividends per share payable on the number of shares of Common Stock into which each share of Series B-1 Stock would be convertible under Article V(A)(3) hereof 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.

2. Rank; Liquidation, Dissolution and Winding Up.

(a) The Series B-1 Stock shall, with respect to rights upon liquidation, winding up or dissolution and redemption rights rank (i) junior to the Series C Stock and any other series of preferred stock duly established by the Board, the terms of which shall specifically provide that such series shall rank prior to the Series B-1 Stock, whether now existing or hereafter created (the "Series B-1 Senior Preferred Stock"), (ii) on a parity with the Series B-2 Stock and any other series of preferred stock duly established by the Board, the terms of which shall specifically provide that such series shall rank on a parity with the Series B-1 Stock, whether now existing or hereafter created (the "Series B-1 Parity Preferred Stock"), and (iii) prior to any other class or series of capital stock of the Corporation, including, without limitation, all classes of the Common Stock of the Corporation, whether now existing or hereafter created (all of such classes or series of capital stock of the Corporation to which the Series B-1 Stock ranks prior, including without limitation the Common Stock, and including, without limitation, junior securities convertible into or exchangeable for other junior securities or phantom stock representing junior securities, are collectively referred to herein as "Series B-1 Junior Securities").

(b) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the holders of the shares of Series B-1 Stock shall be entitled to receive out of the assets of the Corporation legally available for distribution to stockholders (whether representing capital or surplus), before any payment or distribution shall be made on the Common Stock or any other Series B-1 Junior Securities (but after distribution of such assets among, or payment thereof over to, creditors of the Corporation and to holders of any Series B-1 Senior Preferred Stock, including the Series C Stock) the greater of:

(i) for each share of Series B-1 Stock, an amount per share equal to \$1.15206 (the "Series B-1 Stated Value Per Share") (which amount shall be subject to equitable adjustment whenever there shall occur a stock split, combination, reclassification or other similar event involving the Series B-1 Stock) plus an amount equal to dividends declared but unpaid thereon, if any; or

(ii) for each holder of Series B-1 Stock an amount per share equal to the proceeds in Liquidation that the holder of Series B-1 Preferred would have received in respect of all shares of Common Stock owned by such holder (assuming that all shares of the holder's Series B-1 Stock had been converted into Common Stock pursuant to Article V(A)(3)(a)(2) immediately prior to the Liquidation), divided by the number of shares of Series B-1 Stock owned by such holder immediately prior to the date of the Liquidation (either payment, the "Series B-1 Liquidation Preference").

If upon any liquidation, dissolution, or winding up of the Corporation, the assets to be distributed to the holders of the Series B-1 Stock and the holders of any Series B-1 Parity Preferred Stock (including the Series B-2 Stock) shall be insufficient to permit payment of the Series B-1 Liquidation Preference and the liquidation distribution applicable to holders of the Series B-1 Parity Preferred Stock in full, then all of the assets of the Corporation available for distribution to holders of the Series B-1 Stock and the holders of the Series B-1 Parity Preferred Stock shall be distributed to such holders ratably in proportion to the respective amounts of the Series B-1 Liquidation Preference or other liquidation preference of such Series B-1 Parity Preferred Stock.

(c) Written notice of such liquidation, dissolution or winding up, stating a payment date and the place where said payments shall be made, shall be given by mail, postage prepaid, or by telex to non-U.S. residents, not less than 20 days prior to the payment date stated therein, to the holders of record of Series B-1 Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation and the holders of the Series B-1 Stock shall be given the opportunity to exercise their conversion rights under Article V(A)(3) immediately prior to the payment date stated in the notice.

(d) The merger or consolidation of the Corporation into or with another corporation, a merger or consolidation of any other corporation with or into the Corporation upon the completion of which the Corporation's stockholders immediately prior to the consummation of such transaction no longer hold a majority of the outstanding equity securities of the Company or the sale, conveyance, exchange or transfer of all or substantially all of the assets of the Corporation (any such event, a "Reorganization Event") shall be deemed to be a liquidation of the Corporation.

(e) Whenever the distributions provided for in this Article V(A)(2) shall be payable in property other than cash, the value of such distributions shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

Upon the payment of amounts payable under this Article V(A)(2) with respect to any shares of Series B-1 Stock, such shares shall thereupon be null and void and cease to be outstanding and the holders shall deliver their certificates for such shares to the Corporation upon and as a condition to their receipt of final payment thereof.

3. Conversion. The holders of shares of Series B-1 Stock shall have the following conversion rights (the "Series B-1 Conversion Rights"):

(a) (1) Right to Convert. Subject to the terms and conditions of this Article V(A)(3), (x) each holder of shares of Series B-1 Stock shall have the right, at such holder's option, at any time or from time to time after issuance, and (y) in the event that the holders of a majority of the Series B-1 Stock and the Series B-2 Stock, voting together as a single class, so elect, then all holders of Series B-1 Stock shall be required, to convert each share of Series B-1 Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series B-1 Stock so to be converted by the Series B-1 Stated Value Per Share, and (ii) dividing the result by the Series B-1 Conversion Price in effect on the date of conversion. The "Series B-1 Conversion Price" shall equal the Series B-1 Stated Value Per Share or, in case an adjustment of such price has taken place pursuant to the further provisions of this Article V(A)(3), then by the Series B-1 Conversion Price as last adjusted and in effect at the date any share or shares of Series B-1 Stock are surrendered for conversion. Such rights of conversion shall be exercised by holders thereof by giving irrevocable written notice that the holders elect to convert a stated number of shares of Series B-1 Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation duly endorsed or assigned either to the Corporation or in blank at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Series B-1 Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued. Notwithstanding the foregoing, no shares of Series B-1 Stock shall be converted without the consent of the holder thereof pursuant to subclause (a)(1)(y) above unless the holders of a majority of the Series B-1 Stock and the Series B-2 Stock, voting together as a separate class, shall have elected to convert all of the issued and outstanding shares of Series B-2 Stock contemporaneously with the conversion of the Series B-1 Stock.

(2) Automatic Conversion. Each share of Series B-1 Stock shall automatically be converted into shares of Common Stock at the then effective Series B-1 Conversion Price immediately upon the consummation of the Corporation's sale of its Common Stock in a bona fide, firm commitment underwriting pursuant to a registration statement under the Securities Act of 1933, as amended, which results in aggregate gross cash proceeds to the

Corporation before underwriting discounts and commissions and other fees and expenses related to the offering of not less than \$40,000,000 and as to which the public offering price per share of Common Stock multiplied by the number of fully diluted shares of Common Stock outstanding immediately prior to the closing of the offering (including, for purposes of this calculation, the aggregate number of shares of Common Stock into which all shares of Series B-1 Stock then outstanding may be converted) shall equal not less than \$200,000,000 (a "Qualified IPO").

(b) Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in Article V(A)(3)(a)(1) and surrender of the certificate or certificates for the share or shares of Series B-1 Stock to be converted duly endorsed or assigned either to the Corporation or in blank, but in no event later than five (5) business days, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series B-1 Stock. To the extent permitted by law, such conversion shall be deemed to have been effected (1) with respect to conversion effected pursuant to Article V(A)(3)(a)(1)(x) hereof, on the date when the aforesaid delivery is made, (2) with respect to conversion effected pursuant to Article V(A)(3)(a)(1)(y) hereof, on the date of the Corporation's receipt of a conversion request from the requisite number of holders of Series B-1 and B-2 Stock, or (3) with respect to conversion effected pursuant to Article V(A)(3)(a)(2) hereof, on the date of the occurrence of the Qualified IPO, as applicable (the "Series B-1 Conversion Date"), and at such time the rights of the holder of such share or shares of Series B-1 Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

(c) Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of Series B-1 Stock into Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. In case the number of shares of Series B-1 Stock represented by the certificate or certificates surrendered pursuant to Article V(A)(3)(a) exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series B-1 Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this Article V(A)(3)(c), be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Series B-1 Stock for

conversion an amount in cash equal to the current market price of such fractional share as determined in reference to the closing price of the Corporation's Common Stock on the Nasdaq National Market (or such other exchange or quotation system on which the Common Stock is then traded) on the Series B-1 Conversion Date or, if there is no such sale, then at the average of the bid and offer prices quoted in such market for such date or, in the event the Common Stock is not publicly traded, the value of such fractional shares shall be determined in good faith by the Board of Directors on the Series B-1 Conversion Date. The determination as to whether or not any fractional shares of Common Stock are issued upon conversion of the Series B-1 Stock shall be based upon the aggregate number of shares of Series B-1 Stock surrendered by any one holder for conversion into Common Stock and not with respect to each share converted.

(d) Adjustment of Conversion Price

(i) Stock Dividends, Distributions or Subdivisions. In the event the Corporation at any time or from time to time shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), the Series B-1 Conversion Price effect immediately prior to such stock dividend, stock distribution or subdivision shall, concurrently with the effectiveness of such stock dividend, stock distribution or subdivision, be proportionately decreased.

(ii) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Series B-1 Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(iii) Adjustment for Merger or Reorganization. Subject to the last sentence of this Article V(A)(3)(d)(iii), in case of any consolidation or merger of the Corporation with or into another corporation or the conveyance of all or substantially all of the assets of the Corporation to another corporation, each share of Series B-1 Stock shall thereafter be convertible, at the option of the holder thereof in the manner described in the last sentence of this Article V(A)(3)(d)(iii), into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of the Series B-1 Stock would have been entitled upon such consolidation, merger or conveyance as if such holder had converted into Common Stock immediately prior to such consolidation, merger or conveyance. In any such case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of these provisions set

forth with respect to the rights and interest thereafter of the holders of the Series B-1 Stock, to the end that these provisions (including provisions with respect to changes in and other adjustments of the Series B-1 Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series B-1 Stock. In the event that such merger or consolidation of the Corporation or the sale of all or substantially all its assets and properties as such events are more fully set forth in the first paragraph of this Article V(A)(3)(d)(iii), shall also be subject to the provisions of Article V(A)(2) above, each holder of the Series B-1 Stock may elect to obtain the treatment of such holder's shares of the Series B-1 Stock under this Article V(A)(3)(d)(iii) in lieu of that described in Article V(A)(2), notice of which election shall be submitted in writing to the Corporation at its principal offices no later than five (5) days before the effective date of such event.

(iv) Authority of the Board. The Board of Directors shall have the power to resolve any ambiguity or correct any error in this Article V(A)(3) and its action in doing so shall be final.

(e) No Impairment. The Corporation will not, by amendment of its Charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Article V(A)(3) and in the taking of all such action as may be necessary or appropriate in order to protect the Series B-1 Conversion Rights against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Series B-1 Conversion Price pursuant to this Article V(A)(3), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with these terms and furnish to each holder of Series B-1 Stock a certificate setting forth such adjustment, readjustment or conversion and showing in detail the facts upon which such adjustment, readjustment or conversion is based; provided that the failure to promptly provide such notice shall not affect the effectiveness of such adjustment, readjustment or conversion. The Corporation shall, upon the written request at any time of any holder of the Series B-1 Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series B-1 Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series B-1 Stock.

(g) Notices of Record Date. In the event of (i) any taking by the Corporation of a record date of the holders of any class of securities for the

purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is the same as cash dividends paid in previous quarters) or other distribution, or (ii) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation, and any transfer of all or substantially all of the assets of the Corporation to any other corporation, or any other entity or person, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of the Series B-1 Stock at least 30 days prior to the record date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (C) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

(h) Common Stock Reserved. The Corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect conversion of the Series B-1 Stock.

(i) No Duplication. Notwithstanding anything to the contrary in these Articles of Incorporation, the adjustments to the Series B-1 Conversion Price and other adjustments to the rights of the Series B-1 Stock hereunder, including this Article V(A)(3), shall be made without duplication.

4. Redemption

(a) At any time and from time to time after May 24, 2007, any holder of the Series B-1 Stock may, by written notice to the Corporation (a "Request"), require the redemption of all of the shares of Series B-1 Stock owned by such holder at a cash redemption price per share (the "Series B-1 Redemption Price") equal to the greater of (1) the Series B-1 Liquidation Preference or (2) the fair market value of the Series B-1 Stock as determined by the Board of Directors of the Corporation, or, if requested by the holder(s) making the Request, by an appraisal conducted by an appraiser selected by the Corporation and acceptable to the Holder(s) making the Request. Such appraisal shall not consider discounts for illiquidity and lack of control and must consider any premium due to the rights and preferences of the Series B-1 Stock. The Corporation shall, within twenty (20) days following its receipt of the Request, deliver to the requesting holder(s) of the Series B-1 Stock a notice specifying the date on which such shares of Series B-1 Stock shall be

redeemed, which date shall not be more than sixty (60) days thereafter. Any date so designated for redemption, or if none, the sixtieth (60th) day after the date of a Request is herein referred to as a "Redemption Date."

(b) The Corporation shall not make payments in respect of the redemption of any shares of Series B-1 Stock, Series B-2 Stock or any other Junior Securities unless any unpaid amounts with respect to the Series C Redemption Price (as defined in Article V(C)(5) hereof) for all shares of Series C Stock shall have been paid in full or unless a majority of the holders of the Series C Stock then outstanding shall have consented thereto.

(c) In the event that for any reason, including without limitation a prohibition under applicable law, the Corporation is prohibited from redeeming or is otherwise unable to redeem any shares of the Series B-1 Stock on a Redemption Date, upon five (5) days written notice thereof, the Corporation shall (unless such shares have been converted or the Request for redemption has been withdrawn) thereafter redeem such shares on the earliest date(s) on which the Corporation is no longer so prohibited from redeeming or unable to redeem such shares.

(d) Simultaneously with its receipt of the cash payment for the Series B-1 Redemption Price, each redeeming holder of Series B-1 Stock shall deliver to the Corporation or its agent the certificates representing the shares to be redeemed duly endorsed or assigned either to the Company or in blank; provided, however, that upon the payment by the Corporation of the Series B-1 Redemption Price, all rights in respect of the shares of Series B-1 Stock to be redeemed shall cease and terminate, and such shares shall no longer be deemed to be outstanding, whether or not the certificates representing such shares have been received by the Corporation.

(e) Once redeemed pursuant to the provisions of this Article V(A)(4), each such redeemed share of Series B-1 Stock shall be canceled and not subject to reissuance and such redeemed share shall, without any action on the part of the Corporation or the shareholders of the Corporation, be eliminated from the authorized number of shares of capital stock of the Corporation.

(f) In the event that any holder of Series B-1 Stock exercises any of its rights as set forth in this Article V(A)(4), and the Corporation fails to redeem the shares of the capital stock in question on the Redemption Date, for whatever reason, from the Redemption Date until the date such redemption is consummated (unless such shares have been converted, or the Request for redemption has been withdrawn, in which case until the date of such conversion or withdrawal), the applicable Series B-1 Redemption Price shall bear interest at the rate of fifteen percent (15%) per annum, compounded annually. Such interest shall be payable by the

Corporation upon the consummation of the applicable redemption transaction or upon conversion or withdrawal, as the case may be.

(g) In the event that the Corporation fails to redeem shares of Series B-1 Stock (whether due to the circumstances set forth in Article V(A)(4)(c) or (f) hereof) on or prior to the Redemption Date, each holder of Series B-1 Stock to be redeemed hereunder shall, until the earlier to occur of the redemption of such Series B-1 Stock or the conversion thereof, have the right upon delivery to the Corporation of written notice thereof to (1) convert such shares of Series B-1 Stock into shares of Common Stock at the then current Series B-1 Conversion Price, or (2) withdraw its Request that such Series B-1 Stock be redeemed. In the event of such conversion or withdrawal, the Corporation's obligation to pay the applicable redemption price pursuant to the Request that was withdrawn, or for the shares that were converted, as the case may be, shall cease.

5. Restrictions.

Except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law, and in addition to any other vote required by law or these Articles of Incorporation, without the written consent of the holders of at least a majority of the then outstanding shares of Series B-1 Stock, voting together on an as-converted basis with the Series B-2 Stock as a single class, given in writing or by vote at a meeting, consenting or voting (as the case may be), the Corporation will not pay any dividend or make any distribution on any shares of common stock.

6. Voting Rights.

Except as otherwise required by law or the Articles of Incorporation, each holder of Series B-1 Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series B-1 Stock held by such holder are convertible (as adjusted from time to time pursuant to Article V(A)(3)(d) hereof) on all matters submitted to a vote of the common stockholders of the Corporation. Except as provided by law and by the provisions of the Articles of Incorporation, the holders of Series B-1 Stock shall vote together with the holders of the Common Stock and the holders of any other capital stock of the Corporation having similar voting rights as a single class.

B. SERIES B-2 STOCK

1. Dividend Rights.

Each holder of shares of the Series B-2 Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally

available therefor, dividends on a parity with each holder of shares of Common Stock. Such dividends shall be payable per share of Series B-2 Stock in an amount equal to the dividends per share payable on the number of shares of Common Stock into which each share of Series B-2 Stock would be convertible under Article V(B)(3) hereof 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.

2. Rank; Liquidation, Dissolution and Winding Up.

(a) The Series B-2 Stock shall, with respect to rights upon liquidation, winding up or dissolution and redemption rights rank (i) junior to the Series C Stock and any other series of preferred stock duly established by the Board, the terms of which shall specifically provide that such series shall rank prior to the Series B-2 Stock, whether now existing or hereafter created (the "Series B-2 Senior Preferred Stock"), (ii) on a parity with the Series B-1 Stock and any other series of preferred stock duly established by the Board, the terms of which shall specifically provide that such series shall rank on a parity with the Series B-2 Stock, whether now existing or hereafter created (the "Series B-2 Parity Preferred Stock"), and (iii) prior to any other class or series of capital stock of the Corporation, including, without limitation, all classes of the Common Stock of the Corporation, whether now existing or hereafter created (all of such classes or series of capital stock of the Corporation to which the Series B-2 Stock ranks prior, including without limitation the Common Stock, and including, without limitation, junior securities convertible into or exchangeable for other junior securities or phantom stock representing junior securities, are collectively referred to herein as "Series B-2 Junior Securities").

(b) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the holders of the shares of Series B-2 Stock shall be entitled to receive out of the assets of the Corporation legally available for distribution to stockholders (whether representing capital or surplus), before any payment or distribution shall be made on the Common Stock or any other Series B-2 Junior Securities (but after distribution of such assets among, or payment thereof over to, creditors of the Corporation and to holders of any Series B-2 Senior Preferred Stock, including the Series C Stock) the greater of:

(i) for each share of Series B-2 Stock, an amount per share equal to \$1.50571 (the "Series B-2 Stated Value Per Share") (which amount shall be subject to equitable adjustment whenever there shall occur a stock split, combination, reclassification or other similar event involving the Series B-2 Stock) plus an amount equal to dividends declared but unpaid thereon, if any; or

(ii) for each holder of Series B-2 Stock an amount per share equal to the proceeds in Liquidation that the holder of Series B-2 Preferred would have received in respect of all shares of Common Stock owned by such holder (assuming that all shares of the holder's Series B-1 Stock had been converted into Common Stock pursuant to Article V(B)(3)(a)(2) immediately prior to the Liquidation), divided by the number of shares of Series B-2 Stock owned by such holder immediately prior to the date of the Liquidation (either payment, the "Series B-2 Liquidation Preference").

If upon any liquidation, dissolution, or winding up of the Corporation, the assets to be distributed to the holders of the Series B-2 Stock and the holders of any Series B-2 Parity Preferred Stock (including the Series B-1 Stock) shall be insufficient to permit payment of the Series B-2 Liquidation Preference and the liquidation distribution applicable to holders of the Series B-2 Parity Preferred Stock in full, then all of the assets of the Corporation available for distribution to holders of the Series B-2 Stock and the holders of the Series B-2 Parity Preferred Stock shall be distributed to such holders ratably in proportion to the respective amounts of the Series B-2 Liquidation Preference or other liquidation preference of such Series B-2 Parity Preferred Stock.

(c) Written notice of such liquidation, dissolution or winding up, stating a payment date and the place where said payments shall be made, shall be given by mail, postage prepaid, or by telex to non-U.S. residents, not less than 20 days prior to the payment date stated therein, to the holders of record of Series B-2 Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation and the holders of the Series B-2 Stock shall be given the opportunity to exercise their conversion rights under Article V(B)(3) immediately prior to the payment date stated in the notice.

(d) The merger or consolidation of the Corporation into or with another corporation, a merger or consolidation of any other corporation with or into the Corporation upon the completion of which the Corporation's stockholders immediately prior to the consummation of such transaction no longer hold a majority of the outstanding equity securities of the Company or the sale, conveyance, exchange or transfer of all or substantially all of the assets of the Corporation (any such event, a "Reorganization Event") shall be deemed to be a liquidation of the Corporation.

(e) Whenever the distributions provided for in this Article V(B)(2) shall be payable in property other than cash, the value of such distributions shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

Upon the payment of amounts payable under this Article V(B)(2) with respect to any shares of Series B-2 Stock, such shares shall thereupon be null and void and cease to be outstanding and the holders shall deliver their certificates for such shares to the Corporation upon and as a condition to their receipt of final payment thereof.

3. Conversion. The holders of shares of Series B-2 Stock shall have the following conversion rights (the "Series B-2 Conversion Rights"):

(a) (1) Right to Convert. Subject to the terms and conditions of this Article V(B)(3), (x) each holder of shares of Series B-2 Stock shall have the right, at such holder's option, at any time or from time to time after issuance, and (y) in the event that the holders of a majority of the Series B-2 Stock and the Series B-1 Stock, voting together as a single class, so elect, then all holders of Series B-2 Stock shall be required, to convert each share of Series B-2 Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series B-2 Stock so to be converted by the Series B-2 Stated Value Per Share, and (ii) dividing the result by the Series B-2 Conversion Price in effect on the date of conversion. The "Series B-2 Conversion Price" shall equal the Series B-2 Stated Value Per Share or, in case an adjustment of such price has taken place pursuant to the further provisions of this Article V(B)(3), then by the Series B-2 Conversion Price as last adjusted and in effect at the date any share or shares of Series B-2 Stock are surrendered for conversion. Such rights of conversion shall be exercised by holders thereof by giving irrevocable written notice that the holders elect to convert a stated number of shares of Series B-2 Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation duly endorsed or assigned either to the Corporation or in blank at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Series B-2 Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued. Notwithstanding the foregoing, no shares of Series B-2 Stock shall be converted without the consent of the holder thereof pursuant to subclause (a)(1)(y) above unless the holders of a majority of the Series B-1 Stock and the Series B-2 Stock, voting together as a separate class, shall have elected to convert all of the issued and outstanding shares of Series B-1 Stock contemporaneously with the conversion of the Series B-2 Stock.

(2) Automatic Conversion. Each share of Series B-2 Stock shall automatically be converted into shares of Common Stock at the then effective Series B-2 Conversion Price immediately upon the consummation of the Corporation's sale of its Common Stock in a bona fide, firm commitment underwriting pursuant to a registration statement under the Securities Act of 1933, as amended, which results in aggregate gross cash proceeds to the

Corporation before underwriting discounts and commissions and other fees and expenses related to the offering of not less than \$40,000,000 and as to which the public offering price per share of Common Stock multiplied by the number of fully diluted shares of Common Stock outstanding immediately prior to the closing of the offering (including, for purposes of this calculation, the aggregate number of shares of Common Stock into which all shares of Series B-2 Stock then outstanding may be converted) shall equal not less than \$200,000,000 (a "Qualified IPO").

(b) Issuance of Certificates; Time Conversion Effected.

Promptly after the receipt of the written notice referred to in Article V(B)(3)(a)(1) and surrender of the certificate or certificates for the share or shares of Series B-2 Stock to be converted duly endorsed or assigned either to the Corporation or in blank, but in no event later than five (5) business days, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series B-2 Stock. To the extent permitted by law, such conversion shall be deemed to have been effected (1) with respect to conversion effected pursuant to Article V(B)(3)(a)(1)(x) hereof, on the date when the aforesaid delivery is made, (2) with respect to conversion effected pursuant to Article V(B)(3)(a)(1)(y) hereof, on the date of the Corporation's receipt of a conversion request from the requisite number of holders of Series B-1 and B-2 Stock, or (3) with respect to conversion effected pursuant to Article V(B)(3)(a)(2) hereof, on the date of the occurrence of the Qualified IPO, as applicable (the "Series B-2 Conversion Date"), and at such time the rights of the holder of such share or shares of Series B-2 Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

(c) Fractional Shares; Dividends; Partial Conversion.

No fractional shares shall be issued upon conversion of Series B-2 Stock into Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. In case the number of shares of Series B-2 Stock represented by the certificate or certificates surrendered pursuant to Article V(B)(3)(a) exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series B-2 Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this Article V(B)(3)(c), be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Series B-2 Stock for

conversion an amount in cash equal to the current market price of such fractional share as determined in reference to the closing price of the Corporation's Common Stock on the Nasdaq National Market (or such other exchange or quotation system on which the Common Stock is then traded) on the Series B-2 Conversion Date or, if there is no such sale, then at the average of the bid and offer prices quoted in such market for such date or, in the event the Common Stock is not publicly traded, the value of such fractional shares shall be determined in good faith by the Board of Directors on the Series B-2 Conversion Date. The determination as to whether or not any fractional shares of Common Stock are issued upon conversion of the Series B-2 Stock shall be based upon the aggregate number of shares of Series B-2 Stock surrendered by any one holder for conversion into Common Stock and not with respect to each share converted.

(d) Adjustment of Conversion Price

(i) Stock Dividends, Distributions or Subdivisions. In the event the Corporation at any time or from time to time shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), the Series B-2 Conversion Price effect immediately prior to such stock dividend, stock distribution or subdivision shall, concurrently with the effectiveness of such stock dividend, stock distribution or subdivision, be proportionately decreased.

(ii) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Series B-2 Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(iii) Adjustment for Merger or Reorganization. Subject to the last sentence of this Article V(B)(3)(d)(iii), in case of any consolidation or merger of the Corporation with or into another corporation or the conveyance of all or substantially all of the assets of the Corporation to another corporation, each share of Series B-2 Stock shall thereafter be convertible, at the option of the holder thereof in the manner described in the last sentence of this Article V(B)(3)(d)(iii), into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of the Series B-2 Stock would have been entitled upon such consolidation, merger or conveyance as if such holder had converted into Common Stock immediately prior to such consolidation, merger or conveyance. In any such case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of these provisions set

forth with respect to the rights and interest thereafter of the holders of the Series B-2 Stock, to the end that these provisions (including provisions with respect to changes in and other adjustments of the Series B-2 Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series B-2 Stock. In the event that such merger or consolidation of the Corporation or the sale of all or substantially all its assets and properties as such events are more fully set forth in the first paragraph of this Article V(B)(3)(d)(iii), shall also be subject to the provisions of Article V(B)(2) above, each holder of the Series B-2 Stock may elect to obtain the treatment of such holder's shares of the Series B-2 Stock under this Article V(B)(3)(d)(iii) in lieu of that described in Article V(B)(2), notice of which election shall be submitted in writing to the Corporation at its principal offices no later than five (5) days before the effective date of such event.

(iv) Authority of the Board. The Board of Directors shall have the power to resolve any ambiguity or correct any error in this Article V(B)(3) and its action in doing so shall be final.

(e) No Impairment. The Corporation will not, by amendment of its Charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Article V(B)(3) and in the taking of all such action as may be necessary or appropriate in order to protect the Series B-2 Conversion Rights against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Series B-2 Conversion Price pursuant to this Article V(B)(3), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with these terms and furnish to each holder of Series B-2 Stock a certificate setting forth such adjustment, readjustment or conversion and showing in detail the facts upon which such adjustment, readjustment or conversion is based; provided that the failure to promptly provide such notice shall not affect the effectiveness of such adjustment, readjustment or conversion. The Corporation shall, upon the written request at any time of any holder of the Series B-2 Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series B-2 Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series B-2 Stock.

(g) Notices of Record Date. In the event of (i) any taking by the Corporation of a record date of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is the same as cash dividends paid in previous quarters) or other distribution, or (ii) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation, and any transfer of all or substantially all of the assets of the Corporation to any other corporation, or any other entity or person, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of the Series B-2 Stock at least 30 days prior to the record date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (C) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

(h) Common Stock Reserved. The Corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect conversion of the Series B-2 Stock.

(i) No Duplication. Notwithstanding anything to the contrary in these Articles of Incorporation, the adjustments to the Series B-2 Conversion Price and other adjustments to the rights of the Series B-2 hereunder, including this Article V(B)(3), shall be made without duplication.

4. Redemption.

(a) At any time and from time to time after May 24, 2007, any holder of the Series B-2 Stock may, by written notice to the Corporation (a "Request"), require the redemption of all of the shares of Series B-2 Stock owned by such holder at a cash redemption price per share (the "Series B-2 Redemption Price") equal to the greater of (1) the Series B-2 Liquidation Preference or (2) the fair market value of the Series B-2 Stock as determined by the Board of Directors of the Corporation, or, if requested by the holder(s) making the Request, by an appraisal conducted by an appraiser selected by the Corporation and acceptable to the Holder(s) making the Request. Such appraisal shall not consider discounts for illiquidity and lack of control and must consider any premium due to the rights and preferences of the Series B-1 Stock. The Corporation shall, within twenty (20) days following its receipt of

the Request, deliver to the requesting holder(s) of the Series B-2 Stock a notice specifying the date on which such shares of Series B-2 Stock shall be redeemed, which date shall not be more than sixty (60) days thereafter. Any date so designated for redemption, or if none, the sixtieth (60th) day after the date of a Request is herein referred to as a "Redemption Date."

(b) The Corporation shall not make payments in respect of the redemption of any shares of Series B-2 Stock, Series B-1 Stock or any other Junior Securities unless any unpaid amounts with respect to the Series C Redemption Price (as defined in Article V(C)(5) hereof) for all shares of Series C Stock shall have been paid in full or unless a majority of the holders of the Series C Stock then outstanding shall have consented thereto.

(c) In the event that for any reason, including without limitation a prohibition under applicable law, the Corporation is prohibited from redeeming or is otherwise unable to redeem any shares of the Series B-2 Stock on a Redemption Date, upon five (5) days written notice thereof, the Corporation shall (unless such shares have been converted or the Request for redemption has been withdrawn) thereafter redeem such shares on the earliest date(s) on which the Corporation is no longer so prohibited from redeeming or unable to redeem such shares.

(d) Simultaneously with its receipt of the cash payment for the Series B-1 Redemption Price, each redeeming holder of Series B-2 Stock shall deliver to the Corporation or its agent the certificates representing the shares to be redeemed duly endorsed or assigned either to the Company or in blank; provided, however, that upon the payment by the Corporation of the Series B-2 Redemption Price, all rights in respect of the shares of Series B-2 Stock to be redeemed shall cease and terminate, and such shares shall no longer be deemed to be outstanding, whether or not the certificates representing such shares have been received by the Corporation.

(e) Once redeemed pursuant to the provisions of this Article V(B)(4), each such redeemed share of Series B-2 Stock shall be canceled and not subject to reissuance and such redeemed share shall, without any action on the part of the Corporation or the shareholders of the Corporation, be eliminated from the authorized number of shares of capital stock of the Corporation.

(f) In the event that any holder of Series B-2 Stock exercises any of its rights as set forth in this Article V(B)(4), and the Corporation fails to redeem the shares of the capital stock in question on the Redemption Date, for whatever reason, from the Redemption Date until the date such redemption is consummated (unless such shares have been converted, or the Request for redemption has been withdrawn, in which case until the date of such conversion or withdrawal), the applicable Series B-2

Redemption Price shall bear interest at the rate of fifteen percent (15%) per annum, compounded annually. Such interest shall be payable by the Corporation upon the consummation of the applicable redemption transaction or upon conversion or withdrawal, as the case may be.

(g) In the event that the Corporation fails to redeem shares of Series B-2 Stock (whether due to the circumstances set forth in Article V(B)(4)(c) or (f) hereof) on or prior to the Redemption Date, each holder of Series B-2 Stock to be redeemed hereunder shall, until the earlier to occur of the redemption of such Series B-2 Stock or the conversion thereof, have the right upon delivery to the Corporation of written notice thereof to (1) convert such shares of Series B-2 Stock into shares of Common Stock at the then current Series B-2 Conversion Price, or (2) withdraw its Request that such Series B-2 Stock be redeemed. In the event of such conversion or withdrawal, the Corporation's obligation to pay the applicable redemption price pursuant to the Request that was withdrawn, or for the shares that were converted, as the case may be, shall cease.

5. Restrictions.

Except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law, and in addition to any other vote required by law or these Articles of Incorporation, without the written consent of the holders of at least a majority of the then outstanding shares of Series B-2 Stock, voting together on an as-converted basis with the Series B-1 Stock as a single class, given in writing or by vote at a meeting, consenting or voting (as the case may be), the Corporation will not pay any dividend or make any distribution on any shares of common stock.

6. Voting Rights.

Except as otherwise required by law or the Articles of Incorporation, each holder of Series B-2 Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series B-2 Stock held by such holder are convertible (as adjusted from time to time pursuant to Article V(B)(3)(d) hereof) on all matters submitted to a vote of the common stockholders of the Corporation. Except as provided by law and by the provisions of the Articles of Incorporation, the holders of Series B-2 Stock shall vote together with the holders of the Common Stock and the holders of any other capital stock of the Corporation having similar voting rights as a single class.

C. SERIES C STOCK

1. Dividend Rights.

Each holder of shares of the Series C Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefor dividends on a parity with each holder of shares of Common Stock. Such dividends shall be payable per share of Series C Preferred Stock in an amount equal to the dividends per share payable on the number of shares of Common Stock into which each share of Series C Preferred Stock would be convertible under Article V(C)(4) hereof 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.

2. Rank; Liquidation, Dissolution and Winding Up.

(a) The Series C Stock shall, with respect to rights upon liquidation, winding up or dissolution and redemption rights rank (i) junior to any other series of preferred stock duly established by the Board of Directors with the consent of the holders of the Series C Stock pursuant to Article V(C)(3), the terms of which shall specifically provide that such series shall rank prior to the Series C Stock, whether now existing or hereafter created (the "Series C Senior Preferred Stock"), (ii) on a parity with any other series of preferred stock duly established by the Board with the consent of the holders of the Series C Stock pursuant to Article V(C)(3), the terms of which shall specifically provide that such series shall rank on a parity with the Series C Stock, whether now existing or hereafter created (the "Series C Parity Preferred Stock"), and (iii) prior to any other class or series of capital stock of the Corporation, including, without limitation, the Series B-1 Stock, the Series B-2 Stock and all classes of the Common Stock of the Corporation, whether now existing or hereafter created (all of such classes or series of capital stock of the Corporation to which the Series C Stock ranks prior, including, without limitation the Series B-1 Stock, the Series B-2 Stock and the Common Stock, and including, without limitation junior securities convertible into or exchangeable for other junior securities or phantom stock representing junior securities, are collectively referred to herein as "Series C Junior Securities").

(b) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the holders of the shares of Series C Stock shall be entitled to receive out of the assets of the Corporation legally available for distribution to stockholders (whether representing capital or surplus), before any payment or distribution shall be made on the Common Stock or any other Series C Junior Securities (but after distribution of such assets among, or payment thereof over to, creditors of the Corporation and to holders of any Senior Preferred Stock) the greater of:

(i) for each share of Series C Stock, an amount per share equal to \$0.60 (the "Series C Stated Value Per Share") (which amount shall be subject to equitable adjustment whenever there shall occur a stock

split, combination, reclassification or other similar event involving the Series C Stock) plus (x) an amount equal to 8% per annum on the Series C Stated Value Per Share, compounded annually, and for any partial year, computed on the actual number of days elapsed and a year of 365 or 366 days, as applicable, from the original issue date of such applicable share of Series C Stock (the "Series C Original Issue Date") to the date of payment, provided that if the Corporation shall have failed to achieve any of the Performance Targets set forth in Article V(C)(4)(d)(viii), resulting in an adjustment to the Series C Conversion Price as described therein, and the Corporation's audited financial statements for the fiscal year ended December 31, 2003 shall report less than \$15.0 million in revenue, then the per annum rate for the year then ended shall be equal to 58% (rather than 8%), and (y) an amount equal to dividends declared but unpaid thereon, if any; or

(ii) for each holder of Series C Stock an amount per share equal to the proceeds in Liquidation that the holder of Series C Preferred would have received in respect of all shares of Common Stock owned by such holder (assuming that all shares of the holder's Series C Stock had been converted into Common Stock pursuant to Article V(C)(4)(a)(2) immediately prior to the Liquidation), divided by the number of shares of Series C Stock owned by such holder immediately prior to the date of the Liquidation (either payment, the "Series C Liquidation Preference").

If upon any liquidation, dissolution, or winding up of the Corporation, the assets to be distributed to the holders of the Series C Stock and the holders of any Series C Parity Preferred Stock shall be insufficient to permit payment of the Series C Liquidation Preference and the liquidation distribution applicable to holders of the Series C Parity Preferred Stock in full, then all of the assets of the Corporation available for distribution to holders of the Series C Stock and the holders of the Series C Parity Preferred Stock shall be distributed to such holders ratably in proportion to the respective amounts of the Series C Liquidation Preference or other liquidation preference of such Series C Parity Preferred Stock.

(c) Written notice of such liquidation, dissolution or winding up, stating a payment date and the place where said payments shall be made, shall be given by mail, postage prepaid, or by telex to non-U.S. residents, not less than 20 days prior to the payment date stated therein, to the holders of record of Series C Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

(d) The merger or consolidation of the Corporation into or with another corporation, a merger or consolidation of any other corporation with or into the Corporation upon the completion of which the Corporation's stockholders immediately prior to the consummation of such transaction no longer hold a majority of the outstanding equity securities of the Company or

the sale, conveyance, exchange or transfer of all or substantially all of the assets of the Corporation (any such event, a "Reorganization Event") shall be deemed to be a liquidation of the Corporation.

(e) Whenever the distributions provided for in this Article V(C)(2) shall be payable in property other than cash, the value of such distributions shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation.

Upon the payment of amounts payable under this Article V(C)(2) with respect to any shares of Series C Stock, such shares shall thereupon by null and void and cease to be outstanding and the holders shall deliver their certificates for such shares to the Corporation upon and as a condition to their receipt of final payment thereof.

3. Restrictions.

(a) Except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law, and in addition to any other vote required by law or these Articles of Incorporation, without the written consent of the holders of at least a majority of the then outstanding shares of Series C Stock given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a single class, the Corporation will not:

(i) Increase the authorized number of shares of Preferred Stock;

(ii) In any manner alter or change the designation or the powers, preferences or rights, or the qualifications, limitations or restrictions of, the Series C Stock;

(iii) Create or authorize the creation of any additional class or series of shares of stock unless the same ranks junior to the Series C Stock as to dividends and the distribution of assets on the liquidation, dissolution or winding up of the Corporation, or create or authorize any obligation or security convertible into shares of Series C Stock or into shares of any other class or series of stock unless the same ranks junior to the Series C Stock as to dividends and the distribution of assets on the liquidation, dissolution or winding up of the Corporation, whether any such creation, authorization or increase shall be by means of amendment to the articles of incorporation or by merger, consolidation or otherwise;

(iv) Amend, alter or repeal any provision of these Articles of Incorporation or bylaws of the Corporation which adversely affects the rights and privileges of the Series C Stock provided, however, that the amendment of the certificate of incorporation to authorize or create or increase the authorized

amount of any Series C Junior Securities shall not be deemed to adversely affect the rights and privileges of the Series C Stock;

(v) Consent to any liquidation, dissolution or winding up of the Corporation or a Reorganization Event;

(vi) Purchase or redeem, or set aside any sums for the purchase or redemption of, or pay any dividend or make any distribution on, any shares of stock, other than purchases or redemption at cost of shares of Common Stock held by employees, officers, consultants or directors pursuant to agreements approved by the Board of Directors and entered into upon commencement of such individual's employment or service or upon any closing of the sales of the Series C Stock under which the Corporation has the option to repurchase such shares at cost upon the termination of the individual's employment or service;

(vii) Incur any indebtedness for borrowed money (whether by loan or the issuance and sale of debt securities) or for the deferred purchase of property or services (other than equipment leases incurred in the ordinary course of business) in excess of \$3,000,000;

(viii) Acquire, whether through merger, acquisition of stock or acquisition of assets, any entity or assets having a purchase price greater than \$3,000,000; or

(ix) Consent to any material change in the nature of the Corporation's business provided, however, that a vote under this Article V(C)(3) shall not be required for the Company to consummate one or more of the Opportunities as defined in that certain Escrow Agreement, dated as of May 23, 2002 by and between the Corporation and certain investors therein.

4. Conversion. The holders of shares of Series C Stock shall have the following conversion rights (the "Conversion Rights"):

(a) (1) Right to Convert. Subject to the terms and conditions of this Article V(C)(4), (x) each holder of shares of Series C Stock shall have the right, at such holder's option, at any time or from time to time after issuance, and (b) in the event that the holders of two-thirds of the Series C Stock so elect, then all holders of Series C Stock shall be required, to convert each share of Series C Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series C Stock so to be converted by the Series C Stated Value Per Share, and (ii) dividing the result by the Series C Conversion Price in effect on the date of conversion. The "Series C Conversion Price" shall equal the Series C Stated Value Per Share or, in case an adjustment of such price has taken place

pursuant to the further provisions of this Article V(C)(4), then by the Series C Conversion Price as last adjusted and in effect at the date any share or shares of Series C Stock are surrendered for conversion. Such rights of conversion shall be exercised by the holders thereof by giving irrevocable written notice that the holders elect to convert a stated number of shares of Series C Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted duly endorsed or assigned either to the Corporation or in blank to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Series C Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued.

(2) Automatic Conversion. Each share of Series C Stock shall automatically be converted into shares of Common Stock at the then effective Series C Conversion Price immediately upon the closing of a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation having an offering price to the public resulting in gross cash proceeds to the Corporation before underwriting discounts and commissions and other fees and expenses related to the offering of not less than \$40,000,000 and as to which the public offering price per share of Common Stock multiplied by the number of fully diluted shares of Common Stock outstanding immediately prior to the closing of the offering shall equal not less than \$200,000,000 (a "Qualified IPO").

(b) Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in Article V(C)(4)(a)(1) and surrender of the certificate or certificates for the share or shares of Series C Stock to be converted duly endorsed or assigned either to the Corporation or in blank, but in no event later than five (5) business days, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holders, registered in such name or names as such holders may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series C Stock. To the extent permitted by law, such conversion shall be deemed to have been effected (1) with respect to conversion effected pursuant to Article V(C)(4)(a)(1)(x) hereof, on the date when the aforesaid delivery is made, (2) with respect to conversion effected pursuant to Article V(C)(4)(a)(1)(y) hereof, on the date of the Corporation's receipt of a conversion request from the requisite number of holders of Series C Stock, or (3) with respect to conversion effected pursuant to Article V(C)(4)(a)(2) hereof, on the date of the occurrence of the Qualified IPO, as applicable (the "Series C Conversion Date"), and at such time the rights of the holder of such share or shares of Series C Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common

Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

(c) Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of Series C Stock into Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. At the time of each conversion, the Corporation shall: (i) if cash is legally available, pay in cash an amount equal to all dividends declared and unpaid, if any, on the shares of Series C Stock surrendered for conversion as provided in Article V(C)(4)(b), or (ii) if cash is not legally available, provide to such holder a certificate representing a number of shares of Common Stock equal to the quotient of (A) the sum of all dividends declared and unpaid on the shares of Series C Stock so surrendered divided by (B) the Series C Conversion Price. In case the number of shares of Series C Stock represented by the certificate or certificates surrendered pursuant to Article V(C)(4)(a) exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series C Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this Article V(C)(4)(c), be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Series C Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in reference to the closing price of the Corporation's Common Stock on the Nasdaq National Market (or such other exchange or quotation system on which the Common Stock is then traded) on the Series C Conversion Date or, if there is no such sale, then at the average of the bid and offer prices quoted in such market for such date or, in the event the Common Stock is not publicly traded, the value of such fractional shares shall be determined in good faith by the Board of Directors on the Series C Conversion Date. The determination as to whether or not any fractional shares of Common Stock are issued upon conversion of the Series C Stock shall be based upon the aggregate number of shares of Series C Stock surrendered by any one holder for conversion into Common Stock and not with respect to each share converted.

(d) Adjustment of Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of this Article V(C)(4)(d), the following definitions shall apply:

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

(2) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(3) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Article V(C)(4)(d)(iii)), deemed to be issued) by the Corporation after the Series C Original Issue Date, other than shares of Common Stock issued or issuable (or so deemed to be issued):

(A) upon conversion of shares of Preferred Stock or by way of dividend or distribution on shares of Preferred Stock; or

(B) to current or former officers, directors or employees of, or consultants to, the Corporation pursuant to action by the Board of Directors prior to the Series C Original Issue Date, pursuant to the Corporation's Stock Option Plan in existence as of the Series C Original Issue Date or pursuant to any other stock purchase or option plan or other employee or director stock incentive, restricted stock, compensation program or grant (collectively, the "Plans") approved by a majority of the members of the Board of Directors.

(C) pursuant to a Qualified IPO;

(D) in connection with equipment financing or leases (including securities issued in consideration of guarantees of such financing or leasing) which are approved by the Corporation's Board of Directors, provided that such securities are issued to one or more of the following or to affiliates of such persons (a) any commercial lender or financial institution providing financing for such transaction or (b) the party providing the equipment or lease; or

(E) in connection with acquisitions or strategic ventures, arrangements and alliances, and/or to vendors, customers, co-venturers or other persons in similar commercial or corporate partnering situations, in each case, where such issuance is approved by the Corporation's Board of Directors and provided that such securities are issued to the seller in the case of an acquisition or to the parties constituting the strategic venture, arrangement or alliances, or to the vendors, customers, co-venturers or other persons in similar commercial or corporate partnering situations as the case may be.

(ii) No Adjustment of Conversion Price. Subject to the provisions of Article V(C)(4)(d)(vi) and Article V(C)(4)(d)(vii), no adjustment in the number of shares of Common Stock into which Series C Stock is convertible

shall be made by adjustment in the Conversion Price of Series C Stock in respect of the issuance of Additional Shares of Common Stock or otherwise, unless the consideration per share for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is less than the Series C Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Shares.

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

(1) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Series C Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, *provided that* Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Article V(C)(4)(d)(v)) of such Additional Shares of Common Stock would be less than the Series C Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, *and provided further that* in any such case in which Additional Shares of Common Stock are deemed to be issued:

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

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

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series C Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(I) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the corporation upon such conversion or exchange, and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Article V(C)(4)(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

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

(E) in the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Series C Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above; and

(F) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Series C Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Series C Conversion Price shall be

adjusted pursuant to this Article V(C)(4)(d)(iii) as of the actual date of their issuance.

(2) Stock Dividends, Stock Distributions and Subdivisions. In the event the Corporation at any time or from time to time after the Series C Original Issue Date shall (i) declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock) or (ii) consolidate or merge with or into another corporation or convey all or substantially all of the assets of the Corporation to another corporation, then and in any such event, Additional Shares of Common Stock shall not be deemed to have been issued, but the Series C Conversion Price shall be adjusted in accordance with Article V(C)(4)(d)(vi) or Article V(C)(4)(d)(vii), respectively.

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

In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Article V(C)(4)(d)(iii)) without consideration or for a consideration per share less than the Series C Conversion Price in effect immediately prior to the time of such issue or sale (a "Dilutive Financing"), then, forthwith upon the Dilutive Financing, the Series C Conversion Price shall be reduced to the price (calculated to the nearest cent) determined by multiplying the Series C Conversion Price by a fraction (x) the numerator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to such issue, plus (B) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Series C Conversion Price, and (y) the denominator of which shall be (A) the number of shares of Common Stock outstanding immediately prior to such issue, plus (B) the number of such Additional Shares of Common Stock so issued, provided that, for the purposes of this Article V(C)(4)(d), all shares of Common Stock then held in escrow or issuable upon conversion of Series B-1 Stock, Series B-2 Stock, or Series C Stock outstanding immediately prior to such issue shall be deemed to be outstanding as of such date, and immediately after any Additional Shares of Common Stock are deemed to be issued pursuant to Article V(C)(4)(d)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

Notwithstanding the foregoing, the Series C Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$0.01, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together

with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.01 or more.

(v) Determination of Consideration. For purposes of this Article V(C)(4)(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

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

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

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

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Article V(C)(4)(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration until such subsequent adjustment occurs) payable to the corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number until such subsequent adjustment occurs) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Adjustment for Dividends, Distributions, Subdivisions, Combinations or Consolidation of Common Stock.

(1) Stock Dividends, Distributions or Subdivisions.

In the event the Corporation at any time or from time to time shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), the Series C Conversion Price in effect immediately prior to such stock dividend, stock distribution or subdivision shall, concurrently with the effectiveness of such stock dividend, stock distribution or subdivision, be proportionately decreased.

(2) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Series C Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(vii) Adjustment for Merger or Reorganization. Subject to the last sentence of this Article V(C)(4)(d)(vii), in case of any consolidation or merger of the Corporation with or into another corporation or the conveyance of all or substantially all of the assets of the Corporation to another corporation, each share of Series C Stock shall thereafter be convertible, at the option of the holder thereof in the manner described in the last sentence of this Article V(C)(4)(d)(vii), into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of the Series C Stock would have been entitled upon such consolidation, merger or conveyance as if such holder had converted to Common Stock immediately prior to such consolidation, merger or conveyance. In any such case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of these provisions set forth with respect to the rights and interest thereafter of the holders of the Series C Stock, to the end that these provisions (including provisions with respect to changes in and other adjustments of the Series C Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series C Stock. In the event that such merger or consolidation of the Corporation or the sale of all or substantially all its assets and properties as such events are more fully set forth in the first paragraph of this Article V(C)(4)(d)(vii), shall also be subject to the provisions of Article V(C)(2) above, each holder of the Series C Stock may elect to obtain the treatment of such holder's shares of the Series C Stock under this Article V(C)(4)(d)(vii) in lieu of that described in Article V(C)(2), notice of which election shall be submitted in writing to the Corporation at its principal offices no later than five (5) days before the effective date of such event.

(viii) Performance Adjustment in 2002. In the event that the Corporation's audited financial statements for the fiscal year ended December 31, 2002 shall report (x) less than \$12.5 million in revenue; (y) a Loss from Operations as reflected on the Income Statement greater than \$2.2 million; or (z) cash at December 31, 2002 less than \$5.5 million (which amount shall be calculated as cash less bank debt) (the "Performance Targets"), the Series C Conversion Price, if not previously adjusted under this Article V(C)(4)(d), shall be reduced to \$0.50 as last adjusted and in effect as of such date and shall be recalculated as though the Series C Stated Value Per Share were \$0.50 on the Series C Original Issue Date.

(ix) Performance Adjustment in 2003. In the event that the provisions of Article V(C)(4)(d)(viii) are triggered, and the Corporation's audited financial statements for the fiscal year ended December 31, 2003 shall report at least \$17.5 million in revenue, then the Series C Conversion Price, if not previously adjusted under this Article V(C)(4)(d), shall be increased to \$0.60, and if previously adjusted, as last adjusted and in effect as of such date, shall be recalculated as though the Series C Conversion Price were \$0.60 on the Series C Original Issue Date.

(x) Authority of the Board. The Board of Directors shall have the power to resolve any ambiguity or correct any error in this Article V(C)(4) and its action in doing so shall be final.

(e) No Impairment. The Corporation will not, by amendment of its Charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Article V(C)(4) and in the taking of all such action as may be necessary or appropriate in order to protect the Series C Conversion Rights against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Article V(C)(4)(d), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with these terms and furnish to each holder of Series C Stock a certificate setting forth such adjustment, readjustment or conversion and showing in detail the facts upon which such adjustment, readjustment or conversion is based; provided that the failure to promptly provide such notice shall not affect the effectiveness of such adjustment, readjustment or conversion. The Corporation shall, upon the written request at any time of any holder of the Series C Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series C Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if

any, of other property which at the time would be received upon the conversion of the Series C Stock.

(g) Notices of Record Date. In the event of (i) any taking by the Corporation of a record date of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is the same as cash dividends paid in previous quarters) or other distribution, or (ii) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation, and any transfer of all or substantially all of the assets of the Corporation to any other corporation, or any other entity or person, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of the Series C Stock at least 30 days prior to the record date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (C) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

(h) Common Stock Reserved. The Corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect conversion of the Series C Stock.

(i) No Duplication. Notwithstanding anything to the contrary in these Articles of Incorporation, the adjustments to the Series C Conversion Price and other adjustments to the rights of the Series C Stock hereunder, including this Article V(C)(4), shall be made without duplication.

5. Redemption.

(a) At any time and from time to time after May 23, 2007, any holder of the Series C Stock may, by written notice to the Corporation (a "Request"), require the redemption of all of the shares of Series C Stock then owned by such holder at a cash redemption price per share (the "Series C Redemption Price") equal to the greater of (1) the Series C Liquidation Preference or (2) the fair market value of the Series C Stock as determined by a majority of the members of the Board of Directors not interested in the redemption, or, if requested by the holder(s) making the Request, by an appraisal conducted by an appraiser selected by the Corporation and

acceptable to the Holder(s) making the Request. Such appraisal shall not consider discounts for illiquidity and lack of control and must consider any premium due to the rights and preferences of the Series C Stock. The Corporation shall, within twenty (20) days following its receipt of the Request, deliver to the requesting holder(s) of the Series C Stock a notice specifying the date on which such shares of Series C Stock shall be redeemed, which date shall not be more than sixty (60) days thereafter. Any date so designated for redemption, or if none, the sixtieth (60th) day after the date of a Request is herein referred to as a "Redemption Date."

(b) The Corporation shall not make payments in respect of the redemption of any shares of Series B-1 Stock, Series B-2 Stock or any other Junior Securities unless any unpaid amounts with respect to the Series C Redemption Price for all shares of Series C Stock shall have been paid in full or unless a majority of the holders of the Series C Stock then outstanding shall have consented thereto.

(c) In the event that for any reason, including without limitation a prohibition under applicable law, the Corporation is prohibited from redeeming or is otherwise unable to redeem any shares of the Series C Stock on a Redemption Date, upon five (5) days written notice thereof, the Corporation shall (unless such shares have been converted or the Request for redemption has been withdrawn) thereafter redeem such shares on the earliest date(s) on which the Corporation is no longer so prohibited from redeeming or unable to redeem such shares.

(d) Simultaneously with its receipt of the cash payment for the Series C Redemption Price, each redeeming holder of Series C Stock shall deliver to the Corporation or its agent the certificates representing the shares to be redeemed duly endorsed or assigned either to the Corporation or in blank; provided, however, that upon the payment by the Corporation of the Series C Redemption Price, all rights in respect of the shares of Series C Stock to be redeemed shall cease and terminate, and such shares shall no longer be deemed to be outstanding, whether or not the certificates representing such shares have been received by the Corporation.

(e) Once redeemed pursuant to the provisions of this Article V(C)(5), each such redeemed share of Series C Stock shall be canceled and not subject to reissuance and each such redeemed share shall, without any action on the part of the Corporation or the shareholders of the Corporation, be eliminated from the authorized number of shares of capital stock of the Corporation.

(f) In the event that any holder of Series C Stock exercises any of its rights as set forth in this Article V(C)(5), and the Corporation fails to redeem the shares of the capital stock in question on the Redemption Date, for

whatever reason, from the Redemption Date until the date such redemption is consummated (unless such shares have been converted, or the Request for redemption has been withdrawn, in which case until the date of such conversion or withdrawal), the applicable Series C Redemption Price shall bear interest at the rate of fifteen percent (15%) per annum, compounded annually. Such interest shall be payable by the Corporation upon the consummation of the applicable redemption transaction or upon conversion or withdrawal, as the case may be.

(g) In the event that the Corporation fails to redeem shares of Series C (whether due to the circumstances set forth in Article V(C)(5)(c) or (f) hereof) on or prior to the Redemption Date, each holder of Series C Stock to be redeemed hereunder shall, until the earlier to occur of the redemption of such Series C Stock or the conversion thereof, have the right upon delivery to the Corporation of written notice thereof to (1) convert such shares of Series C Stock into shares of Common Stock at the then current Series C Conversion Price, or (2) withdraw its Request that such Series C Stock be redeemed. In the event of such conversion or withdrawal, the Corporation's obligation to pay the applicable redemption price pursuant to the Request that was withdrawn, or for the shares that were converted, as the case may be, shall cease.

6. Voting Rights.

Except as otherwise required by law or these Articles of Incorporation, each holder of Series C Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series C Stock held by such holder are convertible (as adjusted from time to time pursuant to Article V(C)(4)(d) hereof) on all matters submitted to a vote of the common stockholders of the Corporation. Except as provided by law and by the provisions of these Articles of Incorporation, the holders of Series C Stock shall vote together with the holders of the Common Stock and the holders of any other capital stock of the Corporation having similar voting rights as a single class.

D. Preferred Stock

1. Issuance of Preferred Stock in Classes or Series. The Preferred Stock of the Corporation may be issued in one or more classes or series at such time or times and for such consideration as the Board of Directors may determine in its sole discretion. Each class or series shall be so designated as to distinguish the shares thereof from the shares of all other classes and series. All shares of a series shall have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise specifically provided in the designation and description of the series, with those of other series of the same class. Different

series of Preferred Stock shall not be construed to constitute different classes of shares for the purpose of voting by classes unless specifically provided for herein or in the designation and description of such series.

2. Authority to Establish Variations Between Classes or Series of Preferred Stock. The Board of Directors is expressly authorized, subject to the limitations provided by law and the provisions of these Articles of Incorporation, to provide, by adopting a resolution or resolutions, for the designation and issuance of the undesignated Preferred Stock in one or more classes or series, each with such preferences, limitations and relative rights and privileges as shall be set forth in articles of amendment to these Articles of Incorporation, which shall be filed in accordance with applicable law. Without limiting the foregoing, the authority of the Board of Directors with respect to each such class or series shall include the right to determine and fix:

(a) the distinctive designation of such class or series and the number of shares to constitute such class or series;

(b) the rate at which dividends on the shares of such class or series shall be declared and paid, or set aside for payment, whether dividends at the rate so determined shall be cumulative or accruing, and whether the shares of such class or series shall be entitled to any participating or other dividends in addition to dividends at the rate so determined, and if so, on what terms or in what events;

(c) the right or obligation, if any, of the Corporation to redeem shares of the particular class or series of Preferred Stock and, if redeemable, the price, terms and manner of such redemption;

(d) the special and relative rights and preferences, if any, and the amount or amounts per share, which the shares of such class or series of Preferred Stock shall be entitled to receive, in preference over any or all other class(es) or series of shares, upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (and distribution of the net assets of the Corporation in connection therewith);

(e) the terms and conditions, if any, upon which shares of such class or series shall be convertible into, or exchangeable for, shares of capital stock of any other class or series, including the price or prices or the rate or rates of conversion or exchange, the terms and conditions of conversion or exchange, the terms of adjustment, if any, and the manner of conversion or exchange;

(f) the obligation, if any, of the Corporation to retire, redeem or purchase shares of such class or series pursuant to a

sinking fund or fund of a similar nature or otherwise, and the terms and conditions of such obligation;

(g) voting rights, if any, including special, conditional or limited voting rights with respect to any matter, including with respect to the election of directors and matters adversely affecting any class or series of Preferred Stock;

(h) limitations, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock; and

(i) such other preferences, limitations or relative rights and privileges, or other rights, thereof as the Board of Directors, acting in accordance with these Articles of Incorporation, may deem advisable and which are not inconsistent with law or with the provisions of these Articles of Incorporation.

ARTICLE VI. COMMON STOCK

1. General. All shares of Common Stock shall be identical and shall entitle the holders thereof to the same powers, preferences, qualifications, limitations, privileges and other rights.

2. Relative Rights of Preferred Stock and Common Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Common Stock are expressly made subject and subordinate to those that may be fixed with respect to any shares of the Preferred Stock.

3. Voting Rights. Except as otherwise required by law or these Articles of Incorporation, each holder of Common Stock shall have one vote in respect of each share of stock held by him of record on the books of the Corporation on all matters submitted to a vote of stockholders of the Corporation. Except as otherwise required by law or these Articles of Incorporation or any shareholders' agreement to which the Corporation and its shareholders may be a party, the holders of Common Stock shall vote together as a single class on all matters submitted to shareholders for a vote (including in connection with any action by written consent of shareholders).

4. Dividends. Subject to the preferential rights of the Preferred Stock, the holders of shares of Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the assets of the

Corporation which are by law available therefor, dividends payable either in cash, in property or in shares of capital stock.

5. **Dissolution, Liquidation or Winding Up.** In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, after distribution in full of the preferential amounts to be distributed to the holders of shares of the Preferred Stock pursuant to Article V(A)(2), Article V(B)(2) and Article V(C)(2) hereof, holders of Common Stock shall be entitled, unless otherwise provided by law or these Articles of Incorporation, to receive all of the remaining assets of the Corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

ARTICLE VII. **OPTIONS, WARRANTS & RIGHTS**

1. Except as otherwise required by law or these Articles of Incorporation, the Corporation may issue options, warrants and rights for the purchase of shares of any class or series of the Corporation. The Board of Directors, in its sole discretion, shall determine the terms and conditions on which the options, warrants or rights are issued, their form and content and the consideration for which, and terms and conditions upon which, the shares are to be issued upon exercise thereof.

2. The terms and conditions of rights or options to purchase shares of any class or series of the Corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, receipt or holding of such rights or options by any person or persons, including any person or persons owning (beneficially or of record) or offering to acquire a specified number or percentage of the outstanding shares of any class or series, or any transferee or transferees of any such person or persons, or that invalidate or void such rights or options held by any such person or persons or any such transferee or transferees.

ARTICLE IVIII. **DIRECTORS**

The Board of Directors will consist of the number of individuals specified in or fixed in accordance with the Bylaws of the Corporation. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors. Members of the Board of Directors must be natural persons who are at least 18 years of age but need not be residents of Florida or shareholders of the Corporation.

ARTICLE IX.
LIMITATION OF LIABILITY

To the fullest extent permitted under the under the Florida Business Corporation Act, Chapter 607, Florida Statutes (the "FBCA"), including any amendments thereto and other applicable law, no director of the Corporation shall be personally liable to the Corporation or any of its shareholders or any other person for monetary damages for or relating to any statement, vote, decision or failure to act, regarding corporate management or policy or any other matter relating to the Corporation, by a director, unless the breach or failure to perform his or her duties as a director satisfies the standards set forth in Section 706.0831(1) of the FBCA (or a successor provision of such law) as the same exists or may hereafter be amended. To the fullest extent permitted under the FBCA and other applicable law, a director of the Corporation shall not be or held liable for any action taken as a director, or any failure to take action, if he or she performed the duties of his or her office in compliance with Section 607.0830 of the FBCA (or a successor provision of such law) as the same exists or may hereafter be amended. If the FBCA is amended hereafter to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent authorized by the FBCA, as so amended. Any repeal or modification of this Article IX shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE X.
INDEMNIFICATION

The Corporation shall indemnify its directors 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 of the Corporation and shall inure to the benefit of his or her heirs, executors, administrators, assigns 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 his or her heirs, executors, administrators, assigns 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(s) to indemnification conferred by this Article X 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 only upon the Corporation's receipt of an undertaking, in form reasonably satisfactory to the Corporation, by or on behalf of the director to

repay such amounts if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article X.

The Corporation may, to the extent authorized from time to time in the Corporation's Bylaws or otherwise by resolution of the Board of Directors, provide rights to indemnification and to the advancement of expenses to officers, employees and agents of the Corporation similar to those conferred in this Article X to directors of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this Article X shall not be exclusive of any other right(s) which any person may have or hereafter acquire or be granted or accorded under these Articles of Incorporation, the Bylaws of the Corporation, any statute, agreement, vote of shareholders or disinterested directors or otherwise.

Any repeal or modification of this Article X shall not adversely affect any right(s) to indemnification or to the advancement of expenses of a director 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.

The Corporation shall have the power and authority to purchase and maintain insurance (including, without limitation, errors and omissions insurance) on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, company, joint venture, trust or other enterprise, against any liability or expenses asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability or expenses under the provisions of this Article X.

ARTICLE XI. **DIRECTOR ACTION WITHOUT A MEETING**

Any action required or permitted to be taken at a meeting of the Board of Directors (or at a meeting of any committee of the Board of Directors) may be taken without a meeting, without prior notice and without a vote if the action is taken by the written consent of all members of the Board of Directors (or of such committee of the Board of Directors). The action must be evidenced by one or more written consents describing the action to be taken and signed by each director (or committee member), which consent(s) shall be filed in the minutes of the proceedings of the Board of Directors. The action taken shall be deemed effective when the last director signs the consent, unless the consent specifies otherwise, and shall have the effect of a meeting vote and may be described as such in any document.

ARTICLE XII.
SHAREHOLDER ACTION BY WRITTEN CONSENT

Any action required or permitted to be taken at any annual or special meeting of shareholders of the Corporation may be taken without a meeting, without prior notice and without a vote if such action is taken by the written consent of the holders of the outstanding shares of capital stock of the Corporation entitled to vote on such action having not less than the minimum number of votes (including, if and as applicable, the minimum number of votes of any voting groups entitled to vote separately on the matter) necessary to authorize or take such action at a meeting at which all shares of capital stock entitled to vote thereon were present and voted. In order to be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving shareholders having the requisite number of votes entitled to vote thereon, and delivered to the Secretary or other officer or agent of the Corporation having custody of the official minute books of the Corporation in which proceedings of meetings of the shareholders are recorded (the "Shareholder Minute Books"). Whenever action is taken pursuant to this Article XII, the written consent(s) of shareholders, or the written reports of inspectors appointed to tabulate shareholder consents, shall be filed in the Shareholder Minute Books. No written consent of shareholders shall be effective to take the corporate action referred to therein unless, within 60 days of the date of the earliest dated consent delivered in the manner provided in this Article XII, written consents executed and delivered by the number of holders required to take action are delivered to the Corporation by delivery as required in this Article XII. Within ten (10) days after obtaining authorization of corporate action by written consent of shareholders, notice shall be given to those shareholders who have not consented in writing or who are not entitled to vote on the action, which notice shall comply with the provisions of the FBCA. The action taken by written consent under this Article XII shall have the effect of a meeting vote and may be described as such in any document.

ARTICLE XIII.
BYLAW AMENDMENTS

In furtherance and not in limitation of the powers conferred by the laws of the State of Florida, each of the Board of Directors and the shareholders of the Corporation is expressly authorized and empowered to make, alter, amend and repeal the Bylaws of the Corporation in any respect not inconsistent with the laws of the State of Florida or with these Articles of Incorporation. For the shareholders to make, alter, amend or repeal the Bylaws of the Corporation in any respect, such action (in addition to any other vote required under applicable law or elsewhere in these Articles of Incorporation) must be approved by the affirmative vote of the holders of a majority of the outstanding shares of capital stock entitled to vote thereon. The Corporation's Board of

Directors may freely alter, amend or repeal the Bylaws of the Corporation unless (a) these Articles of Incorporation or the FBCA (as the same exists or may hereafter be amended) reserves the power to alter, amend or repeal the Bylaws generally or a particular Bylaw provision exclusively to the shareholders, or (b) the shareholders of the Corporation, in altering, amending or repealing the Bylaws generally or a particular Bylaw provision, provide expressly that the Board of Directors may not alter, amend or repeal the Bylaws or a particular Bylaw provision.

ARTICLE XIV.
AMENDMENT OF ARTICLES

The Corporation reserves the right to amend or repeal any provision contained in these Articles of Incorporation, or any amendment thereto, in the manner provided in the FBCA (as the same exists or may hereafter be amended), and any right conferred upon the shareholders is expressly subject to this reservation.

ARTICLE XV.
PRINCIPAL OFFICE

The principal office and mailing address of the Corporation is 10550 Deerwood Park Blvd., Building 300, Jacksonville, Florida 32256.

ARTICLE XVI.
REGISTERED OFFICE AND AGENT

The street address in Florida of the Corporation's registered office is 101 East College, Tallahassee, Florida 32301 and the registered agent at such address is Fred F. Harris, Jr.

IN WITNESS WHEREOF, Payformance Corporation, has caused these Amended and Restated Articles of Incorporation to be executed by its Senior Vice President and Chief Financial Officer on this 23rd day of May, 2002.

PAYFORMANCE CORPORATION

By: David W. Mayer

David W. Mayer, Senior
Vice President and
Chief Financial Officer