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10/22/97

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NAME: MARS, INC.

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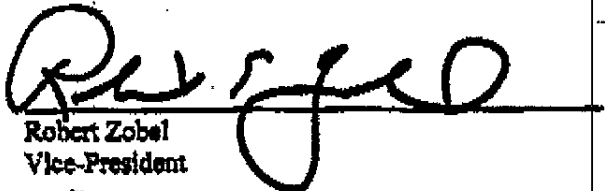
**ARTICLES OF AMENDMENT AND RESTATEMENT
OF THE
ARTICLES OF INCORPORATION
OF
MARS, INC.**

The Amended and Restated Articles of Incorporation of MARS, Inc., a Florida corporation ("Corporation"), filed with the Department of State on December 19, 1996, Charter Number P95000088716, be, and they are hereby amended as shown below:

All Articles of the Articles of Incorporation of this Corporation are either completely eliminated or amended in their entirety to read as shown in the Second Amended and Restated Articles of Incorporation of this Corporation, the original of which is attached hereto and made a part hereof.

The Second Amended and Restated Articles of Incorporation were duly adopted on October 20, 1997 by the Corporation's Board of Directors in order to establish the preferences, limitations and related rights of the Corporation's Series B Convertible Preferred Stock pursuant to Article V of the Corporation's Amended and Restated Articles of Incorporation and Florida Statutes Section 607.0602. The Second Amended and Restated Articles of Incorporation do not contain any amendment requiring shareholder approval.

IN WITNESS WHEREOF, the undersigned, being the President of this Corporation, has executed these Articles of Amendment and Restatement as of the 20th day of October, 1997.


Robert Zobel
Vice-President

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
MARS, INC.**

THE UNDERSIGNED, being the President of MARS, Inc., does hereby make, subscribe, file and acknowledge these Second Amended and Restated Articles of Incorporation ("Articles of Incorporation") for the purpose of continuing a corporation under the Florida Business Corporation Act.

**ARTICLE I
NAME**

The name of the corporation (hereinafter referred to as the "Corporation") is MARS, Inc.

**ARTICLE II
PRINCIPAL OFFICE AND REGISTERED AGENT**

The principal office of the Corporation shall be at 5300 N. Powerline Road, Fort Lauderdale, Florida 33309, or in any other city in the State of Florida designated by the Board of Directors from time to time. The name and address of the Corporation's registered agent in the State of Florida, whose Consent to Appointment as Registered Agent accompanies these Articles of Incorporation, is Robert Zobel, 5300 N. Powerline Road, Fort Lauderdale, Florida 33309.

**ARTICLE III
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the laws of the State of Florida, and the Corporation shall have

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all of the powers conferred upon corporations organized under the laws of the State of Florida to carry out such purpose.

ARTICLE IV TERM

The Corporation shall have perpetual existence.

ARTICLE V CAPITAL STOCK

1. *Authorized Capital Stock.* Except as otherwise provided by law, authorized shares of capital stock of the Corporation, regardless of class or series, may be issued by the Corporation, from time to time in such amounts, for such lawful consideration and for such corporate purposes as the Board of Directors may from time to time determine. All capital stock when issued and fully paid for shall be deemed fully paid and non-assessable. The total number of shares of all classes of capital stock which the Corporation shall have authority to issue shall be 300,000,000 consisting of:

- (a) 100,000,000 shares of Class A Common Stock, having a par value of \$.001 per share;
- (b) 100,000,000 shares of Class B Common Stock, having a par value of \$.001 per share; and
- (c) 100,000,000 shares of Preferred Stock, having a par value of \$.001 per share.

2. *Terms of Common Stock.*

(a) *General.* Except as otherwise required by law or as otherwise provided in these Articles of Incorporation, each share of each class of Common Stock (as hereinafter defined) shall have identical powers, preferences, qualifications, limitations and other rights. The Class A Common Stock and Class B Common Stock are hereinafter collectively referred to as the "Common Stock."

(b) *Voting Rights.* Except as otherwise required by law or as otherwise provided in these Articles of Incorporation: (i) each share of Class A Common Stock shall be entitled to one vote per share; (ii) each share of Class B Common Stock shall be entitled to ten votes per share; and

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(iii) the holders of Class A Common Stock and the holders of Class B Common Stock shall vote together as a single class on all matters submitted to a vote of stockholders.

(c) *Dividends.* Subject to the rights of any outstanding class or series of capital stock ranking senior to Common Stock as to dividends, dividends may be paid upon Common Stock in cash, property or securities as and when declared by the Board of Directors out of funds legally available therefor. As and when dividends are so declared and paid, the holders of Common Stock shall be entitled to participate in such dividends ratably on a per share basis; provided that: (i) if dividends are declared that are payable in shares of Common Stock, such dividends shall be declared and payable at the same rate to holders of each class of Common Stock, but the holders of Class A Common Stock shall receive dividends in Class A Common Stock (rather than dividends in Class B Common Stock), and the holders of Class B Common Stock shall receive dividends in Class B Common Stock, and (ii) if the dividends consist of other voting securities of the Corporation, the Corporation shall declare and pay such dividends in separate classes of securities, identical in all respects, except that the voting rights of each such security shall correspond to the class of security held.

(d) *Liquidation.* In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the holders of each class of Common Stock are entitled to share ratably in the net assets, if any, remaining after payment in full of all debts and liabilities of the Corporation and after the holders of any outstanding class or series of capital stock ranking senior to Common Stock shall have been paid in full the amounts to which such holders shall be entitled, or an amount sufficient to pay the aggregate amount to which such holders are entitled shall have been set aside for the benefit of the holders of such senior capital stock.

(e) *Stock Splits.* The Corporation may not split, divide or combine the shares of any class of Common Stock unless, at the same time, the Corporation splits, divides or combines, as the case may be, the shares of the other class of Common Stock in the same proportion and manner.

(f) *No Preemptive Rights.* The Board of Directors may from time to time issue any class or series of authorized stock of the Corporation, or any notes, debentures, bonds, or other securities convertible into or carrying options or warrants to purchase authorized stock of any class or series without offering any such stock, either in whole or in part, to the existing stockholders of any class or series. Except as otherwise provided in these Articles of Incorporation, no shareholder shall by reason of his holding shares of any class of capital stock have any preemptive or preferential rights to purchase or subscribe to stock of any class or series of the Corporation now or hereafter to

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be authorized, or any notes, debentures, bonds, or other securities convertible into or carrying options or warrants to purchase stock of any class or series now or hereafter to be authorized, whether or not the issuance of any such stock, or such notes, debentures, bonds or other securities, would adversely affect the dividend or voting rights of such stockholder; provided, all such newly authorized shares of stock of any class or series, or notes, debentures, bonds or other securities convertible into, or carrying options or warrants to purchase, stock of any class or series, may be issued and disposed of or sold by the Board of Directors on such terms and for such consideration, so far as may be permitted by law, and to such person or persons as the Board of Directors may determine in its discretion from time to time.

(g) *Conversion.* Each holder of Class B Common Stock is entitled to convert at any time at the holder's election, any or all of such holder's Class B Common Stock into shares of Class A Common Stock at the rate of one share of Class B Common Stock for one share of Class A Common Stock. Before any holder of a share converted pursuant to this Section 2(g) of this Article V shall be entitled to the rights of a holder of a share of Class A Common Stock into which such holder is converting, such holder must surrender the certificate therefor, duly endorsed, at the office of the Corporation or its transfer agent and registrar for capital stock and there give written notice to the Corporation at such office stating such holder's name or the name of such holder's nominee in which such holder wishes the certificate for the converted share of Common Stock to be issued and such holder's agreement to pay any applicable transfer taxes. The Corporation shall, as soon as practicable thereafter, issue and deliver to the holder or such holder's nominee, as the case may be, such certificate.

3. *Restrictions on Ownership and Transfer of Common Stock.* Shares of Class B Common Stock may only be issued to or owned by members of the "Begelman Family" (as hereinafter defined). In the event the ownership or the beneficial interest in any share of Class B Common Stock ceases to be vested in a member of the Begelman Family, such share shall, immediately upon the effectiveness of such divestiture, convert into a share of Class A Common Stock; provided, however, that, upon the death of a member of the Begelman Family holding Class B Common Stock, the shares of Class B Common Stock owned by such holder at the time of death shall remain Class B Common Stock if they are to be transferred to another member of the Begelman Family, without any intermediate holding by a person other than a member of the Begelman Family other than the personal representative of the deceased. The term "Begelman Family" means Mark D. Begelman and any person related to him by kinship or marriage, trusts or similar arrangements established solely for the benefit of one or more of them and partnerships and other companies that are wholly owned by them and that remain wholly owned by them.

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4. *Preferred Stock.* The Board of Directors is expressly authorized to issue from time to time all or any shares of Preferred Stock (other than the shares of Series A Preferred Stock), in one or more series, and to fix for each such series such voting powers, full or limited, or no voting powers, and such designations, preferences (including seniority upon liquidation), relative participating, optional or other special rights, redemption rights, conversion privileges and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such series and to the fullest extent as now or hereafter permitted by these Articles of Incorporation and the laws of the State of Florida. Unless a vote of any shareholder is required pursuant to a certificate or certificate establishing a series of Preferred Stock, the Board of Directors may from time to time increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series of Preferred Stock subsequent to the issuance of shares of that series. In case the number of shares of any series is so decreased, the shares constituting such reduction shall resume the status that such shares had prior to the adoption of the resolution originally fixing the number of shares of such series.

5. *Rights, Preferences and Restrictions of Series A Convertible Preferred Stock*

16,880,000 shares of the Corporation's Preferred Stock, par value \$0.001 per share, shall be designated as the "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"). Set forth below is a statement of the preferences, limitations and relative rights of the Series A Preferred Stock. Unless otherwise indicated, all cross-references in each subdivision of this Article refer to other paragraphs in such subdivision.

5.1 *Preferred Dividends.*

The holders of Series A Preferred Stock shall be entitled to receive, when and as dividends are declared by the Board of Directors of the Corporation upon the Class A Common Stock (whether such dividends shall be payable in cash, property, securities or otherwise), dividends at the rate per share declared upon the Class A Common Stock as if the Series A Preferred Stock had been converted to Class A Common Stock immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are determined. In the event that any dividend is payable in securities of the Corporation or any other entity ("Dividend Securities") and such securities to be issued are either voting securities of the Corporation or such other entity or securities which are convertible,

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exercisable or otherwise exchangeable for voting securities of the Corporation or such other entity and for any reason any holder of Series A Preferred Stock determines in its sole discretion that it would be detrimental to such holder or its affiliates to receive such securities in connection with such dividend, then the Corporation shall, to the extent it is in its power to do so, make available to such holder an amount of alternative securities equal to the amount of such Dividend Securities as such holder is entitled to receive in connection with such dividend which are identical to such Dividend Securities in all respects except for the fact that such alternate securities shall be non-voting securities or convertible, exercisable or otherwise exchangeable for non-voting securities (the "Alternative Securities"); provided further that if such Alternative Securities are nonvoting securities, such securities will be convertible into securities having the same voting rights as the related Dividend Securities, or any securities into which such Dividend Securities have been converted or exchanged upon the occurrence of such events as are specified by such holder. In no event, so long as any Series A Preferred Stock shall remain outstanding, shall any dividend whatsoever be declared or paid upon, nor shall any distribution be made upon, any shares of capital stock of the Corporation without the simultaneous declaration or payment of a dividend or distribution on the Series A Preferred Stock in the manner heretofore provided, nor shall more than 100,000 shares in the aggregate of capital stock of the Corporation be purchased or redeemed by the Corporation nor shall any moneys be paid to or made available for a sinking fund for the purchase or redemption of any shares of capital stock of the Corporation, without, in each such case (other than in the case of repurchases by the Corporation of shares of Common Stock pursuant to (i) paragraph 5.2 hereof, (ii) paragraph 5.3 hereof, (iii) Section 8.6 of the Series A Purchase Agreement, (iv) paragraph 5.10 hereof, or (v) the terms of any employment or employee stock repurchase agreement, stock option plan or agreement or similar arrangement between the Corporation and its employees in effect on the date of original issuance of the Series A Preferred Stock or approved by the holders of 51% of the outstanding shares of Series A Preferred Stock), the approval of the holders of 51% of the outstanding shares of the Series A Preferred Stock.

5.2 Liquidation. Upon any liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), whether voluntary or involuntary, the holders of the shares of Series A Preferred Stock, before any distribution or payment is made upon any Junior Securities, shall be paid an amount in cash equal to \$1.25 per share (the "Liquidation Value") plus all accrued and unpaid dividends thereon from the date of initial issuance of such shares of Series A Preferred Stock through and including the date of such Liquidation Event (subject to adjustment as provided in subparagraphs 5.4D(4) and 5.4E) (the "Preferential Payment Amounts"). If, upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series A Preferred Stock and other shares of capital stock having liquidation rights *pari passu* with the Series A Preferred Stock shall be insufficient to permit payment to such

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holders of the Preferential Payment Amounts, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series A Preferred Stock and other shares of capital stock having liquidation rights *pari passu* with the Series A Preferred Stock. The date on which the Corporation initially issues any share of Series A Preferred Stock (a "Series A Share") shall be deemed to be its "date of issuance" regardless of the number of times transfer of such Series A Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Series A Share. Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the Preferential Payment Amounts and the place where such amounts shall be payable, shall be given by mail, postage prepaid, not less than 30 days prior to the payment date stated therein, to the holders of record of Series A Preferred Stock, such notice to be addressed to each such holder at such holder's post office address as shown by the records of the Corporation.

5.3 Deemed Liquidation. The shares of Series A Preferred Stock shall be redeemable as follows:

A. Redemption. Not more than 45 days nor less than 20 days prior to the consummation of any proposed Fundamental Change (as defined in subparagraph 5.3D), and immediately upon obtaining knowledge of any proposed or actual Change in Ownership (as defined in subparagraph 5.3D), the Corporation shall give to each holder of shares of Series A Preferred Stock written notice of such Fundamental Change or Change in Ownership, setting forth in reasonable detail the terms and date of consummation thereof, and the Corporation shall give each holder of Series A Shares prompt written notice of any material change in the terms or timing of such transaction. If within 15 days after receipt of such notice any holder of Series A Shares shall elect, by written notice to the Corporation (a "Redemption Notice"), to have all or any portion of the outstanding Series A Shares of such holder redeemed, the Corporation shall redeem the same (in the manner and with the effect provided in subparagraphs 5.3B and 5.3C below) not later than, in the case of a Fundamental Change, the day of the effective date of consummation thereof and, in the case of a Change in Ownership, five days after the Corporation's receipt of the related Redemption Notice. A Redemption Notice shall be given by certified mail, postage prepaid, to the Corporation and shall state the total number of Series A Shares held by each such holder requesting a redemption be made pursuant to this subparagraph 5.3A, and shall specify the number of shares to be redeemed, the applicable redemption price (as set forth in subparagraph 5.3B) and the place and date of such redemption, which date (the "Redemption Date") shall not be a day on which banks in the City of New York are required or authorized to close. If, following delivery of any Redemption Notice, the proposed Fundamental Change or Change in Ownership does not occur, any election pursuant to this paragraph 5.3A shall be deemed to have been automatically rescinded. Except as provided in this

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subparagraph 5.3A and pursuant to Section 8.6 of the Series A Purchase Agreement, the Series A Preferred Stock shall not be redeemable.

B. Redemption Price. Any redemption of the Series A Preferred Stock pursuant to subparagraph 5.3A shall be at a price per share equal to the price per share determined pursuant to Section 5.2 above treating the Redemption Date as the date of a Liquidation Event. If a Redemption Notice shall have been duly given to the Corporation pursuant to subparagraph 5.3A and if on or before the Redemption Date the funds necessary for redemption shall have been set aside so as to be and continue to be available therefor, then, notwithstanding that any certificate for shares of Series A Preferred Stock to be redeemed shall not have been surrendered for cancellation, after the close of business on such Redemption Date, the shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall, forthwith after the close of business on the Redemption Date, cease, except only the right of the holders thereof to receive, upon presentation of the certificate representing shares so called for redemption, the applicable redemption price therefor, without interest thereon.

C. Redeemed or Otherwise Acquired Shares to Be Retired. Any shares of the Series A Preferred Stock redeemed pursuant to this paragraph 5.3 or otherwise acquired by the Corporation in any manner whatsoever shall be permanently retired and shall not under any circumstances be reissued, and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce the number of authorized shares of Series A Preferred Stock accordingly.

D. Definitions. "Fundamental Change" means any (i) sale or transfer of all or substantially all of the assets of the Corporation and its subsidiaries on a consolidated basis in any transaction or series of transactions (other than sales of equipment or inventory in the ordinary course of business) or (ii) merger or consolidation to which the Corporation is a party, other than a merger in which the Corporation is the surviving corporation and which will not result in more than 49% of the Corporation's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the Corporation's board of directors being owned of record or beneficially by persons or entities other than the holders of such capital stock immediately prior to such merger. "Change in Ownership" means any sale or transfer of Common Stock by the Begelman Family in any transaction (or series of transactions) which results in the Begelman Family owning beneficially and of record less than 50% of the shares of Common Stock held by the Begelman Family as of the date of the original issuance of the Series A Preferred Stock.

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5.4 Conversion.

A. Right to Convert. At any time and from time to time, any holder of Series A Preferred Stock shall have the right, at its option, to convert any such shares of Series A Preferred Stock (except that upon any liquidation, dissolution or winding up of the Corporation, the right of conversion shall terminate at the close of business on the last full business day next preceding the date fixed for payment of the amount distributable on the Series A Preferred Stock), into such number of fully paid and nonassessable shares of Conversion Stock as is obtained by multiplying the number of shares of Series A Preferred Stock so to be converted by \$1.25 and dividing the result by the conversion price of \$1.25 per share, or by the conversion price as last adjusted in accordance with this paragraph 5.4 and in effect at the date any share or shares of Series A Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, being referred to herein as the "Conversion Price").

The right of conversion contained in this subparagraph 5.4A shall be exercised by the holder of shares of Series A Preferred Stock by giving written notice that such holder elects to convert a stated number of shares of Series A Preferred Stock into Conversion Stock, and by surrender of a certificate or certificates for the shares so to be converted 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 holder or holders of the Series A Preferred 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 Conversion Stock shall be issued.

B. Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in subparagraph 5.4A and surrender of the certificate or certificates for the share or shares of Series A Preferred Stock to be converted, 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 shares of Conversion Stock issuable upon the conversion of such share or shares of Series A Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected, and the Conversion Price shall be determined, as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Series A Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Conversion Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

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C. Fractional Shares; Dividends; Partial Conversion. In lieu of delivering any fractional share that would otherwise be deliverable upon any conversion of Series A Preferred Stock, the Corporation shall pay in cash to the holder thereof an amount equal to the Market Price (as defined below) of such fractional share as of the date of such conversion. No payment or adjustment shall be made upon any conversion on account of any cash dividends on the Conversion Stock issued upon such conversion. At the time of each conversion, the Corporation shall pay in cash an amount equal to all dividends declared and unpaid on the shares surrendered for conversion to the date upon which such conversion is deemed to take place as provided in subparagraph 5.4B. If the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 5.4A exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder thereof, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. "Market Price" of any security means the average of the closing prices of such security's sales on all securities exchanges on which such security may at the time be listed, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, or, if on any day such security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau Incorporated, or any similar successor organization, in each such case, averaged over a period of 21 days consisting of the day as of which "Market Price" is being determined and the 20 consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the "Market Price" shall be the fair value thereof determined in good faith by the Corporation's board of directors.

D. Adjustment of Price Upon Issuance of Common Stock. Except as provided in subparagraph 5.4F hereof, if and whenever (on or after the date of original issuance of the Series A Preferred Stock) the Corporation issues or sells, or in accordance with subparagraphs 5.4D(1) through 5.4D(7) is deemed to have issued or sold, any shares of its Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, immediately upon such issue or sale, the Conversion Price shall be reduced to the Conversion Price determined by dividing (i) the sum of (A) the product derived by multiplying the Conversion Price in effect immediately prior to such issue or sale times the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (B) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) the number of

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shares of Common Stock Deemed Outstanding immediately after such issue or sale. "Common Stock Deemed Outstanding" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to subparagraph 5.4D(1) and 5.4D(2) hereof whether or not such Options or Convertible Securities are actually exercisable at such time, but excluding any shares owned or held by or for the account of the Corporation. For purposes of this subparagraph 5.4D, the following subparagraphs 5.4D(1) to 5.4D(7) shall also be applicable:

(1) **Issuance of Rights or Options.** If at any time the Corporation in any manner grants or sells (whether directly or by assumption in a merger or otherwise) any rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or securities convertible into or exchangeable for Common Stock (such rights or options being herein called "Options" and such convertible or exchangeable stock or securities being herein called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issuance or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) is less than the Conversion Price in effect immediately prior to the time of the granting or sale of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting or sale of such Options and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph 5.4D(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

(2) **Issuance of Convertible Securities.** If the Corporation in any manner issues (whether directly or by assumption in a merger or otherwise) or sells any Convertible Securities, whether or not the rights to exchange or convert thereunder are immediately exercisable,

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and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issuance or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) is less than the Conversion Price in effect immediately prior to the time of such issuance or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issuance or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in subparagraph 5.4D(3) below, no adjustment of the Conversion Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities, and (b) if any such issuance or sale of such Convertible Securities for which adjustments of the Conversion Price has been or is to be made pursuant to other provisions of this subparagraph 5.4D, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale.

(3) **Change in Option Price or Conversion Rate.** If (i) the purchase price provided for in any Option referred to in subparagraph 5.4D(1), (ii) the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph 5.4D(1) or 5.4D(2) or (iii) the rate at which any Convertible Securities referred to in subparagraph 5.4D(1) or 5.4D(2) are convertible into or exchangeable for Common Stock shall change at any time, then the Conversion Price in effect at the time of such event shall, as required, immediately be readjusted to such Conversion Price which would have been in effect at such time had such Options or Convertible Securities which then remain outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and on the expiration of any such Option or the termination of any such right to convert or exchange such Convertible Securities, the Conversion Price, then in effect hereunder shall, as required, forthwith be increased to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued, and the Common Stock issuable thereunder shall no longer be deemed to be outstanding. If the purchase price provided for in any such Option referred to in subparagraph 5.4D(1) or the rate at which any Convertible Securities referred to in subparagraph 5.4D(1) or 5.4D(2) are convertible into or exchangeable for Common Stock shall be reduced at any time under or by reason of provisions with respect thereto designed to protect against dilution, then, in case of the delivery of Common Stock upon the exercise of any such Option or upon conversion or exchange of any such

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Convertible Securities, the Conversion Price then in effect hereunder shall, as required, forthwith be adjusted to such respective amount as would have been obtained had such Option or Convertible Securities never been issued as to such Common Stock and had adjustments been made upon the issuance of the shares of Common Stock delivered as aforesaid, but only if as a result of such adjustment the Conversion Price then in effect hereunder is thereby reduced.

(4) **Stock Dividends.** If the Corporation declares a dividend or makes any other distribution upon any stock of the Corporation payable in Common Stock, Options, Convertible Securities or other assets of the Corporation (other than cash dividends payable out of retained earnings), any Common Stock, Options, Convertible Securities or other assets, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration, and the Conversion Price shall be reduced as if the Corporation had subdivided its outstanding shares of Common Stock into a greater number of shares, as provided in subparagraph 5.4E.

(5) **Consideration for Stock.** If any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. The amount of consideration deemed to be received by the Corporation pursuant to the foregoing provisions of this subparagraph 5.4D(5) upon any issuance and/or sale of shares of Common Stock, Options or Convertible Securities, pursuant to an established compensation plan of the Corporation, to directors, officers or employees of the Corporation in connection with their employment shall be increased by the amount of any tax benefit realized by the Corporation as a result of such issuance and/or sale, the amount of such tax benefit being the amount by which the Federal and/or state income or other tax liability of the Corporation shall be reduced by reason of any deduction or credit in respect of such issuance and/or sale. If any Options are issued in connection with the issuance and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the Corporation, such Options are deemed to have been issued without consideration, and the Conversion Price shall be reduced as if the Corporation had subdivided its outstanding shares of Common Stock into a greater number of shares, as provided in subparagraph 5.4E hereof.

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(6) **Record Date.** If the Corporation takes a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities, or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(7) **Treasury Shares.** The initial disposition of any shares owned or held by or for the account of the Corporation shall be considered an issuance or sale of Common Stock for the purposes of this subparagraph 5.4D.

E. **Subdivision or Combination of Stock.** If the Corporation in any manner subdivides one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, if the Corporation in any manner combines one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased. The Corporation will at all times take such action as is necessary to assure that an adequate number of shares of Class A Common Stock is available and reserved for issuance upon conversion of all outstanding shares of Series A Preferred Stock. The Corporation will not take any action with respect to any series or class of its capital stock if subsequent to such action the provisions of the preceding sentence could not be complied with.

F. **Certain Issues of Common Stock Excepted.** Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price upon the occurrence of any of the following events: (i) the issuance of Class A Common Stock upon conversion of outstanding shares of Series A Preferred Stock, (ii) the issuance of up to an aggregate of 1,921,000 shares of Class A Common Stock upon exercise of options or conversion or exchange of securities outstanding on the date of original issuance of the Series A Preferred Stock, and (iii) the issuance to employees, directors or consultants of the Corporation of options approved by the Corporation's board of directors (and the subsequent issuance of Class A Common Stock pursuant to such options) to purchase shares of Class A Common Stock; provided that such options shall not be granted for less than fair market value on the date of issuance thereof (as determined in good faith by the Corporation's board of directors).

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G. **Reorganization, Reclassification, Consolidation, Merger or Sale.** If any reorganization or reclassification of the capital stock of the Corporation, any consolidation or merger of the Corporation, or any sale of all or substantially all of its assets shall be effected in such a way (including, without limitation, by way of consolidation or merger) that holders of Common Stock are entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provisions (in form reasonably satisfactory to the holders of at least 51% of the outstanding shares of the Series A Preferred Stock) shall be made whereby each holder of a share or shares of Series A Preferred Stock shall thereafter have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of or in addition to (as the case may be) the shares of Conversion Stock of the Corporation immediately theretofore receivable upon the conversion of such shares or shares of the Series A Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Conversion Stock equal to the number of shares of such stock immediately theretofore so receivable had such reorganization, reclassification, consolidation, merger or sale not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including, without limitation, provisions for adjustment of the applicable conversion price) shall thereafter be applicable, as nearly practicable, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights (including, if necessary to effect the adjustments contemplated herein, an immediate adjustment, by reason of such reorganization, reclassification, consolidation, merger or sale, of the Conversion Price to the value for the Conversion Stock reflected by the terms of such reorganization, reclassification, consolidation, merger or sale if the value so reflected is less than the Conversion Price in effect immediately prior to such reorganization, reclassification, consolidation, merger or sale). In the event of a merger or consolidation of the Corporation as a result of which a greater or lesser number of shares of common stock of the surviving corporation is issuable to holders of Common Stock outstanding immediately prior to such merger or consolidation, the Conversion Price in effect immediately prior to such merger or consolidation shall be adjusted in the same manner as though there were a subdivision or combination of the outstanding shares of Common Stock of the Corporation. The Corporation will not effect any such consolidation or merger, or any sale of all or substantially all of its assets and properties, unless prior to the consummation thereof the successor Corporation (if other than the Corporation) resulting from such consolidation or merger or the corporation purchasing such assets shall assume by written instrument (in form reasonably satisfactory to the holders of at least two-thirds of the outstanding shares of the Series A Preferred Stock), executed and mailed or delivered to each holder of shares of Series A Preferred Stock at the last address of such holder appearing on the books of the Corporation, the obligation to deliver to

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such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to receive.

H. Certain Events. If any event occurs of the type contemplated by the provisions of this paragraph 5.4 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's board of directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series A Preferred Stock; provided that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this paragraph 5.4 or decrease the number of shares of Conversion Stock issuable upon conversion of each share of Series A Preferred Stock.

I. Automatic Conversion. If at any time while any of the Series A Preferred Stock is outstanding, the Corporation completes a public offering involving the sale by the Corporation of shares of Common Stock (i) providing aggregate gross proceeds (before deducting underwriting discounts and expenses) to the Corporation of at least \$30 million and (ii) at a public offering price that represents an aggregate valuation of the Common Stock Deemed Outstanding immediately prior to such offering that is not less than \$150 million, then all outstanding shares of Series A Preferred Stock shall, automatically and without further action on the part of the holders of the Series A Preferred Stock, be converted into shares of Conversion Stock in accordance with the terms of this paragraph 5.4 with the same effect as if the certificates evidencing such shares had been surrendered for conversion, such conversion to be effective simultaneously with the closing of such public offering; provided, however, that certificates evidencing the shares of Conversion Stock issuable upon such conversion shall not be issued except on surrender of the certificates for the shares of the Series A Preferred Stock so converted.

J. Notice of Adjustment. Immediately upon any adjustment made pursuant to this paragraph 5.4, the Corporation shall give written notice thereof, by first class mail, postage prepaid, addressed to each holder of shares of Series A Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Conversion Price or the number of shares of Conversion Stock issuable upon conversion of the Series A Preferred Stock, as the case may be, resulting from such adjustment and shall set forth in reasonable detail the method of calculation of such adjustment and the facts upon which such calculation is based.

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K. Other Notices. If at any time:

- (1) the Corporation declares any dividend upon its Common Stock payable in cash or stock or makes any other distribution to the holders of its Common Stock;
- (2) the Corporation offers for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;
- (3) there is any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with, or a sale of all or substantially all its assets or its and its subsidiaries' assets on a consolidated basis;
- (4) there is a voluntary or involuntary dissolution, liquidation or winding up of the Corporation; or
- (5) the Corporation takes any action or there occurs any event which would result in an automatic conversion of the Series A Preferred Stock pursuant to subparagraph 5.4I, then, in any one or more of said cases, the Corporation shall give, by first class mail, postage prepaid, addressed to each holder of any shares of Series A Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 20 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 20 days' prior written notice of the date when the same shall take place and (c) in the case of any event which would result in an automatic conversion of the Series A Preferred Stock pursuant to subparagraph 5.4I, at least 20 days' prior written notice of the date on which the same is expected to be completed. Each notice pursuant to clause (a) above shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and each notice pursuant to clause (b) above shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be.

L. Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized and unissued Common Stock or its treasury shares, solely for the purpose of issuance upon the conversion of the Series A Preferred Stock as herein provided, such

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number of shares of Conversion Stock as shall then be issuable upon the conversion of all outstanding shares of Series A Preferred Stock into Conversion Stock. The Corporation covenants that all shares of Conversion Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof. The Corporation will take all such action as may be necessary to assure that all such shares of Conversion Stock may be so issued without violation of any applicable law or regulation, or of any requirements of any national securities exchange upon which the Class A Common Stock of the Corporation may be listed. The Corporation will not take any action which results in any adjustment of the Conversion Price or the number of shares of Conversion Stock issuable upon the conversion of the Series A Preferred Stock if the total number of shares of Conversion Stock issued and issuable after such action upon conversion of the Series A Preferred Stock would exceed the total number of shares of Conversion Stock then authorized by the Corporation's Articles of Incorporation.

M. No Reissuance of Preferred Stock. Shares of Series A Preferred Stock that are converted into shares of Conversion Stock as provided herein shall not be reissued.

N. Issue Tax. The issuance of certificates for shares of Conversion Stock upon conversion of the Series A Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series A Preferred Stock which is being converted.

O. Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Series A Preferred Stock or of any shares of Conversion Stock issued or issuable upon the conversion of any shares of Series A Preferred Stock in any manner which interferes with the timely conversion of such Series A Preferred Stock.

5.5 Voting Rights.

A. Each holder of the Series A Preferred Stock (i) shall be entitled to vote, together as a single class with the holders of the Common Stock, on all matters submitted to the shareholders for a vote, (ii) shall have one vote for each share of Conversion Stock that would be issuable to such holder upon the conversion of all the shares of Series A Preferred Stock held by such holder on the record date for the determination of shareholders entitled to vote and (iii) shall be entitled to notice of each shareholders' meeting and consent of shareholders in accordance with the Bylaws of the Corporation. In addition, the holders of the Series A Preferred Stock shall be

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entitled to vote separately as a class for the election of two (2) members of the Corporation's Board of Directors by the holders of a majority of the outstanding shares of Series A Preferred Stock (the "Series A Directors"), and the holders of 35% or more of the Series A Preferred Stock outstanding at any time shall have the right to call a meeting of the holders of Series A Preferred Stock for purposes of electing or removing the Series A Directors.

B. The Corporation agrees to reimburse all Series A Directors for reasonable travel and other out-of-pocket expenses incurred by each such director in respect of such director's attendance at meetings of the Board or any committee thereof.

5.6 **Issuance of Preferred Stock.** Except as expressly provided in this Section 5 of Article V, the Corporation shall not issue any shares of preferred stock senior in rights or preferences to the Series A Preferred Stock without the written consent of the holders of 51% of the outstanding shares of the Series A Preferred Stock.

5.7 **Definitions.**

"Change in Ownership" has the meaning set forth in paragraph 5.3D hereof.

"Class A Common Stock" means the Corporation's Class A Common Stock, par value \$.001 per share, and any securities issued in respect of such securities or into which such securities are converted or exchanged.

"Common Stock" means collectively, the Corporation's Class A Common Stock, the Corporation's Class B Common Stock and any capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par value in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

"Conversion Stock" means shares of the Corporation's Class A Common Stock; provided that if there is a change such that the securities issuable upon conversion of the Series A Preferred Stock are issued by an entity other than the Corporation or there is a change in the type or class of securities so issuable, then the term "Conversion Stock" shall mean one share of the security issuable upon conversion of the Series A Preferred Stock if such security is issuable in shares, or

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shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

"Convertible Securities" has the meaning set forth paragraph 5.4D(1) hereof.

"Fundamental Change" has the meaning set forth in paragraph 5.3D hereof.

"Investor Shareholder" means each purchaser of Series A Preferred Stock pursuant to the Series A Purchase Agreement and their respective successors and assigns.

"Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series A Preferred Stock and any other series or class of capital stock on a parity with, or senior to, the Series A Preferred Stock.

"Market Price" has the meaning set forth in paragraph 5.4C hereof.

"Options" has the meaning set forth in paragraph 5.4D(1) hereof.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Securities Act" means the Securities Act of 1933, as amended.

"Series A Purchase Agreement" means the Preferred Stock Purchase Agreement, dated as of December 20, 1996 by and among the Corporation and the several Persons party thereto.

"Trust I" means the Pamela M. Begelman Irrevocable Trust for the benefit of Matthew Brian Begelman, dated December 6, 1995.

"Trust II" means the Mark D. Begelman Irrevocable Trust for the benefit of Lauren Andrea Begelman, dated December 6, 1996.

5.8 Right of First Refusal on Corporation's Issuance of Equity Equivalents.

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A. If at any time prior to the consummation of a Qualifying Public Offering the Corporation wishes to issue and sell any equity securities or any options, warrants or other rights to acquire equity securities (the "Equity Equivalents") to any person or persons, the Corporation shall promptly deliver a notice of intention to sell (the "Corporation's Notice of Intention to Sell") to each of the Investor Shareholders setting forth a description of the Equity Equivalents to be sold and the proposed purchase price and terms of sale. Upon receipt of the Corporation's Notice of Intention to Sell, each Investor Shareholder shall have the right to elect to purchase, at the price and on the terms stated in the Corporation's Notice of Intention to Sell, a number of the Equity Equivalents equal to such person's aggregate proportionate ownership of Conversion Stock and rights to acquire Conversion Stock (calculated on a fully-diluted basis assuming all holders of then outstanding warrants, options and convertible securities of the Corporation (including the Series A Preferred Stock) had converted such securities or exercised such warrants or options immediately prior to the delivery of the Corporation's Notice of Intention to Sell) held by all shareholders of the Corporation multiplied by the number of Equity Equivalents to be sold. Such election is to be made by each of the Investor Shareholders by written notice to the Corporation within fifteen (15) days after receipt by such Investor Shareholder of the Corporation's Notice of Intention to Sell (the "Acceptance Period for Equity Equivalents"). Failure to deliver such notice within such Acceptance Period for Equity Equivalents shall be deemed a rejection of the Corporation's offer. Each Investor Shareholder shall also have the option, exercisable by so specifying in such written notice, to purchase on a pro rata basis similar to that described above, any remaining Equity Equivalents not purchased by other Investor Shareholders, in which case the Investor Shareholders exercising such further option shall be deemed to have elected to purchase such remaining Equity Equivalents on such pro rata basis as described above (provided that the denominator used to determine pro rata ownership shall be the number of shares of Conversion Stock, determined on a fully diluted basis, held by all holders exercising such further option). In the event that the Equity Equivalents to be issued at any time as contemplated by this paragraph 5.9 are either voting securities of the Corporation or securities which are convertible, exercisable or otherwise exchangeable for voting securities of the Corporation and for any reason any Investor Shareholder determines in its sole discretion that it would be detrimental to such Investor Shareholder or its affiliates to purchase such securities as provided for hereby, then the Corporation shall make available to such Investor Shareholder an amount of alternative securities equal to the amount of such Equity Equivalents as such Investor Shareholder is entitled to purchase pursuant to the terms hereof which are identical to such Equity Equivalents in all respects except for the fact that such alternate securities shall be non-voting securities or convertible, exercisable or otherwise exchangeable for non-voting securities (the "Alternative Securities"); provided further that if such Alternative Securities are nonvoting securities, such securities will be convertible into securities having the same voting rights as the related Equity Equivalents upon the occurrence of such events as are specified by such Investor Shareholder.

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B. If effective acceptances shall not be received pursuant to paragraph 5.8A above in respect of all Equity Equivalents or Alternative Securities, then the Corporation may, at its election, during a period of one hundred twenty (120) days following the expiration of the Acceptance Period for Equity Equivalents, enter into an agreement to sell and issue all of the remaining offered Equity Equivalents as to which it has not received effective acceptances to another person at a price and upon terms not more favorable to such person than those stated in the Corporation's Notice of Intention to Sell; provided, however, that failure by any Investor Shareholder to exercise its option to purchase with respect to one offering, sale and issuance of Equity Equivalents shall not affect its option to purchase Equity Equivalents or rights to acquire Equity Equivalents in any subsequent offering, sale and purchase. In the event the Corporation has not sold the Equity Equivalents, or entered into a binding agreement to sell the Equity Equivalents, within such one hundred twenty (120) - day period, the Corporation shall not thereafter issue or sell any Equity Equivalents without first offering such securities to the Investor Shareholders in the manner provided in paragraph 5.8A hereof.

C. If any Investor Shareholder gives the Corporation notice, pursuant to the provisions of this paragraph 5.8A that such Investor Shareholder desires to purchase any of the Equity Equivalents or Alternative Securities, payment therefor shall be by check or wire transfer, against delivery of the securities at the executive offices of the Corporation within fifteen (15) days after giving the Corporation such notice, or, if later, the closing date as mutually agreed between the Corporation and such Shareholder for the sale of such Equity Equivalents or Alternative Securities. In the event that any such proposed issuance is for a consideration other than cash, any Investor Shareholder will be entitled to pay cash for each share or other unit, in lieu of such other consideration, in the amount determined in good faith by the Board of Directors of the Corporation (the "Board") to constitute the fair value of such consideration other than cash to be paid per share or other unit.

D. The right of first refusal contained in this paragraph 5.8A shall not apply to: (i) the issuance of shares of Common Stock as a stock dividend or upon any subdivision or stock split of the outstanding shares of Common Stock; (ii) the issuance of shares of Common Stock upon conversion of any shares of convertible securities (including, without limitation, the Series A Preferred Stock); (iii) the issuance of shares of Class A Common Stock to officers, directors and other employees of the Corporation that may be issued subsequent to the date hereof to such persons upon exercise of options heretofore or hereafter granted to such persons and in such number as the Board shall approve; provided that such options granted hereafter shall not be granted for less than fair market value on the date of issuance thereof (as determined in good faith by the Board); (iv) the issuance of shares of Class A Common Stock upon a Qualifying Public Offering or (v) the issuance

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of Class A Common Stock in return for consideration other than cash in connection with any joint venture, or acquisition or other business combination, provided any such issuance has been approved by the Board.

E. As used herein, a "Qualifying Public Offering" means an underwritten initial public offering (underwritten by an investment banking firm or firms of national reputation) involving shares of the Corporation's Common Stock (1) providing aggregate gross proceeds (before deducting underwriting discounts and expenses) to the Corporation of at least \$30 million and (2) at a public offering price that represents an aggregate valuation of the fully diluted Common Stock, immediately preceding such public offering, that is not less than \$150 million.

5.9 Right of Co-Sale.

A. If at any time prior to a Qualifying Public Offering any holder of Class B Common Stock (the "Selling Shareholder") wishes to sell, pledge or transfer all or any portion of its Class B Common Stock (which shares must be converted into Class A Common Stock prior to any such sale), rights to acquire Common Stock or other equity securities (other than Series A Preferred Stock) of the Corporation, such Selling Shareholder shall promptly deliver a notice of intention to sell (a "Sale Notice") to the Corporation and to each Investor Shareholder setting forth the securities to be sold ("Subject Securities") and the proposed purchase price and terms of sale, which shall be for cash or obligations to pay cash. Upon receipt of the Sale Notice, the Investor Shareholders shall have the right to elect to sell, at the price and on the terms stated in the Sale Notice, a pro rata portion of the total holdings of Common Stock, Series A Preferred Stock and rights to acquire Common Stock (calculated on a fully-diluted basis assuming all holders of then outstanding warrants, options and convertible securities of the Corporation (including the Series A Preferred Stock) had converted such securities or exercised such warrants or options immediately prior to the delivery of the Sale Notice) to be sold equal to a fraction the numerator of which is such Shareholder's aggregate proportionate ownership of Common Stock, Series A Preferred Stock and rights to acquire Common Stock (calculated on a fully-diluted basis assuming all holders of then outstanding warrants, options and convertible securities of the Corporation (including the Series A Preferred Stock) had converted such securities or exercised such warrants or options immediately prior to delivery of the Sale Notice) and the denominator of which is the aggregate proportionate ownership of Common Stock, Series A Preferred Stock and rights to acquire Common Stock (calculated on a fully-diluted basis assuming all holders of then outstanding warrants, options and convertible securities of the Corporation (including the Series A Preferred Stock) had converted such securities or exercised such warrants or options immediately prior to the Sale Notice) held by the Selling Shareholder and the Investor Shareholders. Such election shall be made by written notice

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to the Corporation and the Selling Shareholder within ten (10) Business Days after the receipt by the Investor Shareholders of the Sale Notice. Failure to deliver notice of an Investor Shareholder's election to exercise its right of co-sale within such period shall be deemed a rejection of such right. For purposes of participating in any such sale of Subject Securities which are Common Stock, if any Investor Shareholder is selling Series A Preferred Stock such Investor Shareholder shall be deemed to be selling the Common Stock to which such Series A Preferred Stock is convertible into, at the price and on the terms applicable to the Common Stock being sold by the Selling Shareholder as set forth in the Sale Notice. Any Subject Securities not sold pursuant to the foregoing, shall again be subject to the restrictions contained in this paragraph 5.9 and shall not thereafter be sold, pledged or transferred, except in compliance with the applicable provisions of this paragraph 5.9 and the remainder of the Articles.

B. This paragraph 5.9 shall not apply to any transfer of Common Stock by a member of the Begelman Family for estate planning purposes or by gift to such person's spouse, children or other direct family members or to any trust established for the benefit of such person and/or such person's spouse, children, other family members or the estate of any such person, or any other sale or transfer of Common Stock in one or more transactions in which the aggregate number of shares of Common Stock transferred in such sale, when taken together with all prior sales of Common Stock by such Selling Shareholder, does not exceed in the aggregate 900,000 shares by Mark Begelman, 300,000 shares by Trust I and 300,000 shares by Trust II, respectively.

5.10 Corporation Right of First Refusal.

A. Other than in connection with any transfer of Series A Preferred Stock pursuant to a registration statement under the Securities Act, if at any time any Investor Shareholder desires to transfer shares of Series A Preferred Stock to a Person who, upon the consummation of such transfer, would own at least 10% of the then outstanding shares of Series A Preferred Stock (a "10% Transferee"), such transferring Shareholder shall promptly deliver notice of its intention to sell (a "Preferred Stock Sale Notice") to the Corporation setting forth the securities to be sold ("Subject Preferred Shares"), the proposed 10% Transferee and the proposed purchase price and terms of sale, which shall be for cash or obligations to pay cash. Upon receipt of the Preferred Stock Sale Notice the Corporation shall have the right to elect to purchase, at the price and on the terms stated in the Preferred Stock Sale Notice, all, but not less than all, the Subject Preferred Shares, by delivering notice to the transferring Shareholder within fifteen (15) days of receipt of the Preferred Stock Sale Notice (the "Corporation Option Period").

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B. If the Corporation has not elected to purchase all, but not less than all, of the Subject Preferred Shares, the transferring Shareholder may, at its election, during a period of one hundred eighty (180) days following the expiration of the Corporation Option Period, sell, transfer, assign or otherwise convey all or any portion of the Subject Preferred Shares to the proposed 10% Transferee on the terms and conditions specified in the Preferred Stock Sale Notice.

Nothing contained herein shall be deemed to place any additional restriction on the Investor Shareholders to transfer Series A Preferred Stock to any Person who would not become a 10% Transferee.

C. The purchase of Subject Preferred Shares by the Corporation pursuant to this paragraph 5.10 shall be closed at the Corporation's executive offices within twenty (20) days after the expiration of the Corporation Option Period. At the closing, the Corporation shall pay the purchase price for the Subject Preferred Shares by certified check or wire transfer of immediately available funds to an account designated by the transferring Shareholder, and the transferring Shareholder shall deliver the certificate or certificates representing such shares to the Corporation, accompanied by duly executed stock powers. As a condition precedent to purchasing such shares, the Corporation shall receive a written representation from the seller that it owns such shares free and clear of all Liens and that it has the power to sell such shares to the Corporation.

5.11 Amendment and Waiver.

No amendment, modification or waiver shall be binding or effective with respect to any provision of this Section 5 without the prior written consent of the holders of 51% of the Series A Preferred Stock outstanding at the time such action is taken; provided that no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of the applicable percentage of the Series A Preferred Stock then outstanding. Waivers with respect to matters affecting only those holders of Series A Preferred Stock that make an election with respect thereto may be made by the holders of 51% of the shares of Series A Preferred Stock with respect to which such election was made and would therefore be affected by such waiver.

6. *Rights, Preferences and Restrictions of Series B Convertible Preferred Stock*

18,750,000 shares of the Corporation's Preferred Stock, par value \$0.001 per share, shall be designated as the "Series B Convertible Preferred Stock" (the "Series B Preferred Stock"). Set forth below is a statement of the preferences, limitations and relative rights of the Series B Preferred Stock. Unless otherwise indicated, all cross-references in each subdivision of this Article refer to

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other paragraphs in such subdivision. Certain defined terms used in this subsection 6 are defined in paragraph 6.7. The Series B Preferred Stock shall not be senior in rights or preferences to and, except as hereafter expressly provided, shall be on a parity with, the Series A Preferred Stock.

6.1 Preferred Dividends.

The holders of Series B Preferred Stock shall be entitled to receive, when and as dividends are declared by the Board of Directors of the Corporation upon the Class A Common Stock (whether such dividends shall be payable in cash, property, securities or otherwise), dividends at the rate per share declared upon the Class A Common Stock as if the Series B Preferred Stock had been converted to Class A Common Stock immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are determined. In the event that any dividend is payable in securities of the Corporation or any other entity ("Dividend Securities") and such securities to be issued are either voting securities of the Corporation or such other entity or securities which are convertible, exercisable or otherwise exchangeable for voting securities of the Corporation or such other entity and for any reason any holder of Series B Preferred Stock determines in its sole discretion that it would be detrimental to such holder or its affiliates to receive such securities in connection with such dividend, then the Corporation shall, to the extent it is in its power to do so, make available to such holder an amount of alternative securities equal to the amount of such Dividend Securities as such holder is entitled to receive in connection with such dividend which are identical to such Dividend Securities in all respects except for the fact that such alternate securities shall be non-voting securities or convertible, exercisable or otherwise exchangeable for non-voting securities (the "Alternative Securities"); provided further that if such Alternative Securities are nonvoting securities, such securities will be convertible into securities having the same voting rights as the related Dividend Securities, or any securities into which such Dividend Securities have been converted or exchanged upon the occurrence of such events as are specified by such holder. In no event, so long as any Series B Preferred Stock shall remain outstanding, shall any dividend whatsoever be declared or paid upon, nor shall any distribution be made upon, any shares of capital stock of the Corporation without the simultaneous declaration or payment of a dividend or distribution on the Series B Preferred Stock in the manner heretofore provided, nor shall more than 100,000 shares in the aggregate of capital stock of the Corporation be purchased or redeemed by the Corporation nor shall any moneys be paid to or made available for a sinking fund for the purchase or redemption of any shares of capital stock of the Corporation, without, in each such case (other than in the case of repurchases by the Corporation of shares of Common Stock pursuant to (i) paragraph 6.2 hereof, (ii) paragraph 6.3 hereof, (iii) Section 8.6 of the Series B Purchase Agreement, (iv) paragraph 6.10 hereof, or (v) the terms of any employment or employee stock repurchase

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agreement, stock option plan or agreement or similar arrangement between the Corporation and its employees in effect on the date of original issuance of the Series B Preferred Stock or approved by the holders of 51% of the outstanding shares of Series B Preferred Stock), the approval of the holders of 51% of the outstanding shares of the Series B Preferred Stock.

6.2 Liquidation. Upon any liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), whether voluntary or involuntary, the holders of the shares of Series B Preferred Stock, before any distribution or payment is made upon any Junior Securities, shall be paid an amount in cash equal to \$1.60 per share (the "Liquidation Value") plus all accrued and unpaid dividends thereon from the date of initial issuance of such shares of Series B Preferred Stock through and including the date of such Liquidation Event (subject to adjustment as provided in subparagraphs 6.4D(4) and 6.4E) (the "Preferential Payment Amounts"). If, upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series B Preferred Stock and other shares of capital stock having liquidation rights *pari passu* with the Series B Preferred Stock (including the Series A Preferred Stock) shall be insufficient to permit payment to such holders of the Preferential Payment Amounts, then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series B Preferred Stock and other shares of capital stock having liquidation rights *pari passu* with the Series B Preferred Stock. The date on which the Corporation initially issues any share of Series B Preferred Stock (a "Series B Share") shall be deemed to be its "date of issuance" regardless of the number of times transfer of such Series B Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Series B Share. Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the Preferential Payment Amounts and the place where such amounts shall be payable, shall be given by mail, postage prepaid, not less than 30 days prior to the payment date stated therein, to the holders of record of Series B Preferred Stock, such notice to be addressed to each such holder at such holder's post office address as shown by the records of the Corporation.

6.3 Deemed Liquidation. The shares of Series B Preferred Stock shall be redeemable as follows:

D. Redemption. Not more than 45 days nor less than 20 days prior to the consummation of any proposed Fundamental Change (as defined in subparagraph 6.3D), and immediately upon obtaining knowledge of any proposed or actual Change in Ownership (as defined in subparagraph 6.3D), the Corporation shall give to each holder of shares of Series B Preferred Stock written notice of such Fundamental Change or Change in Ownership, setting forth in reasonable detail the terms and date of consummation thereof, and the Corporation shall give each

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holder of Series B Shares prompt written notice of any material change in the terms or timing of such transaction. If within 15 days after receipt of such notice any holder of Series B Shares shall elect, by written notice to the Corporation (a "Redemption Notice"), to have all or any portion of the outstanding Series B Shares of such holder redeemed, the Corporation shall redeem the same (in the manner and with the effect provided in subparagraphs 6.3B and 6.3C below) not later than, in the case of a Fundamental Change, the day of the effective date of consummation thereof and, in the case of a Change in Ownership, five days after the Corporation's receipt of the related Redemption Notice. A Redemption Notice shall be given by certified mail, postage prepaid, to the Corporation and shall state the total number of Series B Shares held by each such holder requesting a redemption and shall specify the number of shares to be redeemed, the applicable redemption price (as set forth in subparagraph 6.3B) and the place and date of such redemption, which date (the "Redemption Date") shall not be a day on which banks in the City of New York are required or authorized to close. If, following delivery of any Redemption Notice, the proposed Fundamental Change or Change in Ownership does not occur, any election pursuant to this paragraph 6.3A shall be deemed to have been automatically rescinded. Except as provided in this subparagraph 6.3A and pursuant to Section 8.6 of the Series B Purchase Agreement, the Series B Preferred Stock shall not be redeemable.

E. Redemption Price. Any redemption of the Series B Preferred Stock pursuant to subparagraph 6.3A shall be at a price per share equal to the price per share determined pursuant to paragraph 6.2 above treating the Redemption Date as the date of a Liquidation Event. If a Redemption Notice shall have been duly given to the Corporation pursuant to subparagraph 6.3A and if on or before the Redemption Date the funds necessary for redemption shall have been set aside so as to be and continue to be available therefor, then, notwithstanding that any certificate for shares of Series B Preferred Stock to be redeemed shall not have been surrendered for cancellation, after the close of business on such Redemption Date, the shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall, forthwith after the close of business on the Redemption Date, cease, except only the right of the holders thereof to receive, upon presentation of the certificate representing shares so called for redemption, the applicable redemption price therefor, without interest thereon.

F. Redeemed or Otherwise Acquired Shares to Be Retired. Any shares of the Series B Preferred Stock redeemed pursuant to this paragraph 6.3 or otherwise acquired by the Corporation in any manner whatsoever shall be permanently retired and shall not under any circumstances be reissued, and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce the number of authorized shares of Series B Preferred Stock accordingly.

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G. Definitions. "Fundamental Change" means any (i) sale or transfer of all or substantially all of the assets of the Corporation and its subsidiaries on a consolidated basis in any transaction or series of transactions (other than sales of equipment or inventory in the ordinary course of business) or (ii) merger or consolidation to which the Corporation is a party, other than a merger in which the Corporation is the surviving corporation and which will not result in more than 49% of the Corporation's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the Corporation's board of directors being owned of record or beneficially by persons or entities other than the holders of such capital stock immediately prior to such merger. **"Change in Ownership"** means any sale or transfer of Common Stock by the Begelman Family in any transaction (or series of transactions) which results in the Begelman Family owning beneficially and of record less than 50% of the shares of Common Stock held by the Begelman Family as of the date of the original issuance of the Series A Preferred Stock.

6.4 Conversion.

A. Right to Convert. At any time and from time to time, any holder of Series B Preferred Stock shall have the right, at its option, to convert any such shares of Series B Preferred Stock (except that upon any liquidation, dissolution or winding up of the Corporation, the right of conversion shall terminate at the close of business on the last full business day next preceding the date fixed for payment of the amount distributable on the Series B Preferred Stock), into such number of fully paid and nonassessable shares of Conversion Stock as is obtained by multiplying the number of shares of Series B Preferred Stock so to be converted by \$1.60 and dividing the result by the conversion price of \$1.60 per share, or by the conversion price as last adjusted in accordance with this paragraph 6.4 and in effect at the date any share or shares of Series B Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, being referred to herein as the "Conversion Price").

The right of conversion contained in this subparagraph 6.4A shall be exercised by the holder of shares of Series B Preferred Stock by giving written notice that such holder elects to convert a stated number of shares of Series B Preferred Stock into Conversion Stock, and by surrender of a certificate or certificates for the shares so to be converted 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 holder or holders of the Series B Preferred 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 Conversion Stock shall be issued.

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B. Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in subparagraph 6.4A and surrender of the certificate or certificates for the share or shares of Series B Preferred Stock to be converted, 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 shares of Conversion Stock issuable upon the conversion of such share or shares of Series B Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected, and the Conversion Price shall be determined, as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Series B Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Conversion 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. In lieu of delivering any fractional share that would otherwise be deliverable upon any conversion of Series B Preferred Stock, the Corporation shall pay in cash to the holder thereof an amount equal to the Market Price (as defined below) of such fractional share as of the date of such conversion. No payment or adjustment shall be made upon any conversion on account of any cash dividends on the Conversion Stock issued upon such conversion. At the time of each conversion, the Corporation shall pay in cash an amount equal to all dividends declared and unpaid on the shares surrendered for conversion to the date upon which such conversion is deemed to take place as provided in subparagraph 6.4B. If the number of shares of Series B Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 6.4A exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder thereof, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series B Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. "Market Price" of any security means the average of the closing prices of such security's sales on all securities exchanges on which such security may at the time be listed, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, or, if on any day such security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau Incorporated, or any similar successor organization, in each such case, averaged over a period of 21 days consisting of the day as of which "Market Price" is being determined and the 20 consecutive business days prior to such day. If at any time such security is

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not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the "Market Price" shall be the fair value thereof determined in good faith by the Corporation's board of directors.

D. Adjustment of Price Upon Issuance of Common Stock. Except as provided in subparagraph 6.4F hereof, if and whenever (on or after the date of original issuance of the Series B Preferred Stock) the Corporation issues or sells, or in accordance with subparagraphs 6.4D(1) through 6.4D(7) is deemed to have issued or sold, any shares of its Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, immediately upon such issue or sale, the Conversion Price shall be reduced to the lowest net price per share at which any share of Common Stock has been issued or sold or is deemed to have been issued or sold. For purposes of determining the adjusted Conversion Price under this subparagraph 6.4D, the following subparagraphs 6.4D(1) to 6.4D(7) shall also be applicable:

(1) **Issuance of Rights or Options.** If at any time the Corporation in any manner grants or sells (whether directly or by assumption in a merger or otherwise) any rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or securities convertible into or exchangeable for Common Stock (such rights or options being herein called "Options" and such convertible or exchangeable stock or securities being herein called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the lowest price per share for which any one share of Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Conversion Price in effect immediately prior to the time of the granting or sale of such Options, then such share of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting or sale of such Options and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph 6.4D(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities. The "lowest" price per share for which any one share of Common Stock is issuable shall be equal to the sum of the lowest amounts of consideration if any, received or receivable by the Corporation as consideration with respect to any one share of Common Stock for the granting of such Option with respect to such share, plus the minimum aggregate amount of additional consideration, payable to the Corporation upon the exercise of such Option, plus, in the case of an Option which relates to Convertible Securities, the minimum aggregate

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amount of additional consideration, if any, payable upon the issuance or sale of such Convertible Securities and upon the conversion or exchange thereof.

(2) **Issuance of Convertible Securities.** If the Corporation in any manner issues (whether directly or by assumption in a merger or otherwise) or sells any Convertible Security, whether or not the rights to exchange or convert thereunder are immediately exercisable, and the lowest price per share for which any one share of Common Stock is issuable upon such conversion or exchange is less than the Conversion Price in effect immediately prior to the time of such issuance or sale, then such share of Common Stock issuable upon conversion or exchange of any such Convertible Security shall be deemed to have been issued for such price per share as of the date of the issuance or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in subparagraph 6.4D(3) below, no adjustment of the Conversion Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities, and (b) if any such issuance or sale of such Convertible Securities for which adjustments of the Conversion Price has been or is to be made pursuant to other provisions of this subparagraph 6.4D, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale. The "lowest" price per share for which any one share of Common Stock is issuable shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock as consideration for the issuance or sale of such Convertible Security, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof.

(3) **Change in Option Price or Conversion Rate.** If (i) the purchase price provided for in any Option referred to in subparagraph 6.4D(1), (ii) the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph 6.4D(1) or 6.4D(2) or (iii) the rate at which any Convertible Securities referred to in subparagraph 6.4D(1) or 6.4D(2) are convertible into or exchangeable for Common Stock shall change at any time, then the Conversion Price in effect at the time of such event shall, as required, immediately be readjusted to such Conversion Price which would have been in effect at such time had such Option or Convertible Security provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and on the expiration of any such Option or the termination of any such right to convert or exchange such Convertible Securities, the Conversion Price, then in effect hereunder shall, as required, forthwith be adjusted to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued, and the Common

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Stock issuable thereunder shall no longer be deemed to be outstanding. If the purchase price provided for in any such Option referred to in subparagraph 6.4D(1) or the rate at which any Convertible Securities referred to in subparagraph 6.4D(1) or 5.4D(2) are convertible into or exchangeable for Common Stock shall be reduced at any time under or by reason of provisions with respect thereto designed to protect against dilution, then, in case of the delivery of Common Stock upon the exercise of any such Option or upon conversion or exchange of any such Convertible Securities, the Conversion Price then in effect hereunder shall, as required, forthwith be adjusted to such respective amount as would have been obtained had such Option or Convertible Securities never been issued as to such Common Stock and had adjustments been made upon the issuance of the shares of Common Stock delivered as aforesaid, but only if as a result of such adjustment the Conversion Price then in effect hereunder is thereby reduced.

(4) **Stock Dividends.** If the Corporation declares a dividend or makes any other distribution upon any stock of the Corporation payable in Common Stock, Options, Convertible Securities or other assets of the Corporation (other than cash dividends payable out of retained earnings), any Common Stock, Options, Convertible Securities or other assets, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration, and the Conversion Price shall be reduced as if the Corporation had subdivided its outstanding shares of Common Stock into a greater number of shares, as provided in subparagraph 6.4E.

(5) **Consideration for Stock.** If any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. The amount of consideration deemed to be received by the Corporation pursuant to the foregoing provisions of this subparagraph 6.4D(5) upon any issuance and/or sale of shares of Common Stock, Options or Convertible Securities, pursuant to an established compensation plan of the Corporation, to directors, officers or employees of the Corporation in connection with their employment shall be increased by the amount of any tax benefit realized by the Corporation as a result of such issuance and/or sale, the amount of such tax benefit being the amount by which the Federal and/or state income or other tax liability of the Corporation

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shall be reduced by reason of any deduction or credit in respect of such issuance and/or sale. If any Options are issued in connection with the issuance and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the Corporation, such Options are deemed to have been issued without consideration, and the Conversion Price shall be reduced as if the Corporation had subdivided its outstanding shares of Common Stock into a greater number of shares, as provided in subparagraph 6.4E hereof.

(6) **Record Date.** If the Corporation takes a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities, or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(7) **Treasury Shares.** The initial disposition of any shares owned or held by or for the account of the Corporation shall be considered an issuance or sale of Common Stock for the purposes of this subparagraph 6.4D.

E. **Subdivision or Combination of Stock.** If the Corporation in any manner subdivides one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, if the Corporation in any manner combines one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased. The Corporation will at all times take such action as is necessary to assure that an adequate number of shares of Class A Common Stock is available and reserved for issuance upon conversion of all outstanding shares of Series B Preferred Stock. The Corporation will not take any action with respect to any series or class of its capital stock if subsequent to such action the provisions of the preceding sentence could not be complied with.

F. **Certain Issues of Common Stock Excepted.** Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price upon the occurrence of any of the following events: (i) the issuance of Class A Common Stock upon conversion of outstanding shares of Series A Preferred Stock or Series B Preferred Stock, (ii) the issuance of up to an aggregate of 2,713,300 shares of Class A Common Stock upon exercise of options or conversion or exchange of securities outstanding on the date of original issuance of the

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Series B Preferred Stock, and (iii) the issuance to employees, directors or consultants of the Corporation of options approved by the Corporation's board of directors (and the subsequent issuance of Class A Common Stock pursuant to such options) to purchase shares of Class A Common Stock; provided that such options shall not be granted for less than fair market value on the date of issuance thereof (as determined in good faith by the Corporation's board of directors).

G. Reorganization, Reclassification, Consolidation, Merger or Sale. If any reorganization or reclassification of the capital stock of the Corporation, any consolidation or merger of the Corporation, or any sale of all or substantially all of its assets shall be effected in such a way (including, without limitation, by way of consolidation or merger) that holders of Common Stock are entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provisions (in form reasonably satisfactory to the holders of at least 51% of the outstanding shares of the Series B Preferred Stock) shall be made whereby each holder of a share or shares of Series B Preferred Stock shall thereafter have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of or in addition to (as the case may be) the shares of Conversion Stock of the Corporation immediately theretofore receivable upon the conversion of such shares or shares of the Series B Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Conversion Stock equal to the number of shares of such stock immediately theretofore so receivable had such reorganization, reclassification, consolidation, merger or sale not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including, without limitation, provisions for adjustment of the applicable conversion price) shall thereafter be applicable, as nearly practicable, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights (including, if necessary to effect the adjustments contemplated herein, an immediate adjustment, by reason of such reorganization, reclassification, consolidation, merger or sale, of the Conversion Price to the value for the Conversion Stock reflected by the terms of such reorganization, reclassification, consolidation, merger or sale if the value so reflected is less than the Conversion Price in effect immediately prior to such reorganization, reclassification, consolidation, merger or sale). In the event of a merger or consolidation of the Corporation as a result of which a greater or lesser number of shares of common stock of the surviving corporation is issuable to holders of Common Stock outstanding immediately prior to such merger or consolidation, the Conversion Price in effect immediately prior to such merger or consolidation shall be adjusted in the same manner as though there were a subdivision or combination of the outstanding shares of Common Stock of the Corporation. The Corporation will not effect any such consolidation or merger, or any sale of all or substantially all of its assets and properties, unless prior to the consummation thereof the

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successor Corporation (if other than the Corporation) resulting from such consolidation or merger or the corporation purchasing such assets shall assume by written instrument (in form reasonably satisfactory to the holders of at least two-thirds of the outstanding shares of the Series B Preferred Stock), executed and mailed or delivered to each holder of shares of Series B Preferred Stock at the last address of such holder appearing on the books of the Corporation, the obligation to deliver to such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to receive.

H. Certain Events. If any event occurs of the type contemplated by the provisions of this paragraph 6.4 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's board of directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series B Preferred Stock; provided that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this paragraph 6.4 or decrease the number of shares of Conversion Stock issuable upon conversion of each share of Series B Preferred Stock.

I. Automatic Conversion. If at any time while any of the Series B Preferred Stock is outstanding, the Corporation completes a Qualifying Public Offering (as defined in paragraph 6.8E), then all outstanding shares of Series B Preferred Stock shall, automatically and without further action on the part of the holders of the Series B Preferred Stock, be converted into shares of Conversion Stock in accordance with the terms of this paragraph 6.4 with the same effect as if the certificates evidencing such shares had been surrendered for conversion, such conversion to be effective simultaneously with the closing of such public offering; provided, however, that certificates evidencing the shares of Conversion Stock issuable upon such conversion shall not be issued except on surrender of the certificates for the shares of the Series B Preferred Stock so converted.

J. Notice of Adjustment. Immediately upon any adjustment made pursuant to this paragraph 6.4, the Corporation shall give written notice thereof, by first class mail, postage prepaid, addressed to each holder of shares of Series B Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Conversion Price or the number of shares of Conversion Stock issuable upon conversion of the Series B Preferred Stock, as the case may be, resulting from such adjustment and shall set forth in reasonable detail the method of calculation of such adjustment and the facts upon which such calculation is based.

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K. Other Notices. If at any time:

- (1) the Corporation declares any dividend upon its Common Stock payable in cash or stock or makes any other distribution to the holders of its Common Stock;
- (2) the Corporation offers for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;
- (3) there is any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with, or a sale of all or substantially all its assets or its and its subsidiaries' assets on a consolidated basis;
- (4) there is a voluntary or involuntary dissolution, liquidation or winding up of the Corporation; or
- (5) the Corporation takes any action or there occurs any event which would result in an automatic conversion of the Series B Preferred Stock pursuant to subparagraph 6.4I, then, in any one or more of said cases, the Corporation shall give, by first class mail, postage prepaid, addressed to each holder of any shares of Series B Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 20 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 20 days' prior written notice of the date when the same shall take place and (c) in the case of any event which would result in an automatic conversion of the Series B Preferred Stock pursuant to subparagraph 6.4I, at least 20 days' prior written notice of the date on which the same is expected to be completed. Each notice pursuant to clause (a) above shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and each notice pursuant to clause (b) above shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be.

L. Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized and unissued Common Stock or its treasury shares, solely for the

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purpose of issuance upon the conversion of the Series B Preferred Stock as herein provided, such number of shares of Conversion Stock as shall then be issuable upon the conversion of all outstanding shares of Series B Preferred Stock into Conversion Stock. The Corporation covenants that all shares of Conversion Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof. The Corporation will take all such action as may be necessary to assure that all such shares of Conversion Stock may be so issued without violation of any applicable law or regulation, or of any requirements of any national securities exchange upon which the Class A Common Stock of the Corporation may be listed. The Corporation will not take any action which results in any adjustment of the Conversion Price or the number of shares of Conversion Stock issuable upon the conversion of the Series B Preferred Stock if the total number of shares of Conversion Stock issued and issuable after such action upon conversion of the Series B Preferred Stock would exceed the total number of shares of Conversion Stock then authorized by the Corporation's Articles of Incorporation.

M. No Reissuance of Preferred Stock. Shares of Series B Preferred Stock that are converted into shares of Conversion Stock as provided herein shall not be reissued.

N. Issue Tax. The issuance of certificates for shares of Conversion Stock upon conversion of the Series B Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Series B Preferred Stock which is being converted.

O. Closing of Books. The Corporation will at no time close its transfer books against the transfer of any Series B Preferred Stock or of any shares of Conversion Stock issued or issuable upon the conversion of any shares of Series B Preferred Stock in any manner which interferes with the timely conversion of such Series B Preferred Stock.

6.5 Voting Rights.

A. Each holder of the Series B Preferred Stock (i) shall be entitled to vote, together as a single class with the holders of the Common Stock, on all matters submitted to the shareholders for a vote, (ii) shall have one vote for each share of Conversion Stock that would be issuable to such holder upon the conversion of all the shares of Series B Preferred Stock held by such holder on the record date for the determination of shareholders entitled to vote and (iii) shall be entitled to notice of each shareholders' meeting and consent of shareholders in accordance with the

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Bylaws of the Corporation. In addition, the holders of the Series B Preferred Stock shall be entitled to vote separately as a class for the election of one (1) member of the Corporation's Board of Directors by the holders of a majority of the outstanding shares of Series B Preferred Stock (the "Series B Directors") provided that such director is acceptable to the Corporation's Chief Executive Officer, whose consent shall not be unreasonably withheld, and the holders of 35% or more of the Series B Preferred Stock outstanding at any time shall have the right to call a meeting of the holders of Series B Preferred Stock for purposes of electing or removing the Series B Directors.

B. The Corporation agrees to reimburse all Series B Directors for reasonable travel and other out-of-pocket expenses incurred by each such director in respect of such director's attendance at meetings of the Board or any committee thereof.

6.6 **Issuance of Preferred Stock.** Except as expressly provided in this subdivision 6, the Corporation shall not issue any shares of preferred stock senior in rights or preferences to the Series B Preferred Stock without the written consent of the holders of 51% of the outstanding shares of the Series B Preferred Stock.

6.7 **Definitions.** For purposes of this Section 6, the following terms shall have the meanings hereafter set forth:

"Change in Ownership" has the meaning set forth in sub paragraph 6.3D hereof.

"Class A Common Stock" means the Corporation's Class A Common Stock, par value \$.001 per share, and any securities issued in respect of such securities or into which such securities are converted or exchanged.

"Common Stock" means collectively, the Corporation's Class A Common Stock, the Corporation's Class B Common Stock and any capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par value in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

"Conversion Stock" means shares of the Corporation's Class A Common Stock; provided that if there is a change such that the securities issuable upon conversion of the Series B Preferred Stock are issued by an entity other than the Corporation or there is a change in the type or class of securities so issuable, then the term "Conversion Stock" shall mean one share of the security issuable upon conversion of the Series B Preferred Stock if such security is issuable in shares, or

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shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

"Convertible Securities" has the meaning set forth in subparagraph 6.4D(1) hereof.

"Fundamental Change" has the meaning set forth in subparagraph 6.3D hereof.

"Investor Shareholder" means each purchaser of Series B Preferred Stock pursuant to the Series B Purchase Agreement, each Investor Shareholder as defined in paragraph 5.7 of Article V, and their respective successors and assigns.

"Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series B Preferred Stock and any other series or class of capital stock on a parity with, or senior to, the Series B Preferred Stock.

"Market Price" has the meaning set forth in subparagraph 6.4C hereof.

"Options" has the meaning set forth in subparagraph 6.4D(1) hereof.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Securities Act" means the Securities Act of 1933, as amended.

"Series B Purchase Agreement" means the Series B Preferred Stock Purchase Agreement, dated as of October 20, 1997, by and among the Corporation and the several Persons party thereto.

"Trust I" means the Pamela M. Begelman Irrevocable Trust for the benefit of Matthew Brian Begelman, dated December 6, 1995.

"Trust II" means the Mark D. Begelman Irrevocable Trust for the benefit of Lauren Andrea Begelman, dated December 6, 1996.

6.8 Right of First Refusal on Corporation's Issuance of Equity Equivalents.

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A. If at any time prior to the consummation of a Qualifying Public Offering the Corporation wishes to issue and sell any equity securities or any options, warrants or other rights to acquire equity securities (the "Equity Equivalents") to any person or persons, the Corporation shall promptly deliver a notice of intention to sell (the "Corporation's Notice of Intention to Sell") to each of the Investor Shareholders setting forth a description of the Equity Equivalents to be sold and the proposed purchase price and terms of sale. Upon receipt of the Corporation's Notice of Intention to Sell, each Investor Shareholder shall have the right to elect to purchase, at the price and on the terms stated in the Corporation's Notice of Intention to Sell, a number of the Equity Equivalents equal to such person's aggregate proportionate ownership of Conversion Stock and rights to acquire Conversion Stock (calculated on a fully-diluted basis assuming all outstanding warrants, options and convertible securities of the Corporation (including the Series B Preferred Stock) had converted such securities or exercised such warrants or options immediately prior to the delivery of the Corporation's Notice of Intention to Sell) held by all shareholders of the Corporation multiplied by the number of Equity Equivalents to be sold. Such election is to be made by each of the Investor Shareholders by written notice to the Corporation within fifteen (15) days after receipt by such Investor Shareholder of the Corporation's Notice of Intention to Sell (the "Acceptance Period for Equity Equivalents"). Failure to deliver such notice within such Acceptance Period for Equity Equivalents shall be deemed a rejection of the Corporation's offer. Each Investor Shareholder shall also have the option, exercisable by so specifying in such written notice, to purchase on a pro rata basis similar to that described above, any remaining Equity Equivalents not purchased by other Investor Shareholders, in which case the Investor Shareholders exercising such further option shall be deemed to have elected to purchase such remaining Equity Equivalents on such pro rata basis as described above (provided that the denominator used to determine pro rata ownership shall be the number of shares of Conversion Stock, determined on a fully diluted basis, held by all holders exercising such further option). In the event that the Equity Equivalents to be issued at any time as contemplated by this paragraph 6.9 are either voting securities of the Corporation or securities which are convertible, exercisable or otherwise exchangeable for voting securities of the Corporation and for any reason any Investor Shareholder determines in its sole discretion that it would be detrimental to such Investor Shareholder or its affiliates to purchase such securities as provided for hereby, then the Corporation shall make available to such Investor Shareholder an amount of alternative securities equal to the amount of such Equity Equivalents as such Investor Shareholder is entitled to purchase pursuant to the terms hereof which are identical to such Equity Equivalents in all respects except for the fact that such alternate securities shall be non-voting securities or convertible, exercisable or otherwise exchangeable for non-voting securities (the "Alternative Securities"); provided further that if such Alternative Securities are nonvoting securities, such securities will be convertible into securities having the same voting rights as the related Equity Equivalents upon the occurrence of such events as are specified by such Investor Shareholder.

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B. If effective acceptances shall not be received pursuant to paragraph 6.8A above in respect of all Equity Equivalents or Alternative Securities, then the Corporation may, at its election, during a period of one hundred twenty (120) days following the expiration of the Acceptance Period for Equity Equivalents, enter into an agreement to sell and issue all of the remaining offered Equity Equivalents as to which it has not received effective acceptances to another person at a price and upon terms not more favorable to such person than those stated in the Corporation's Notice of Intention to Sell; provided, however, that failure by any Investor Shareholder to exercise its option to purchase with respect to one offering, sale and issuance of Equity Equivalents shall not affect its option to purchase Equity Equivalents or rights to acquire Equity Equivalents in any subsequent offering, sale and purchase. In the event the Corporation has not sold the Equity Equivalents, or entered into a binding agreement to sell the Equity Equivalents, within such one hundred twenty (120) - day period, the Corporation shall not thereafter issue or sell any Equity Equivalents without first offering such securities to the Investor Shareholders in the manner provided in paragraph 6.8A hereof.

C. If any Investor Shareholder gives the Corporation notice, pursuant to the provisions of this paragraph 6.8A that such Investor Shareholder desires to purchase any of the Equity Equivalents or Alternative Securities, payment therefor shall be by check or wire transfer, against delivery of the securities at the executive offices of the Corporation within fifteen (15) days after giving the Corporation such notice, or, if later, the closing date as mutually agreed between the Corporation and such Shareholder for the sale of such Equity Equivalents or Alternative Securities. In the event that any such proposed issuance is for a consideration other than cash, any Investor Shareholder will be entitled to pay cash for each share or other unit, in lieu of such other consideration, in the amount determined in good faith by the Board of Directors of the Corporation (the "Board") to constitute the fair value of such consideration other than cash to be paid per share or other unit.

D. The right of first refusal contained in this paragraph 6.8A shall not apply to: (i) the issuance of shares of Common Stock as a stock dividend or upon any subdivision or stock split of the outstanding shares of Common Stock; (ii) the issuance of shares of Common Stock upon conversion of any shares of convertible securities (including, without limitation, the Series B Preferred Stock); (iii) the issuance of shares of Class A Common Stock to officers, directors and other employees of the Corporation that may be issued subsequent to the date hereof to such persons upon exercise of options heretofore or hereafter granted to such persons and in such number as the Board shall approve; provided that such options granted hereafter shall not be granted for less than fair market value on the date of issuance thereof (as determined in good faith by the Board); (iv) the issuance of shares of Class A Common Stock upon a Qualifying Public Offering; or (v) the issuance

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of Class A Common Stock in return for consideration other than cash in connection with any joint venture, or acquisition or other business combination, provided any such issuance has been approved by the Board.

E. As used herein, a "Qualifying Public Offering" means an underwritten initial public offering (underwritten by an investment banking firm or firms of national reputation) involving shares of the Corporation's Common Stock (1) providing aggregate gross proceeds (before deducting underwriting discounts and expenses) to the Corporation of at least \$30 million and (2) at a public offering price that represents an aggregate valuation of the fully diluted Common Stock, immediately preceding such public offering, that is not less than \$150 million.

6.9

Right of Co-Sale.

A. If at any time prior to a Qualifying Public Offering any holder of Class B Common Stock (the "Selling Shareholder") wishes to sell, pledge or transfer all or any portion of its Class B Common Stock (which shares must be converted into Class A Common Stock prior to any such sale), rights to acquire Common Stock or other equity securities (other than Series A Preferred Stock) of the Corporation, such Selling Shareholder shall promptly deliver a notice of intention to sell (a "Sale Notice") to the Corporation and to each Investor Shareholder setting forth the securities to be sold ("Subject Securities") and the proposed purchase price and terms of sale, which shall be for cash or obligations to pay cash. Upon receipt of the Sale Notice, the Investor Shareholders shall have the right to elect to sell, at the price and on the terms stated in the Sale Notice, a pro rata portion of the total holdings of Common Stock, Series B Preferred Stock and rights to acquire Common Stock (calculated on a fully-diluted basis assuming all holders of then outstanding warrants, options and convertible securities of the Corporation (including the Series B Preferred Stock) had converted such securities or exercised such warrants or options immediately prior to the delivery of the Sale Notice) to be sold equal to a fraction the numerator of which is such Shareholder's aggregate proportionate ownership of Common Stock, Series B Preferred Stock and rights to acquire Common Stock (calculated on a fully-diluted basis assuming all holders of then outstanding warrants, options and convertible securities of the Corporation (including the Series B Preferred Stock) had converted such securities or exercised such warrants or options immediately prior to delivery of the Sale Notice) and the denominator of which is the aggregate proportionate ownership of Common Stock, Series B Preferred Stock and rights to acquire Common Stock (calculated on a fully-diluted basis assuming all holders of then outstanding warrants, options and convertible securities of the Corporation (including the Series B Preferred Stock) had converted such securities or exercised such warrants or options immediately prior to the Sale Notice) held by the Selling Shareholder and the Investor Shareholders. Such election shall be made by written notice

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to the Corporation and the Selling Shareholder within ten (10) Business Days after the receipt by the Investor Shareholders of the Sale Notice. Failure to deliver notice of an Investor Shareholder's election to exercise its right of co-sale within such period shall be deemed a rejection of such right. For purposes of participating in any such sale of Subject Securities which are Common Stock, if any Investor Shareholder is selling Series B Preferred Stock such Investor Shareholder shall be deemed to be selling the Common Stock to which such Series B Preferred Stock is convertible into, at the price and on the terms applicable to the Common Stock being sold by the Selling Shareholder as set forth in the Sale Notice. Any Subject Securities not sold pursuant to the foregoing, shall again be subject to the restrictions contained in this paragraph 6.9 and shall not thereafter be sold, pledged or transferred, except in compliance with the applicable provisions of this paragraph 6.9 and the remainder of the Articles.

B. This paragraph 6.9 shall not apply to any transfer of Common Stock by a member of the Begelman Family for estate planning purposes or by gift to such person's spouse, children or other direct family members or to any trust established for the benefit of such person and/or such person's spouse, children, other family members or the estate of any such person, or any other sale or transfer of Common Stock in one or more transactions in which the aggregate number of shares of Common Stock transferred in such sale, when taken together with all prior sales of Common Stock by such Selling Shareholder, does not exceed in the aggregate 900,000 shares by Mark Begelman, 300,000 shares by Trust I and 300,000 shares by Trust II, respectively.

6.10**Corporation Right of First Refusal.**

A. Other than in connection with any transfer of Series B Preferred Stock pursuant to a registration statement under the Securities Act, if at any time any Investor Shareholder desires to transfer shares of Series B Preferred Stock to a Person who, upon the consummation of such transfer, would own at least 10% of the then outstanding shares of Series B Preferred Stock (a "10% Transferee"), such transferring Shareholder shall promptly deliver notice of its intention to sell (a "Preferred Stock Sale Notice") to the Corporation setting forth the securities to be sold ("Subject Preferred Shares"); the proposed 10% Transferee and the proposed purchase price and terms of sale, which shall be for cash or obligations to pay cash. Upon receipt of the Preferred Stock Sale Notice the Corporation shall have the right to elect to purchase, at the price and on the terms stated in the Preferred Stock Sale Notice, all, but not less than all, the Subject Preferred Shares, by delivering notice to the transferring Shareholder within fifteen (15) days of receipt of the Preferred Stock Sale Notice (the "Corporation Option Period").

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B. If the Corporation has not elected to purchase all, but not less than all, of the Subject Preferred Shares, the transferring Shareholder may, at its election, during a period of one hundred eighty (180) days following the expiration of the Corporation Option Period, sell, transfer, assign or otherwise convey all or any portion of the Subject Preferred Shares to the proposed 10% Transferee on the terms and conditions specified in the Preferred Stock Sale Notice.

Nothing contained herein shall be deemed to place any additional restriction on the Investor Shareholders to transfer Series B Preferred Stock to any Person who would not become a 10% Transferee.

C. The purchase of Subject Preferred Shares by the Corporation pursuant to this paragraph 6.10 shall be closed at the Corporation's executive offices within twenty (20) days after the expiration of the Corporation Option Period. At the closing, the Corporation shall pay the purchase price for the Subject Preferred Shares by certified check or wire transfer of immediately available funds to an account designated by the transferring Shareholder, and the transferring Shareholder shall deliver the certificate or certificates representing such shares to the Corporation, accompanied by duly executed stock powers. As a condition precedent to purchasing such shares, the Corporation shall receive a written representation from the seller that it owns such shares free and clear of all Liens and that it has the power to sell such shares to the Corporation.

6.11 Amendment and Waiver.

No amendment, modification or waiver shall be binding or effective with respect to any provision of this Section 6 without the prior written consent of the holders of 51% of the Series B Preferred Stock outstanding at the time such action is taken; provided that no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of the applicable percentage of the Series B Preferred Stock then outstanding. Waivers with respect to matters affecting only those holders of Series B Preferred Stock that make an election with respect thereto may be made by the holders of 51% of the shares of Series B Preferred Stock with respect to which such election was made and would therefore be affected by such waiver.

ARTICLE VI MANAGEMENT OF CORPORATION; BYLAWS

Except as otherwise expressly provided in these Articles of Incorporation for the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the directors and stockholders of the

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Corporation, it is further provided: (1) the management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors; and (2) the power to adopt, alter, amend, repeal, or rescind any provisions of the Bylaws of the Corporation may be exercised by the Board of Directors by the vote of at least a majority of the total number of directors.

ARTICLE VII SPECIAL MEETINGS OF STOCKHOLDERS

Special meetings of holders of all voting shares of capital stock, or, as the case may be, such holders of one class or certain classes of stock entitled to vote with respect to the business to be transacted at the special meeting, shall be called by the Chairman of the Board of Directors or the Secretary at the request of stockholders only if the holders of shares representing not less than 50 percent of the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the Secretary one or more written demands for a special meeting describing the purpose or purposes of which it is to be held.

ARTICLE VIII LIABILITY OF DIRECTORS

To the fullest extent permitted by the laws of the State of Florida, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law, (iii) under Section 607.0834 of the Florida Business Corporation Act, as the same may hereafter be amended or supplemented, or (iv) for any transaction from which the director derived an improper personal benefit. If the laws of the State of Florida are amended after the filing of these Articles of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent so permitted. Any amendment, modification or repeal of this Article VIII shall not adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, modification or repeal.

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**ARTICLE IX
INDEMNIFICATION**

Each person who is or was a director, officer, employee, or agent of the Corporation, and each such person who is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans maintained or sponsored by the Corporation (including the heirs, executors, administrators or estate of such person), shall be indemnified by the Corporation to the fullest extent permitted from time to time by the laws of the State of Florida or any other applicable laws as presently or hereafter in effect. The Corporation shall advance the expenses incurred by any of the foregoing persons in defending actions against them to the full extent permitted by applicable law. Without limiting the generality or the effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification greater or different than that provided by this Article IX. Any amendment, modification or repeal of this Article IX shall not adversely affect any right or protection existing hereunder at the time of such amendment, modification or repeal.

**ARTICLE X
AMENDMENT**

Subject to the express provisions of these Articles of Incorporation, any of the provisions of these Articles of Incorporation may be altered, amended, repealed, or rescinded, and other provisions authorized by the laws of the State of Florida at the time in force may be added or inserted, in the manner or at the time prescribed by such laws, and all rights at any time conferred upon the stockholders of the Corporation by these Articles of Incorporation are granted subject to the provisions of this Article X.

[Left Intentionally Blank]

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IN WITNESS WHEREOF, the undersigned does hereby execute these Second Amended and Restated Articles of Incorporation, and does hereby acknowledge that this instrument constitutes his act and deed and that the facts stated herein are true.

MARS, INC.

Date: October 20, 1997


Robert Zobel
Vice-President

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CONSENT TO APPOINTMENT AS REGISTERED AGENT

THE UNDERSIGNED, named as the registered agent in Article II of these Second Amended and Restated Articles of Incorporation, hereby accepts the appointment as such registered agent, and acknowledges that he is familiar with, and accepts the obligations imposed upon registered agents under, the Florida Business Corporation Act, including specifically Section 607.0505.

Date: October 20, 1997


Robert Zobel, Registered Agent

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