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CORPORATION SERVICE

NO. 372 DP 1/431

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RESUBMIT

BASIC AMENDMENT

Z-KAT, INC.

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G. C. Cullotta OCT 28 2004



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

October 28, 2004

Z-KAT, INC.
2901 SIMMS STREET
HOLLYWOOD, FL 33020

SUBJECT: Z-KAT, INC.
REF: P97000020185

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Cheryl Coulliette
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FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

October 27, 2004

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HOLLYWOOD, FL 33020

SUBJECT: Z-KAT, INC.
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We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

The document must contain written acceptance by the registered agent, (i.e. "I hereby am familiar with and accept the duties and responsibilities as registered agent for said corporation/limited liability company"); and the registered agent's signature.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6903.

Cheryl Coulliette
Document Specialist

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Letter Number: 504A00061797

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**FIFTH AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
Z-KAT, INC.**

In accordance with Section 607.1007 of the Florida Statutes, the Articles of Incorporation of Z-KAT, Inc., a Florida corporation (the "Corporation"), are hereby amended and restated (the "Fifth Amended and Restated Articles") to read in their entirety as follows:

ARTICLE I. - NAME OF CORPORATION

The name of the Corporation shall be z-kat, Inc.

ARTICLE II. - MAILING ADDRESS

The mailing address of the Corporation is 2908 Simms Street, Hollywood, Florida 33020.

ARTICLE III. - DURATION

The Corporation shall have perpetual existence.

ARTICLE IV. - PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the laws of the United States and the Florida Business Corporation Act.

ARTICLE V. - CAPITAL STOCK

The Corporation shall have authority to issue a total of One Hundred Million (100,000,000) shares, consisting of (i) Fifty Million (50,000,000) shares of common stock, par value \$.001 per share (the "Common Stock"), and (ii) Fifty Million (50,000,000) shares of preferred stock, par value \$.001 per share (the "Preferred Stock"), of which Eight Million (8,000,000) shares have been designated Series A Preferred Stock (the "Series A Preferred Stock"), Eleven Million (11,000,000) shares have been designated Series B Convertible Preferred Stock (the "Series B Convertible Preferred Stock"), and Eighteen (18,000,000) Million shares have been designated Series C Convertible Preferred Stock (the "Series C Convertible Preferred Stock"). Each certificate representing Common Stock or Preferred Stock which, before adoption of the Second Amended and Restated Articles of Incorporation, was marked with a par value of \$.01 shall be deemed, without the

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need for any exchange or transfer, to be marked with a par value of \$.001. This Article V contains a description of the Preferred Stock and a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof, of the Series A Preferred Stock, Series B Convertible Preferred Stock, and the Series C Convertible Preferred Stock.

1. Common Stock.

Except as otherwise required by law, the holders of Common Stock shall be entitled to one vote per share on all matters upon which holders of shares of Common Stock shall be entitled to vote. There shall be no cumulative voting of the Common Stock of the Corporation. The holders of Common Stock are not entitled to preemptive rights with respect to any shares of any class of stock of the Corporation.

2. Preferred Stock.

A. *General.*

The Preferred Stock of the Corporation may be issued in one or more classes or series at such time or times and for such consideration as the Board of Directors of the Corporation may determine. Each class or series shall be so designated as to distinguish the shares thereof from the shares of all other classes and series. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purpose of voting by classes unless otherwise specifically set forth herein. The Board of Directors of the Corporation is expressly authorized, subject to the limitations prescribed by law and the provisions of these Fifth Amended and Restated Articles, to provide, by adopting a resolution or resolutions, for the issuance of undesignated Preferred Stock in one or more classes or series, each with such designations, preferences, voting powers, qualifications, special or relative rights and privileges as shall be stated in Articles of Amendment to the Fifth Amended and Restated Articles.

B. *Series A Preferred Stock.*

(a) Designation.

A total of Eight Million (8,000,000) shares of the Corporation's Preferred Stock shall be designated as "Series A Preferred Stock".

(b) Rank.

The Series A Preferred Stock shall rank, with respect to rights to receive dividends senior to the Corporation's Common Stock. The Series A

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Preferred Stock shall rank with respect to the rights to receive distributions upon liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary) senior to the Corporation's Common Stock.

(c) **Dividends and Distributions; Method of Payment.**

The holders of shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for such purpose, dividends before the Corporation declares and pays dividends to holders of shares of Common Stock.

(d) **Voting Rights.**

Except as otherwise provided from time to time by the laws of the State of Florida or the Corporation's Articles of Incorporation, the holders of the Series A Preferred Stock shall have no voting rights.

(e) **Liquidation Preference.**

In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to shareholders, before any distribution of assets shall be made to the holders of the Common Stock (or to the holders of any other class of stock which is junior to the Series A Preferred Stock as to distributions upon liquidation, dissolution or winding up of the Corporation), an amount per share equal to the sum of (i) \$1 (one dollar) for each outstanding share of Series A Preferred Stock and (ii) any and all accrued and accumulated declared but unpaid dividends, if any, on each outstanding share of Series A Preferred Stock.

(f) **Conversion.**

(i) Mandatory Conversion.

In the event: (I) a registration statement for an initial public offering of the Common Stock of the Corporation is declared effective by the Securities and Exchange Commission; (II) a merger, consolidation, or reorganization of the Corporation with or into another corporation (other than a merger, consolidation, or reorganization involving only a change in the state of incorporation of the Corporation) is consummated pursuant to which the shareholders of the Corporation immediately prior to such merger or consolidation fail to own at least a majority of the outstanding voting stock of the surviving entity immediately following such merger or consolidation; or (III) the sale of all or substantially all of the Corporation's capital stock or

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assets to any other person is consummated, then, on the effective date of such event, the shares of Series A Preferred Stock will automatically and mandatorily convert into shares of Common Stock of the Corporation at a conversion rate (the "Conversion Rate") of one share of Common Stock for each share of Series A Preferred Stock, subject to appropriate adjustments in the event of stock splits, stock combinations, or similar events.

(ii) Mechanics of Conversion. In order to convert shares of Series A Preferred Stock into Common Stock, the holder or holders thereof shall surrender the certificate or certificates evidencing such shares of Series A Preferred Stock at the office of the transfer agent for the Series A Preferred Stock (or if there is no such transfer agent, to the secretary of the Corporation), which certificate or certificates shall be duly endorsed for transfer to the Corporation or in blank, or accompanied by proper instruments of transfer.

Shares of Series A Preferred Stock shall be deemed to have been converted immediately upon the effectiveness of the event requiring conversion in accordance with the foregoing provisions, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the surrender of a certificate or certificates for conversion and the receipt of the notice relating thereto (and in any event within five business days thereafter), the Corporation shall deliver or cause to be delivered to the person or persons entitled to receive the same: (I) a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion; and (II) if less than the full number of shares of Series A Preferred Stock evidenced by the surrendered certificate or certificates is being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates less the number of shares being converted.

(iii) Reservation of Shares. The Corporation shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of shares of Series A Preferred Stock, the full number of shares of Common Stock then deliverable upon the conversion of all shares of Series A Preferred Stock then outstanding.

(g) **Additional Preferred Series.**

The Corporation is permitted to designate and issue any other series of preferred stock of the Corporation having rights, preferences, privileges subject to, equal to or superior to the Series A Preferred Stock. No authorization or consent

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will be obtained or required from the holders of the Series A Preferred Stock for such issuance.

C. *Series B Convertible Preferred Stock*

(a) *Designation.*

(i) A total of eleven million (11,000,000) shares of the Corporation's Preferred Stock shall be designated as "Series B Convertible Preferred Stock".

(ii) The Series B Convertible Preferred Stock shall rank with respect to the rights to receive dividends and distributions upon liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary) senior to the Corporation's Series A Preferred Stock and Common Stock.

(b) *Dividends.*

(i) The holders of the Series B Convertible Preferred Stock shall be entitled to receive, whether or not declared by the Board of Directors, dividends payable in cash at the annual rate of 7% per share per annum, compounded quarterly and based on an initial purchase price of \$0.85 per share (computed on the basis of a 360-day year, 30-day month), payable commencing on December 31, 2002 and thereafter quarterly on the last day of March, June, September and December in each year to shareholders of record on such dates, not exceeding 60 days preceding such dividend dates, as shall be fixed for the purpose by the Board of Directors in advance of payment of each particular dividend. Dividends, if not paid in accordance herewith, shall cumulate.

(ii) So long as any shares of Series B Convertible Preferred Stock are outstanding, no dividend shall be declared or paid or other distribution made on any Series A Preferred Stock or Common Stock, nor shall the Corporation purchase or otherwise acquire, or permit any subsidiary of the Corporation to purchase or otherwise acquire, any shares of any Series A Preferred Stock or Common Stock unless all dividends on the Series B Convertible Preferred Stock for the current and all past quarterly dividend periods payable as provided in Section 2.C.(b)(i) of this Article V shall have been paid in full or declared in full and amounts set apart for the payment thereof and there shall exist no default with respect to the redemption provisions for the Series B Convertible Preferred Stock.

(iii) The holders of the Series B Convertible Preferred Stock shall have rights with respect to the payment of dividends as provided for in Section 2.D.(b)(iii) of this Article V.

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(iv) No dividends on the Corporation's Series A Preferred Stock and Common Stock may be paid in cash unless all prior dividends on the Series B Convertible Preferred Stock have been paid in full.

(v) Arrears of dividends shall not bear interest.

(c) **Liquidation; Consolidation or Merger.**

(i) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, then out of the assets of the Corporation before any distribution or payment to the holders of the Corporation's Series A Preferred Stock and the Common Stock, the holders of the Series B Convertible Preferred Stock shall be entitled to be paid the sum of \$1.28 per share (the "Series B Liquidation Preference"), together with full dividends accrued and unpaid to and including the date of such liquidation, dissolution or winding up, whether or not such dividends have been earned or declared.

(ii) If the Corporation shall subdivide or reclassify the then outstanding shares of Common Stock into a greater number of shares of Common Stock or combine or reclassify the then outstanding shares of Common Stock into a smaller number of shares of Common Stock, the Series B Liquidation Preference in effect immediately prior to such subdivision, combination or reclassification, as the case may be, shall be adjusted in proportion to such increase or decrease in the number of shares of Common Stock.

(iii) After payment in full to the holders of the Series C Convertible Preferred Stock, in accordance with Section 2.D.(c)(i) of this Article V, the rights with respect to the holders of the Series B Convertible Preferred Stock are provided for in Section 2.C.(c)(i) in this Article V. After payment in full to the holders of the Series B Convertible Preferred Stock in accordance with Section 2.C.(c)(i), the rights of the Series B Convertible Preferred Stock shall be as set forth in Section 2.D.(c)(iv) of this Article V.

(iv) If the assets of the Corporation available for distribution to its shareholders shall be insufficient to permit payment in full to the holders of both the Series C Convertible Preferred Stock and Series B Convertible Preferred Stock of the sums that such holders are entitled to receive, then the rights, privileges and preferences with respect to the holders of the Series B Convertible Preferred Stock shall be as provided for in Sections 2.D.(c)(iii) and (iv) of this Article V.

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(v) For purposes of this Section (c), (1) the acquisition of the Corporation by merger or consolidation, (2) the sale of all or substantially all of the assets of the Corporation, (3) any transaction or series of related transactions following which persons other than those persons who are holders of the capital stock of the Corporation immediately prior thereto shall own or control by other means 50% or more of the votes entitled to be cast by the holders of all of the shares of the capital stock of the Corporation immediately thereafter, (4) the occurrence of a Bankruptcy Event (as defined in Section 2.D.(e)(ii) of this Article V), or (5) the acceleration of the date on which the payment of a material debt owing by the Corporation is due, shall be deemed a liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), unless such consolidation or merger or sale or transaction or series of related transactions or declaration or acceleration shall have been consented to by the holders of two thirds of the shares of the Series B Convertible Preferred Stock at the time outstanding in the manner provided in Section 2.C.(e)(iii) of this Article V.

(d) Redemption.

(i) At any time after February 1, 2007, upon the affirmative vote of the holders of at least 66.7% of the outstanding Series B Convertible Preferred Stock, the Series B Convertible Preferred Stock shall be redeemed by the Corporation on a date to be selected by such holders at least 30 and no more than 60 days later (the "Series B Redemption Date") at the price of \$0.85 per share, together with full cumulative dividends accrued and unpaid to and including the date fixed for such redemption, whether or not such dividends have been earned or declared. The holders of Series B Convertible Preferred Stock so voting shall provide the Corporation with notice of the Series B Redemption Date as soon as practicable.

(ii) Upon the occurrence of an Event of Default (as defined in Section 2.D.(e)(ii) of this Article V), each holder of Series B Convertible Preferred Stock may elect to have the Corporation immediately thereafter redeem its shares of Series B Convertible Preferred Stock at a price of \$0.85 per share, together with full cumulative dividends accrued and unpaid to and including the date fixed for such redemption, whether or not such dividends have been earned or declared.

(iii) The aggregate of the amounts payable upon the redemption of a share of Series B Convertible Preferred Stock is hereinafter referred to as the "Series B Redemption Price".

(iv) Notice of the obligation of the Corporation to redeem the shares of the Series B Convertible Preferred Stock and of the Series B

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Redemption Date and place for redemption shall be mailed at least 30 and not more than 60 days prior to the Series B Redemption Date to each holder of record of shares so to be redeemed at such holder's last known address as shown by the records of the Corporation, but no failure to mail such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for such redemption except as to the holder to whom the Corporation failed to mail such notice or whose notice was defective. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives such notice.

(iii) On and after the Series B Redemption Date, each holder of shares called for redemption, upon surrender to the Corporation at the place designated in such notice of the certificate or certificates for such shares, properly endorsed in blank for transfer or accompanied by a proper instrument of assignment or transfer in blank and bearing any necessary transfer tax stamps thereto affixed and canceled, shall thereupon be entitled to receive payment of the Series B Redemption Price in cash.

(iv) If such notice of redemption shall have been duly given, and if on or before the Series B Redemption Date funds necessary for the redemption of the shares to be redeemed shall have been set aside so as to be and continue to be available therefor, then notwithstanding that any certificate representing any shares so called for redemption shall not have been surrendered, the dividends thereon shall cease to accrue from and after the Series B Redemption Date and all rights with respect to the shares so called for redemption shall forthwith after the Series B Redemption Date cease, except only the right of the holder to receive the Series B Redemption Price without interest. Any moneys so set aside by the Corporation and unclaimed by the end of three years from the date fixed for such redemption shall revert to the general funds of the Corporation.

(v) All shares of the Series B Convertible Preferred Stock redeemed or otherwise acquired by the Corporation shall be canceled and retired and shall not be reissued.

(e) **Voting Rights:**

(i) Each holder of shares of the Series B Convertible Preferred Stock shall be entitled to one vote for each share of Common Stock into which each share of Series B Convertible Preferred Stock standing in the name of such holder on the books of the Corporation is convertible. Each holder of shares of the Common Stock shall be entitled to one vote for each share standing in the name of such holder on the books of the Corporation. Except as otherwise provided hereinafter in this Section (e) or as otherwise required by statute, the holders of the

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Series C Convertible Preferred Stock, Series B Convertible Preferred Stock, and the Common Stock shall vote together as one class.

(ii) If the Corporation shall have an Event of Default, the rights, privileges and preferences of the holders of the Series B Convertible Preferred Stock shall be as provided for in Section 2.D.(e)(ii) of this Article V, provided however, that in the event there are no Series C Convertible Preferred Stock outstanding, then the holders of the Series B Convertible Preferred Stock voting separately as a class shall be entitled to elect the smallest number of directors of the Corporation which will be at least a majority of the Board of Directors, and the holders of the Common Stock voting separately as a class shall be entitled to elect the remaining directors of the Corporation. However, in such a case, if and when all Events of Default which may have occurred shall thereafter be cured, the holders of the Series B Convertible Preferred Stock and the Common Stock shall then be divested of such voting power, and shall be entitled to elect all directors of the Corporation voting together as one class, but always subject to the same provisions for the vesting of such voting power in the Series B Convertible Preferred Stock and the Common Stock in the case of any future Event of Default. A special meeting of the shareholders, at which the holders of the Series B Convertible Preferred Stock shall vote as a class, and the holders of the Common Stock shall vote as a class, shall be held at any time after the accrual of any such voting power, and upon notice similar to that provided in the By-Laws of the Corporation for shareholders meetings, at the request in writing of the holders of not less than 20% of the number of shares of the Series B Convertible Preferred Stock at the time outstanding, addressed to the Secretary of the Corporation at the principal business office of the Corporation, within 40 days after the receipt of such request. The holders of the Series B Convertible Preferred Stock and the Common Stock, respectively, shall be entitled to exercise such separate class voting power at a special meeting of shareholders called as aforesaid and at the next and succeeding annual meetings until termination of such separate class voting power. Whenever the right of the holders of the Series B Convertible Preferred Stock and Common Stock to elect directors by voting as separate classes has arisen, the terms of office of all persons who then may be directors of the Corporation shall terminate upon the election of their successors at a meeting of the shareholders as above provided. Upon termination of such voting power at any time by reason of the curing of all Events of Default, the terms of office of all persons who may have been elected directors of the Corporation by vote of the holders of the Series B Convertible Preferred Stock and the Common Stock voting as separate classes shall terminate at the next annual meeting of shareholders, or, if sooner, at a special meeting called by the Secretary within 90 days after all Events of Default have been cured or waived in writing by the holders of at least 66.7% of the shares of Series B Convertible Preferred Stock and shares of Common Stock, if any, issued upon conversion of shares of Series B Convertible Preferred Stock.

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(iii) As long as any shares of the Series B Convertible Preferred Stock remain outstanding, the Corporation shall not at any time without the consent of the holders of at least 66.7% of the shares of the Series B Convertible Preferred Stock at the time outstanding, given in person or by proxy, either in writing or at a meeting called for the purpose, at which the holders of the Series B Convertible Preferred Stock shall vote separately as a class (unless the consent of the holders of a greater number of such shares shall be required by statute):

(1) increase or decrease the number of shares of Preferred Stock or Common Stock that the Corporation is authorized to issue.

(2) create, authorize or issue any additional class of stock ranking prior to or on a parity with the Series B Convertible Preferred Stock or increase the authorized amount of the Series B Convertible Preferred Stock or any additional class of stock ranking prior to or on a parity with the Series B Convertible Preferred Stock, or create or authorize any obligation or security exercisable or exchangeable for or convertible into shares of stock of any class ranking prior to or on a parity with the Series B Convertible Preferred Stock;

(3) amend, alter or repeal any provision of the Articles of Incorporation or By-Laws of the Corporation which would affect adversely the rights, preferences or privileges of the Series B Convertible Preferred Stock or of the holders thereof; provided, however, that the amendment of the Articles of Incorporation of the Corporation to create, increase or decrease the authorized amount of any class of stock ranking junior to the Series B Convertible Preferred Stock, or to increase or decrease the par value of any class of stock ranking junior to the Series B Convertible Preferred Stock shall not be deemed to affect adversely the rights or preferences of the Series B Convertible Preferred Stock or the holders thereof and may be effected by the affirmative vote of the holders of a majority of the stock of the Corporation which is entitled to vote;

(4) change the rights, preferences, privileges or restrictions of the Series B Convertible Preferred Stock;

(5) change the number of authorized directors;

(6) issue any Common Stock;

(7) declare any dividend on any share of Common Stock of the Corporation;

(8) sell, lease or convey all or substantially all of the property or business of the Corporation or any subsidiary of the Corporation (except to the Corporation), or consolidate or merge the Corporation or any

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W04000214069 7

subsidiary of the Corporation with any other corporation (except a consolidation or merger of the Corporation with any wholly-owned subsidiary of the Corporation), or in any way reorganize the capital of the Corporation or significantly change the business of the Corporation, or take any action that would result in a Liquidation Event;

(9) purchase or otherwise acquire any shares of stock or any other securities or any assets or properties of any other entity or person;

(10) incur or obligate itself to incur any indebtedness that would result in the aggregate indebtedness that the Corporation has incurred and is obligated to incur to exceed \$1,000,000;

(11) take any action that results in any asset of the Corporation (including, without limitation, any intellectual property) being transferred to a foreign subsidiary of the Corporation; or

(12) increase the number of shares of Common Stock reserved for issuance to employees, strategic partners, advisors and other service providers of the Corporation from the number of shares of Common Stock so reserved as at January 29, 2002, or issue any such additional shares.

(f) Preemptive Rights with Respect to Equity:

The Series B Convertible Preferred Stock rights, privileges, and preferences with respect to Preemptive Rights shall be as provided for in Section 2.D(f)(i)-(iv) of this Article V.

(g) Conversion of the Series B Convertible Preferred Stock:

(i) Shares of the Series B Convertible Preferred Stock shall be converted into fully paid and nonassessable full shares of Common Stock of the Corporation at the conversion price (the "Series B Conversion Price") in effect at the time of conversion, each share of the Series B Convertible Preferred Stock being valued at \$0.85, plus full cumulative dividends accrued and unpaid to the date of such conversion on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like) for the purpose of such conversion:

(1) in toto, at the option of the holders of at least 66.7% of the shares of Series B Convertible Preferred Stock at the time outstanding,

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(2) at the option of the holder thereof, at any time and from time to time, in the manner and upon the terms and conditions hereinafter in this Section (g) set forth; or

(3) if the Corporation has consummated a Qualified Public Offering (as defined in Section 2.D.(f)(iii) of this Article V), at the option of the Corporation, at any time within 30 days after the consummation of such Qualified Public Offering, in the manner and upon the terms and conditions hereinafter set forth;

provided, however, that as to any share of the Series B Convertible Preferred Stock which shall have been called for redemption, the right of conversion shall terminate at the close of business on the last full business day prior to the date fixed for redemption. The Series B Conversion Price shall be \$0.85 per share of Common Stock until adjusted (to the nearest cent, a half-cent being considered a full cent) as hereinafter in this Section (g) and thereafter the Series B Conversion Price shall be further adjusted and readjusted from time to time as hereinafter set forth in this Section (g), provided each such adjustment or readjustment to remain in effect until a further adjustment or readjustment is required by this Section (g).

(ii) If at any time or from time to time after the date on which shares of Series B Convertible Stock were originally issued (the "Series B Original Issue Date"), the Corporation shall issue or sell shares of its Common Stock or any Convertible Security (as defined below) other than (I) shares issued upon conversion of the Series A Preferred Stock, Series B Convertible Preferred Stock or Series C Convertible Preferred Stock, (II) shares issued to directors, officers and employees of and consultants to the Corporation or a subsidiary of the Corporation pursuant to a stock option or purchase plan approved by the Board of Directors of the Corporation, (III) securities issued or issuable by the Corporation in connection with the acquisition by the Corporation of another corporation or other entity by merger, purchase of all or substantially all of the assets or other reorganization transaction in which the Corporation is the surviving company, (IV) securities issued to a strategic partner of the Corporation in connection with the entering into of a material agreement between the Corporation and such strategic partner, which agreement shall have been approved in advance by the Board of Directors of the Corporation, for a consideration per share less than the Series B Conversion Price in effect immediately prior to such issue or sale (the "Series B New Conversion Price"), then in each such case the Series B Conversion Price shall be reduced to the Series B New Conversion Price immediately upon such issue or sale or deemed issue or sale.

For purposes of any such adjustment, the following provisions shall be applicable:

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(1) If after the Series B Original Issue Date the Corporation shall (I) grant any rights or options to subscribe for, purchase or otherwise acquire its Common Stock, or (II) issue or sell any stock or other securities directly or indirectly convertible into or exchangeable for its Common Stock (such stock or securities being hereinafter called "Convertible Securities"), then in each such case the price per share of the Common Stock issuable upon the exercise of such rights or options or the conversion or exchange of such Convertible Securities shall be determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such rights or options or the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights or options or the conversion or exchange of such Convertible Securities, by (y) the maximum number of shares of Common Stock issuable upon such exercise or conversion or exchange, as the case may be. If the price per share so determined is less than the Series B Conversion Price in effect immediately prior to the granting of such rights or options or the issue or sale of such Convertible Securities, such granting or issue or sale shall be deemed to be an issue or sale for cash of such maximum number of shares of Common Stock at such price per share and such maximum number of shares of Common Stock shall be deemed to be outstanding, provided that

(A) if such rights or options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the amount of additional consideration payable to the Corporation or decrease in the number of shares of Common Stock issuable upon such exercise or conversion or exchange (by change of rate or otherwise), the Series B Conversion Price shall, upon each such increase or decrease becoming effective, be readjusted to reflect such increase or decrease insofar as it affects rights of exercise, exchange or conversion which have not theretofore expired, and

(B) upon the expiration of such rights or options or the rights of conversion or exchange of such Convertible Securities, if any thereof shall not have been exercised, the Series B Conversion Price shall, upon such expiration, be readjusted and shall thereafter be such as it would have been had it been originally adjusted (or had the original adjustment not been required, as the case may be) on the basis that (xx) the only shares of Common Stock so issued were the shares of Common Stock, if any, actually issued or sold upon the exercise of such rights or options or the rights of conversion or exchange of such Convertible Securities, and (yy) such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise plus the consideration, if any, actually received by the Corporation for the granting of all of such rights or options, whether or not exercised, or for the issue or sale of all such Convertible Securities which shall have been converted or exchanged,

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provided, further, that no such readjustment shall have the effect of increasing the Series B Conversion Price by an amount in excess of the amount of the adjustment thereof initially made in respect of the granting of such rights or options or the issue or sale of such Convertible Securities. If the Corporation shall grant any rights or options to subscribe for, purchase or otherwise acquire Convertible Securities, such Convertible Securities shall be deemed, for the purposes of this paragraph (3), to have been issued or sold for the total amount received or receivable by the Corporation as consideration for the granting of such rights or options plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights or options, and the Series B Conversion Price shall be adjusted and readjusted as provided above in this paragraph (3) in the case of Convertible Securities.

(2) If the Corporation shall pay a dividend or make a distribution on or in respect of any stock of the Corporation (other than the Series B Convertible Preferred Stock or classes or series of stock senior in priority to the Series B Convertible Preferred Stock), which dividend or distribution is payable in Common Stock or Convertible Securities, such Common Stock or Convertible Securities shall be deemed to have been issued or sold for no consideration.

(3) In case of a consideration consisting in whole or in part of cash, the cash consideration shall be deemed to be the amount of cash constituting or included in such consideration after deduction of any expenses payable by the Corporation and any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation. In case of a consideration consisting in whole or in part of property other than cash, the amount of the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors of the Corporation. In case Common Stock or Convertible Securities are issued or sold or rights or options to purchase or otherwise acquire Common Stock or Convertible Securities are granted together with other stock or securities or assets of the Corporation for a consideration which covers a combination of them, the portion of such consideration allocable to the Common Stock, Convertible Securities, rights or options shall be as determined in good faith by the Board of Directors of the Corporation.

(4) The date of the issue or sale of Common Stock issuable on the exercise of any rights or options or the conversion or exchange of any Convertible Securities shall be deemed to be the date of issue or sale of such rights or options or such Convertible Securities (or right or options to acquire such Convertible Securities), provided that if a record of the holders of any class of securities shall be taken for the purpose of entitling such holders to receive any

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dividend or other distribution payable in, or any rights or options to subscribe for, purchase or otherwise acquire, Common Stock or Convertible Securities, the date of the issue or sale of any Common Stock issuable in payment of any such dividend or other distribution or upon the exercise of any such rights or options, or upon the conversion or exchange of any Convertible Securities so issuable shall be deemed to be the date of such record.

(5) The shares of Common Stock from time to time outstanding shall be deemed to include shares reacquired by the Corporation after they had been issued and outstanding, and the sale of such shares shall not be deemed to be an issue or sale of Common Stock.

(iii) If the Corporation shall subdivide or reclassify the then outstanding shares of its Common Stock into a greater number of shares of Common Stock or combine or reclassify the then outstanding shares of its Common Stock into a smaller number of shares of Common Stock, the Series B Conversion Price in effect immediately prior to such subdivision, combination or reclassification, as the case may be, shall be proportionately adjusted as of the effective date thereof so that the holder of any Series B Convertible Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which he would have owned after the happening of such event had such Series B Convertible Preferred Stock been converted immediately prior to the happening of such event.

(iv) In case of any capital reorganization of the Corporation, or any consolidation or merger of the Corporation with or into another corporation, or any sale or conveyance to another corporation of all or substantially all of the property of the Corporation, the holder of each share of Series B Convertible Preferred Stock then outstanding (or of the stock or securities received in lieu of such share) shall have the right thereafter to convert such share (or such stock or securities) into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock of the Corporation into which such share of the Series B Convertible Preferred Stock might have been converted immediately prior to such reorganization, consolidation, merger, sale or conveyance, and shall have no conversion rights under these provisions; and effective provision shall be made in the Articles of Incorporation of the resulting or surviving corporation or otherwise so that the provisions set forth in this Section (g) for the protection of the conversion rights of the Series B Convertible Preferred Stock shall thereafter be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion of the Series B Convertible Preferred Stock remaining outstanding or other convertible securities received by the holders in place thereof; and any such

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resulting or surviving corporation shall expressly assume the obligation to deliver, upon the exercise of the conversion privilege, such shares, securities or property as the holders of the Series B Convertible Preferred Stock, or other convertible securities received by the holders in place thereof, shall be entitled to receive pursuant to the provisions hereof, and to make provisions for the protection of the conversion right as above provided. In case securities or property other than Common Stock shall be issuable or deliverable upon conversion as aforesaid, then all references in this Section (g) to Common Stock shall be deemed to apply, so far as appropriate and as nearly as may be, to such other securities or property.

(v) In the event of

(1) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend at the same rate as the rate of the last cash dividend theretofore paid) or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or

(2) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation or any transfer of all or substantially all the assets of the Corporation to or consolidation or merger of the Corporation with or into another corporation, or

(3) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, or

(4) any proposed issue or grant after the Series B Original Issue Date by the Corporation of any shares of stock of any class or any other securities, or any right or option to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities (other than the issue of Common Stock on the exercise of the Series B Convertible Preferred Stock or other Convertible Securities or rights or options issued on or prior to the Series B Original Issue Date or the granting of options by the Corporation to officers and employees of and consultants to the Corporation or a subsidiary of the Corporation pursuant to a stock option or purchase plan approved by the Board of Directors of the Corporation),

then and in each such event the Corporation will mail to each holder of the Series B Convertible Preferred Stock then outstanding at such holder's address as it appears on the records of the Corporation a notice specifying (I) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, (II) the

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date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up is to take place, and the time, if any is to be fixed, of which the holders of record of Common Stock shall be entitled to exchange their shares of Common Stock for securities or other properties deliverable upon such event, and (III) the amount and character of any stock or other securities, or rights or options with respect thereto, proposed to be issued or granted, the date of such proposed issue or grant, and the person or class of person to whom such proposed issue or grant is to be offered or made. Such notice shall be mailed at least 20 days prior to the date therein specified.

(vi) Upon each adjustment or readjustment in the Series B Conversion Price, in excess of \$0.10, or cumulative, the Corporation at its expense will cause the independent public accountants who regularly audit the books and accounts of the Corporation or other independent public accountants of recognized standing selected by the Corporation to compute such adjustment or readjustment in accordance with the provisions of this Section (g) and prepare a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or to be received by the Corporation for any additional shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the number of shares of Common Stock outstanding or deemed to be outstanding, and (3) the Series B Conversion Price in effect immediately prior to such issue or sale and as adjusted and readjusted (if required) on account thereof. The Corporation forthwith shall file such certificate with its corporate records and mail a copy to each holder of the Series B Convertible Preferred Stock then outstanding at such holder's address as it appears on the records of the Corporation.

(vii) In order to convert shares of the Series B Convertible Preferred Stock into shares of Common Stock, the holder thereof shall surrender at the principal office of the Corporation (or at such other place as the Board of Directors shall have designated for the purpose) the certificate or certificates for such shares of the Series B Convertible Preferred Stock properly endorsed in blank for transfer or accompanied by a proper instrument of assignment or transfer in blank and bearing any necessary transfer tax stamps thereto affixed and canceled, together with a written request for conversion in which shall be stated the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation will, as soon as practicable thereafter, deliver at said office to such holder of the Series B Convertible Preferred Stock, or to his nominee or nominees, a certificate or certificates for the number of full shares of Common Stock to which he shall be entitled as aforesaid, together with a cash payment in lieu of any fraction of a share of such Common Stock and full cumulative dividends on the shares of the Series B Convertible Preferred Stock surrendered for conversion accrued and unpaid to and

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including the date surrendered for conversion. No fraction of a share of Common Stock shall be issued upon any conversion but, in lieu thereof, shall be paid upon such conversion an amount in cash equal to the same fraction of the Conversion Price at the time of conversion. No payment or adjustment for dividends on any shares of Common Stock that shall be issuable upon conversion of the Series B Convertible Preferred Stock shall be made. Shares of the Series B Convertible Preferred Stock shall be deemed to be converted and the person or persons in whose name or names any certificate or certificates for Common Stock shall be issuable upon such conversion shall be deemed to have become a holder or holders of record of the shares of Common Stock at the close of business on the date upon which the certificate representing shares of the Series B Convertible Preferred Stock has been surrendered to the Corporation for conversion. The Corporation will pay all issue taxes, if any, incurred upon the issue of Common Stock upon conversion of the Series B Convertible Preferred Stock, provided that the Corporation will not pay any transfer or other taxes incurred by reason of the issue of such Common Stock in a name or names other than that in which the shares of the Series B Convertible Preferred Stock so converted were registered.

(viii) Upon the closing of an issuance of New Securities (as defined in Section 2.D.(f)(i) of this Article V) at any time after the Series B Original Issue Date but before the Corporation issues shares of Common Stock in a Qualified Public Offering, if (a) a holder of Series B Convertible Preferred Stock does not purchase in such issuance all of such holder's pro rata portion (based on each holder's ownership of shares of Series B Convertible Preferred Stock) of any New Securities allocated by the Company for purchase by the holders of shares of Series B Convertible Preferred Stock (unless such holder is not able to purchase all of its percentage ownership because the other holders of shares of Series B Convertible Preferred Stock purchased their full allocation) and (b) the holders of a majority of the then outstanding shares of Series B Convertible Preferred Stock participate in such New Issuance, then such non-participating holder's shares of Series B Convertible Preferred Stock (and only such holder's shares of Series B Convertible Preferred Stock) shall automatically convert into shares of Common Stock pursuant to and in accordance with the terms relating to the conversion of shares of Series B Convertible Preferred Stock into shares of Common Stock set forth in this Section (g). The automatic conversion of a holder's shares of Series B Convertible Preferred Stock into shares of Common Stock shall be the Company's sole and exclusive remedy for the failure of such holder to participate in an issuance of New Securities as provided above. An issuance of New Securities means a bona fide arms-length issuance by the Company of equity securities (whether or not in conjunction with an issuance by the Company of debt securities).

(ix) All shares of the Series B Convertible Preferred Stock which shall have been converted as provided in this Section (g) shall no longer

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be deemed to be outstanding and all rights with respect to such shares (including all rights to receive cumulative dividends on the shares of the Series B Convertible Preferred Stock surrendered for conversion accrued and unpaid to and including the date surrendered for conversion) shall forthwith cease and terminate except for the right of the holders thereof to receive full shares of Common Stock, together with a cash payment in lieu of any fraction of a share of such Common Stock. All shares of the Series B Convertible Preferred Stock surrendered for conversion shall be canceled and retired and shall not be reissued.

(x) The Corporation will at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the shares of the Series B Convertible Preferred Stock, the full number of shares of Common Stock from time to time issuable upon conversion of all shares of the Series B Convertible Preferred Stock then outstanding.

D. Series C Convertible Preferred Stock

(a) Designation.

(i) A total of eighteen million (18,000,000) shares of the Corporation's Preferred Stock shall be designated as "Series C Convertible Preferred Stock"

(ii) The Series C Convertible Preferred Stock shall rank, with respect to rights to receive dividends senior to the Corporation's Series B Convertible Preferred Stock, Series A Preferred Stock and Common Stock. The Series C Convertible Preferred Stock shall rank with respect to the rights to receive distributions upon liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary) senior to the Corporation's Series B Convertible Preferred Stock, Series A Preferred Stock and Common Stock.

(b) Dividends:

(i) The holders of the Series C Convertible Preferred Stock shall be entitled to receive, whether or not declared by the Board of Directors, dividends payable, at the option of the Corporation, in cash or Series C Convertible Preferred Stock at the annual rate of 7% per share per annum, compounded quarterly and based on the Initial Price per share (computed on the basis of a 360-day year, 30-day month), payable commencing on December 31, 2003 and thereafter quarterly on the last day of March, June, September and December in each year to shareholders of record on such dates, not exceeding 60 days preceding such dividend dates, as shall be fixed for the purpose by the Board of Directors in advance of payment of each particular dividend. Dividends, if not paid in accordance herewith,

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shall cumulate. The "Initial Price" shall be equal to, for such share, \$.90 for such share of Series C Convertible Preferred Stock (subject to adjustment of such fixed dollar amount for any stock splits, stock dividends, combinations, recapitalizations or the like).

(ii) So long as any shares of Series C Convertible Preferred Stock are outstanding, no dividend shall be declared or paid or other distribution made on any other class of Preferred Stock or Common Stock nor shall the Corporation purchase or otherwise acquire, or permit any subsidiary of the Corporation to purchase or otherwise acquire, any shares of any other class of Preferred Stock or Common Stock unless all dividends on the Series C Convertible Preferred Stock for the current and all past quarterly dividend periods payable as provided in Section 2.D.(b)(i) shall have been paid in full or declared in full and amounts set apart for the payment thereof and there shall exist no default with respect to the redemption provisions for the Series C Convertible Preferred Stock.

(iii) After payment in full to the holders of the Series C Convertible Preferred Stock of the dividends which such holders are entitled to receive as provided in Section 2.D.(b)(i) of this Article V and after payment in full to the holders of the Series B Convertible Preferred Stock of the dividends which such holders are entitled to receive as provided in Section 2.C.b(i) hereof, subject to the provisions of Section 2.D.(b)(ii) of this Article V, the holders of the Series C Convertible Preferred Stock, Series B Convertible Preferred Stock, Series A Preferred Stock, and Common Stock shall be entitled to receive, as and when declared by the Board of Directors out of the remaining funds of the Corporation legally available therefor, such dividends (payable in cash, stock or otherwise) as the Board of Directors may from time to time determine, payable to the holders of the Series B Convertible Preferred Stock, Series A Preferred Stock and Common Stock in proportion to the number of shares of Common Stock into which the shares of Series B Convertible Preferred Stock and Series A Preferred Stock held by them of record are convertible and the number of shares of Common Stock held by them of record, on such dates, not exceeding 60 days preceding such dividend payment dates, as shall be fixed for the purpose by the Board of Directors in advance of payment of each particular dividend.

(iv) Notwithstanding any prior dividend payment to the holders of Series C Convertible Preferred Stock, in the event the Corporation declares a dividend payable to the holders of Common Stock, such dividend shall also be paid to the holders of the Series C Convertible Preferred Stock on an as converted basis and amount.

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(v) No dividends on any class of the Corporation's stock may be paid in cash unless all prior dividends on the Series C Convertible Preferred Stock have been paid in full.

(vi) Arrears of dividends shall not bear interest.

(c) **Liquidation; Consolidation or Merger.**

(i) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, then out of the assets of the Corporation before any distribution or payment to the holders of the Series B Convertible Preferred Stock, Series A Preferred Stock and Common Stock, the holders of the Series C Convertible Preferred Stock shall be entitled to be paid the sum per share of 1.5 times the Initial Price for each share of the Series C Convertible Preferred Stock (the "Series C Liquidation Preference"), together with full dividends accrued and unpaid to and including the date of such liquidation, dissolution or winding up, whether or not such dividends have been earned or declared. The "Initial Price" shall be equal to, for such share, \$.90 for such share of Series C Convertible Preferred Stock (subject to adjustment of such fixed dollar amount for any stock splits, stock dividends, combinations, recapitalizations or the like).

(ii) If the Corporation shall subdivide or reclassify the then outstanding shares of Common Stock into a greater number of shares of Common Stock or combine or reclassify the then outstanding shares of Common Stock into a smaller number of shares of Common Stock, the Series C Liquidation Preference in effect immediately prior to such subdivision, combination or reclassification, as the case may be, shall be adjusted in proportion to such increase or decrease in the number of shares of Common Stock.

(iii) If the assets of the Corporation available for distribution to its shareholders shall be insufficient to permit payment in full to the holders of the Series C Convertible Preferred Stock of the sums which such holders are entitled to receive in such case, then all of the assets available for distribution to the shareholders shall be distributed among and paid to the holders of the Series C Convertible Preferred Stock ratably in proportion to the respective amounts that would be payable per share if such assets were sufficient to permit payment in full.

(iv) After payment in full to the holders of the Series C Convertible Preferred Stock of the sums which such holders are entitled to receive as provided in Section 2.D.(c)(i) of this Article V, and after payment of all other preferences on the capital stock of the Corporation, including payment in full to the holders of the Series B Convertible Preferred Stock of the sums which such holders are entitled to receive as provided in Section 2.C.(c)(i) hereof, the remaining assets

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of the Corporation shall be distributed among and paid to the holders of the Series C Convertible Preferred Stock, Series B Convertible Preferred Stock, Series A Preferred Stock and the Common Stock in proportion to the number of shares of Common Stock into which the shares of Series C Convertible Preferred Stock, Series B Convertible Preferred Stock and Series A Preferred Stock held by them are convertible and the number of shares of Common Stock held by them respectively.

(v) For purposes of this Section (c), any Liquidation Event, as defined in Section 2.C.(c)(v) shall be deemed a liquidation, dissolution or winding up of the Corporation, unless such consolidation or merger or sale or transaction or series of related transactions or declaration or acceleration shall have been consented to by the holders of two thirds of the shares of the Series C Convertible Preferred Stock at the time outstanding in the manner provided in Section 2.D.(e)(iii) of this Article V.

(vi) The Corporation shall not issue shares of stock or equity securities that shall have a Liquidation preference senior in any respect to the Series C Liquidation Preference of the Series C Convertible Preferred Stock.

(d) **Redemption.**

(i) At any time after the fifth anniversary of the final closing of the Series C Convertible Preferred Stock financing, but in no event later than July 14, 2008, upon the affirmative vote of the holders of at least 66.7% of the outstanding Series C Convertible Preferred Stock, the Series C Convertible Preferred Stock shall be redeemed by the Corporation on a date to be selected by such holders at least 30 and no more than 60 days later (the "Series C Redemption Date") at the Initial Price, together with full cumulative dividends accrued and unpaid to and including the date fixed for such redemption, whether or not such dividends have been earned or declared. The holders of Series C Convertible Preferred Stock so voting shall provide the Corporation with notice of the Redemption Date as soon as practicable. The "Initial Price" shall be equal to, for such share, \$.90 for such share of Series C Convertible Preferred Stock (subject to adjustment of such fixed dollar amount for any stock splits, stock dividends, combinations, recapitalizations or the like).

(ii) Upon the occurrence of an Event of Default, each holder of Series C Convertible Preferred Stock may elect to have the Corporation immediately thereafter redeem its shares of Series C Convertible Preferred Stock at the Initial Price, together with full cumulative dividends accrued and unpaid to and including the date fixed for such redemption, whether or not such dividends have been earned or declared.

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(iii) The aggregate of the amounts payable upon the redemption of a share of Series C Convertible Preferred Stock is hereinafter referred to as the "Series C Redemption Price".

(iv) Notice of the obligation of the Corporation to redeem the shares of the Series C Convertible Preferred Stock and of the Series C Redemption Date and place for redemption shall be mailed at least 30 and not more than 60 days prior to the Series C Redemption Date to each holder of record of shares so to be redeemed at such holder's last known address as shown by the records of the Corporation, but no failure to mail such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for such redemption except as to the holder to whom the Corporation failed to mail such notice or whose notice was defective. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives such notice.

(v) On and after the Series C Redemption Date, each holder of shares called for redemption, upon surrender to the Corporation at the place designated in such notice of the certificate or certificates for such shares, properly endorsed in blank for transfer or accompanied by a proper instrument of assignment or transfer in blank and bearing any necessary transfer tax stamps thereto affixed and canceled, shall thereupon be entitled to receive payment of the Series C Redemption Price in cash.

(vi) If such notice of redemption shall have been duly given, and if on or before the Series C Redemption Date funds necessary for the redemption of the shares to be redeemed shall have been set aside so as to be and continue to be available therefor, then notwithstanding that any certificate representing any shares so called for redemption shall not have been surrendered, the dividends thereon shall cease to accrue from and after the Series C Redemption Date and all rights with respect to the shares so called for redemption shall forthwith after the Series C Redemption Date cease, except only the right of the holder to receive the Series C Redemption Price without interest. Any moneys so set aside by the Corporation and unclaimed by the end of three years from the date fixed for such redemption shall revert to the general funds of the Corporation.

(vii) All shares of the Series C Convertible Preferred Stock redeemed or otherwise acquired by the Corporation shall be canceled and retired and shall not be reissued.

(e) **Voting Rights:**

(i) Each holder of shares of the Series C Convertible Preferred Stock shall be entitled to one vote for each share of Common Stock into

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which each share of Series C Convertible Preferred Stock standing in the name of such holder on the books of the Corporation is convertible. Each holder of shares of the Common Stock shall be entitled to one vote for each share standing in the name of such holder on the books of the Corporation. Except as otherwise provided hereinafter in this Section (e) or as otherwise required by statute, the holders of the Series C Convertible Preferred Stock, Series B Convertible Preferred Stock and the Common Stock shall vote together as one class.

(ii) If the Corporation shall (1) default in the payment of the Series C Redemption Price upon the redemption of any shares of Series C Convertible Preferred Stock as provided in this Section 2.D.(d) of this Article V or default in the payment of the Series B Redemption Price upon the redemption of any shares of Series B Convertible Preferred Stock as provided in Section 2.D.(d) of this Article V; (2) fail to pay any dividend on any share of Series C Convertible Preferred Stock when due as provided in Section 2.D.(b) of this Article V or fail to pay any dividend on any share of Series B Convertible Preferred Stock when due as provided in Section 2.C.(b) of this Article V; (3) fail to redeem any share of Series C Convertible Preferred Stock when due as provided in Section 2.D.(d) of this Article or fail to redeem any share of Series B Preferred Stock when due as provided in Section 2.C.(d) of this Article V; (4) have the date on which the payment of any debt owing by the Corporation in excess of \$1,000,000 becomes due accelerated by the obligee of such debt; (5) make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts as they become due or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file any answer admitting or not contesting the material allegations of a petition filed against the Corporation in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Corporation or of all or any substantial part of the properties of the Corporation, or the Corporation or its directors or a majority of its stockholders shall take any action looking to the dissolution or liquidation of the Corporation; or if, within 60 days after the commencement of an action against the Corporation seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such action shall not have been dismissed or all orders or proceedings thereunder affecting the operations or the business of the Corporation stayed, or if the stay of any such order or proceeding shall thereafter be set aside, or if within 60 days after the appointment without the consent or acquiescence of the Corporation of any trustee, receiver or liquidator of the Corporation or of all or any substantial part of the properties of the Corporation such appointment shall not have been vacated (a "Bankruptcy Event"); (6) if a final judgment shall be rendered against the Corporation and if, within 60 days after

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entry thereof, such judgment shall not have been discharged; or (7) have made a material misrepresentation in or pursuant to the Stock Purchase Agreement dated as January 14, 2003 by and between the Corporation and the Investors listed on Schedule I attached thereto; or (8) take any action in violation of Section 2.D.(e)(iii) or Section 2.C.(e)(iii) of this Article; then and in every such event (hereinafter referred to as an "Event of Default"), the holders of the Series C Convertible Preferred Stock voting separately as a class shall be entitled to elect the smallest number of directors of the Corporation which will be at least a majority of the Board of Directors, the holders of the Series B Convertible Preferred Stock voting separately as a class shall be entitled to elect half of the remaining directors of the Corporation, and the holders of the Common Stock voting separately as a class shall be entitled to elect the other half of the remaining directors of the Corporation. However, if and when all Events of Default which may have occurred shall thereafter be cured, the holders of the Series C Convertible Preferred Stock, Series B Convertible Preferred Stock and the Common Stock shall then be divested of such voting power, and shall be entitled to elect all directors of the Corporation voting together as one class, but always subject to the same provisions for the vesting of such voting power in the Series C Convertible Preferred Stock, Series B Convertible Preferred Stock, and the Common Stock in the case of any future Event of Default. A special meeting of the shareholders, at which the holders of the Series C Convertible Preferred Stock, Series B Convertible Preferred Stock and the holders of the Common Stock shall vote as separate classes, shall be held at any time after the accrual of any such voting power, and upon notice similar to that provided in the By-Laws of the Corporation for shareholders meetings, at the request in writing of the holders of not less than 20% of the number of shares of the Series C Convertible Preferred Stock or Series B Convertible Preferred Stock at the time outstanding, addressed to the Secretary of the Corporation at the principal business office of the Corporation, in which case such Secretary shall call such meeting at the earliest time allowed pursuant to the notice provisions of the By-laws after the receipt of such request. The holders of the Series C Convertible Preferred Stock, Series B Convertible Preferred Stock and the Common Stock, respectively, shall be entitled to exercise such separate class voting power at a special meeting of shareholders called as aforesaid and at the next and succeeding annual meetings until termination of such separate class voting power. Whenever the right of the holders of the Series C Convertible Preferred Stock, Series B Convertible Preferred Stock and Common Stock to elect directors by voting as separate classes has arisen, the terms of office of all persons who then may be directors of the Corporation shall terminate upon the election of their successors at a meeting of the shareholders as above provided. Upon termination of such voting power at any time by reason of the curing of all Events of Default, the terms of office of all persons who may have been elected directors of the Corporation by vote of the holders of the Series C Convertible Preferred Stock, Series B Convertible Preferred Stock and the Common Stock voting as separate classes shall terminate at the next annual meeting of

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shareholders, or, if sooner, at a special meeting called by the Secretary within 90 days after all Events of Default have been cured or waived in writing by the holders of at least 66.7% of the shares of Series C Convertible Preferred Stock and shares of Common Stock, if any, issued upon conversion of shares of Series C Convertible Preferred Stock and 66.7% of the shares of Series B Convertible Preferred Stock and shares of Common Stock, if any, issued upon conversion of shares of Series B Convertible Preferred Stock

(iii) As long as any shares of the Series C Convertible Preferred Stock remain outstanding, the Corporation shall not at any time without the consent of the holders of at least 66.7% of the shares of the Series C Convertible Preferred Stock at the time outstanding, given in person or by proxy, either in writing or at a meeting called for the purpose, at which the holders of the Series C Convertible Preferred Stock shall vote separately as a class (unless the consent of the holders of a greater number of such shares shall be required by statute):

(1) increase or decrease the number of shares of Preferred Stock or Common Stock that the Corporation is authorized to issue.

(2) create, authorize or issue any additional class of stock ranking prior to or on a parity with the Series C Convertible Preferred Stock or increase the authorized amount of the Series C Convertible Preferred Stock or any additional class of stock ranking prior to or on a parity with the Series C Convertible Preferred Stock, or create or authorize any obligation or security exercisable or exchangeable for or convertible into shares of stock of any class ranking prior to or on a parity with the Series C Convertible Preferred Stock;

(3) amend, alter or repeal any provision of the Articles of Incorporation or By-Laws of the Corporation which would affect adversely the rights, preferences or privileges of the Series C Convertible Preferred Stock or of the holders thereof; provided, however, that the amendment of the Articles of Incorporation of the Corporation to create, increase or decrease the authorized amount of any class of stock ranking junior to the Series C Convertible Preferred Stock, or to increase or decrease the par value of any class of stock ranking junior to the Series C Convertible Preferred Stock shall not be deemed to affect adversely the rights or preferences of the Series C Convertible Preferred Stock or the holders thereof and may be effected by the affirmative vote of the holders of a majority of the stock of the Corporation which is entitled to vote;

(4) change the rights, preferences, privileges or restrictions of the Series C Convertible Preferred Stock;

(5) change the number of authorized directors;

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- (6) issue any common stock;
- (7) declare any dividend on any share of common stock of the Corporation;
- (8) sell, lease or convey all or substantially all of the property or business of the Corporation or any subsidiary of the Corporation (except to the Corporation), or consolidate or merge the Corporation or any subsidiary of the Corporation with any other corporation (except a consolidation or merger of the Corporation with any wholly-owned subsidiary of the Corporation), or in any way reorganize the capital of the Corporation or significantly change the business of the Corporation, or take any action that would result in a Liquidation Event;
- (9) purchase or otherwise acquire any shares of stock or any other securities or any assets or properties of any other entity or person;
- (10) incur or obligate itself to incur any indebtedness that would result in the aggregate indebtedness that the Corporation has incurred and is obligated to incur to exceed \$1,000,000;
- (11) take any action that results in any asset of the Corporation (including, without limitation, any intellectual property) being transferred to a foreign subsidiary of the Corporation;
- (12) increase the number of shares of Common Stock reserved for issuance to employees, strategic partners, advisors and other service providers of the Corporation from the number of shares of Common Stock so reserved as at January 14, 2003, or issue any such additional shares; or
- (13) undertake to make a significant change in the business of the Corporation.

(f) **Preemptive Rights with Respect to Equity.**

(i) If the Corporation proposes to issue or sell any shares of its capital stock, grant options or other rights to subscribe for, purchase or otherwise acquire any shares of its capital stock, issue or sell or grant any options or other rights to subscribe for, purchase or otherwise acquire any security convertible into or exchangeable or exercisable for shares of its capital stock or otherwise enter into any financing arrangement which in any way affects the equity of the Corporation, then the Corporation shall first give notice by mail or by any other certifiable manner (the "Subscription Notice") addressed to the holders of

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shares of Series C Convertible Preferred Stock and shares of Common Stock, if any, issued upon conversion of shares of Series C Convertible Preferred Stock, and to the holders of shares of Series B Convertible Preferred Stock and shares of Common Stock, if any, issued upon conversion of shares of Series B Convertible Preferred Stock, specifying the number of shares or other securities proposed to be issued or sold by the Corporation (the "New Securities"), the subscription price per New Security (the "Subscription Price") and the terms and conditions of such New Securities and all other terms of the issuance or sale thereof and the subscription therefor. Upon mailing of the Subscription Notice, each holder of shares of Series C Convertible Preferred Stock and shares of Common Stock, if any, issued upon the conversion of shares of Series C Convertible Preferred Stock, and the shares of Series B Convertible Preferred Stock and shares of Common Stock, if any, issued upon the conversion of shares of Series B Convertible Preferred Stock, shall be entitled to subscribe for and purchase or otherwise acquire, within 30 days after the mailing of the Subscription Notice, its portion of the New Securities based on the pro rata portion of the shares of Series C Convertible Preferred Stock and the shares of Common Stock issued upon the conversion of shares of Series C Convertible Preferred Stock, and shares of Series B Convertible Preferred Stock and the shares of Common Stock issued upon the conversion of shares of Series B Convertible Preferred Stock then outstanding which such holder holds, at the Subscription Price and upon the other terms and conditions stated in the Subscription Notice.

(ii) All New Securities not subscribed and paid for by holders of shares of Series C Convertible Preferred Stock and shares of Common Stock, if any, issued upon conversion of shares of Series C Convertible Preferred Stock, and holders of shares of Series B Convertible Preferred Stock and shares of Common Stock, if any, issued upon the conversion of shares of Series B Convertible Preferred Stock within the time, or upon the terms and conditions, set forth in the Subscription Notice (the "Unsubscribed Securities"), may be issued or sold by the Corporation to any person or persons the Corporation may desire at any time during the 120 day period following the above mentioned 30 day period; provided, however, that the Corporation shall not sell such Unsubscribed Securities at a lower price or on terms more favorable to the purchaser than those specified in the Subscription Notice.

(iii) This Section (f) shall not be applicable to (i) the Series C Convertible Preferred Stock and the shares of Common Stock issued or issuable upon conversion of the Series C Convertible Preferred Stock, and the Series B Convertible Preferred Stock and the shares of Common Stock, issued upon or issuable upon conversion of shares of Series B Convertible Preferred Stock, (ii) securities issued by the Corporation to effect any stock split or stock dividend, (iii) securities issued or issuable by the Corporation in connection with the acquisition

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by the Corporation of another corporation or other entity by merger, purchase of all or substantially all of the assets or other reorganization transaction in which the Corporation is the surviving company, (iv) options granted by the Corporation to officers and employees of and consultants to the Corporation or any of its subsidiaries to purchase not more than 15% of the fully diluted outstanding shares of Common Stock (taking into account for such purposes such options granted), the granting of which options shall have been approved in advance by the Board of Directors of the Corporation, and shares of Common Stock issued or issuable upon the exercise of such options, (v) securities issued to a strategic partner of the Corporation in connection with the entering into or modification of a material agreement between the Corporation and such strategic partner, which agreement shall have been approved in advance by the Board of Directors of the Corporation, provided, however, in any such case, the holders of the shares of Series C Convertible Preferred Stock and the shares of Common Stock issued upon conversion of shares of Series C Convertible Preferred Stock and the holders of the shares of Series B Convertible Preferred Stock and the shares of Common Stock issued upon conversion of shares of Series B Convertible Preferred Stock shall have the right to purchase, at the time of such transaction, from the Corporation shares of Common Stock at their then fair market value, as determined in good faith by the Board of Directors of the Corporation, to maintain their proportionate interest on a fully diluted basis in the Common Stock, (vi) securities issued to employees, officers or directors of, or consultants to, the Corporation, pursuant to an arrangement approved by the Board of Directors of the Corporation, or (vii) Common Stock sold in a bonafide, firm commitment public underwriting by a nationally recognized investment bank pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended (or any equivalent successor form), at a price per share of not less than 300% of the Series C Conversion Price of the Series C Convertible Preferred Stock then in effect (as that term is defined in Section 2.D.(g) of this Article V) and gross proceeds to the Corporation of not less than \$20,000,000 (a "Qualified Public Offering").

(iv) All preemptive rights described in this Section (f) shall terminate upon (i) a Qualified Public Offering or (ii) any sale of substantially all of the Corporation's assets or of securities of the Corporation entitled to cast a majority of the votes entitled to be cast by all outstanding securities of the Corporation approved by the holders of shares of Series C Convertible Preferred Stock and shares of Common Stock issued upon the conversion of shares of Series C and the holders of the shares of Series B Convertible Preferred Stock and the shares of Common Stock issued upon conversion of shares of Series B Convertible Preferred Stock Convertible Preferred Stock then outstanding representing, respectively, at least 66.7% of the votes entitled to be cast by such shares of Series C Convertible Preferred Stock and shares of Common Stock issued upon the conversion of shares of Series C Convertible Preferred Stock, and at least 66.7% of

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the votes entitled to be cast by shares of Series B Convertible Preferred Stock and shares of Common Stock issued upon the conversion of shares of Series B Convertible Preferred Stock, then outstanding or (iii) the occurrence of any of the events described in clauses (II) and (III) of Section 2.B(f)(i) of this Article V.

(g) **Conversion of the Series C Convertible Preferred Stock.**

(i) Each share of the Series C Convertible Preferred Stock, plus full cumulative dividends accrued and unpaid to the date of such conversion on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like), shall be convertible into a number of shares of fully paid and nonassessable full shares of Common Stock equal to the quotient of (i) the Initial Price (as defined below) and (ii) the Series C Price Conversion Price (as defined below). Shares of the Series C Convertible Preferred Stock shall be converted into fully paid and nonassessable full shares of Common Stock of the Corporation at the Series C Conversion Price in effect at the time of conversion, for the purpose of such conversion:

(1) in to, at the option of the holders of at least 66.7% of the shares of Series C Convertible Preferred Stock at the time outstanding,

(2) at the option of the holder thereof, at any time and from time to time, in the manner and upon the terms and conditions hereinafter set forth; or

(3) if the Corporation has consummated a Qualified Public Offering, at the option of the Corporation, at any time within 30 days after the consummation of such Qualified Public Offering, in the manner and upon the terms and conditions hereinafter set forth;

provided, however, that as to any share of the Series C Convertible Preferred Stock which shall have been called for redemption, the right of conversion shall terminate at the close of business on the last full business day prior to the date fixed for redemption. The "Initial Price" shall be equal to, for such share, \$.90 for such share of Series C Convertible Preferred Stock (subject to adjustment of such fixed dollar amount for any stock splits, stock dividends, combinations, recapitalizations or the like). The Series C Conversion Price shall be initially be the Initial Price per share of Common Stock, adjusted (to the nearest cent, a half-cent being considered a full cent) as hereinafter in this Section (g) and thereafter the Series C Conversion Price shall be further adjusted and readjusted from time to time as hereinafter set forth in this Section (g), provided each such adjustment or readjustment to remain in effect until a further adjustment or readjustment is required by this Section (g).

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(ii) (a) If at any time or from time to time after the date on which shares of Series C Convertible Stock were originally issued (the "Series C Original Issue Date") until the second (2nd) anniversary of the Series C Original Issue Date (the "Series C Initial Adjustment Period"), the Corporation shall issue or sell shares of its Common Stock or Convertible Securities other than (I) shares issued upon conversion of the Series A Preferred Stock, the Series B Convertible Preferred Stock or the Series C Convertible Preferred Stock, (II) shares issued to directors, officers and employees of and consultants to the Corporation or a subsidiary of the Corporation pursuant to a stock option or purchase plan approved by the Board of Directors of the Corporation (III) securities issued or issuable by the Corporation in connection with the acquisition by the Corporation of another corporation or other entity by merger, purchase of all or substantially all of the assets or other reorganization transaction in which the Corporation is the surviving company, (IV) securities issued to a strategic partner of the Corporation in connection with the entering into of a material agreement between the Corporation and such strategic partner, which agreement shall have been approved in advance by the Board of Directors of the Corporation (collectively, the "Series C Adjustment Exceptions"), for a consideration per share less than the Series C Conversion Price in effect immediately prior to such issue or sale (the "Series C New Conversion Price"), then in each such case the Series C Conversion Price shall be reduced to the Series C New Conversion Price immediately upon such issue or sale or deemed issue or sale.

(b) If at any time or from time to time after the conclusion of the Series C Initial Adjustment Period, the Corporation shall issue or sell shares of its Common Stock or Preferred Stock (other than securities sold pursuant to any of the Series C Adjustment Exceptions) for a consideration per share less than the Series C Conversion Price in effect immediately prior to such issue or sale, then in each such case the Series C Conversion Price shall be adjusted (to the nearest cent, a half cent being considered a full cent) by dividing

(1) the sum of (x) the result obtained by multiplying the number of shares of Common Stock of the Corporation outstanding immediately prior to such issue or sale by the Series C Conversion Price in effect immediately prior to such issue or sale, and (y) the consideration, if any, received by the Corporation upon such issue or sale,

by

(2) the number of shares of Common Stock of the Corporation outstanding immediately after such issue or sale,

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(c) For purposes of any such adjustment under (ii)(a) and (b) above, the following provisions shall be applicable:

(1) If after August 15, 2004, the Corporation shall (I) grant any rights or options to subscribe for, purchase or otherwise acquire its Common Stock, or (II) issue or sell any Convertible Securities then in each such case the price per share of the Common Stock issuable upon the exercise of such rights or options or the conversion or exchange of such Convertible Securities shall be determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such rights or options or the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights or options or the conversion or exchange of such Convertible Securities, by (y) the maximum number of shares of Common Stock issuable upon such exercise or conversion or exchange, as the case may be. If the price per share so determined is less than the Series C Conversion Price in effect immediately prior to the granting of such rights or options or the issue or sale of such Convertible Securities, such granting or issue or sale shall be deemed to be an issue or sale for cash of such maximum number of shares of Common Stock at such price per share and such maximum number of shares of Common Stock shall be deemed to be outstanding, provided that

(A) if such rights or options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the amount of additional consideration payable to the Corporation or decrease in the number of shares of Common Stock issuable upon such exercise or conversion or exchange (by change of rate or otherwise), the Series C Conversion Price shall, upon each such increase or decrease becoming effective, be readjusted to reflect such increase or decrease insofar as it affects rights of exercise, exchange or conversion which have not theretofore expired, and

(B) upon the expiration of such rights or options or the rights of conversion or exchange of such Convertible Securities, if any thereof shall not have been exercised, the Series C Conversion Price shall, upon such expiration, be readjusted and shall thereafter be such as it would have been had it been originally adjusted (or had the original adjustment not been required, as the case may be) on the basis that (xx) the only shares of Common Stock so issued were the shares of Common Stock, if any, actually issued or sold upon the exercise of such rights or options or the rights of conversion or exchange of such Convertible Securities, and (yy) such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise plus the

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consideration, if any, actually received by the Corporation for the granting of all of such rights or options, whether or not exercised, or for the issue or sale of all such Convertible Securities which shall have been converted or exchanged,

and provided, further, that no such readjustment shall have the effect of increasing the Series C Conversion Price by an amount in excess of the amount of the adjustment thereof initially made in respect of the granting of such rights or options or the issue or sale of such Convertible Securities. If the Corporation shall grant any rights or options to subscribe for, purchase or otherwise acquire Convertible Securities, such Convertible Securities shall be deemed, for the purposes of this paragraph (3), to have been issued or sold for the total amount received or receivable by the Corporation as consideration for the granting of such rights or options plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights or options, and the Conversion Price shall be adjusted and readjusted as provided above in this paragraph (c) in the case of Convertible Securities.

(2) If the Corporation shall pay a dividend or make a distribution on or in respect of any stock of the Corporation (other than the Series C Convertible Preferred Stock), which dividend or distribution is payable in Common Stock or Convertible Securities, such Common Stock or Convertible Securities shall be deemed to have been issued or sold for no consideration.

(3) In case of a consideration consisting in whole or in part of cash, the cash consideration shall be deemed to be the amount of cash constituting or included in such consideration after deduction of any expenses payable by the Corporation and any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation. In case of a consideration consisting in whole or in part of property other than cash, the amount of the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors of the Corporation. In case Common Stock or Convertible Securities are issued or sold or rights or options to purchase or otherwise acquire Common Stock or Convertible Securities are granted together with other stock or securities or assets of the Corporation for a consideration which covers a combination of them, the portion of such consideration allocable to the Common Stock, Convertible Securities, rights or options shall be as determined in good faith by the Board of Directors of the Corporation.

(4) The date of the issue or sale of Common Stock issuable on the exercise of any rights or options or the conversion or exchange of any Convertible Securities shall be deemed to be the date of issue or sale of such rights or options or such Convertible Securities (or right or options to acquire such

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Convertible Securities), provided that if a record of the holders of any class of securities shall be taken for the purpose of entitling such holders to receive any dividend or other distribution payable in, or any rights or options to subscribe for, purchase or otherwise acquire, Common Stock or Convertible Securities, the date of the issue or sale of any Common Stock issuable in payment of any such dividend or other distribution or upon the exercise of any such rights or options, or upon the conversion or exchange of any Convertible Securities so issuable shall be deemed to be the date of such record.

(5) The shares of Common Stock from time to time outstanding shall be deemed to include shares reacquired by the Corporation after they had been issued and outstanding, and the sale of such shares shall not be deemed to be an issue or sale of Common Stock.

(iii) If the Corporation shall subdivide or reclassify the then outstanding shares of its Common Stock into a greater number of shares of Common Stock or combine or reclassify the then outstanding shares of its Common Stock into a smaller number of shares of Common Stock, the Series C Conversion Price in effect immediately prior to such subdivision, combination or reclassification, as the case may be, shall be proportionately adjusted as of the effective date thereof so that the holder of any Series C Convertible Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which he would have owned after the happening of such event had such Series C Convertible Preferred Stock been converted immediately prior to the happening of such event.

(iv) In case of any capital reorganization of the Corporation, or any consolidation or merger of the Corporation with or into another corporation, or any sale or conveyance to another corporation of all or substantially all of the property of the Corporation, the holder of each share of Series C Convertible Preferred Stock then outstanding (or of the stock or securities received in lieu of such share) shall have the right thereafter to convert such share (or such stock or securities) into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock of the Corporation into which such share of the Series C Convertible Preferred Stock might have been converted immediately prior to such reorganization, consolidation, merger, sale or conveyance, and shall have no conversion rights under these provisions; and effective provision shall be made in the Articles of Incorporation of the resulting or surviving corporation or otherwise so that the provisions set forth in this Section (g) for the protection of the conversion rights of the Series C Convertible Preferred Stock shall thereafter be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion

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of the Series C Convertible Preferred Stock remaining outstanding or other convertible securities received by the holders in place thereof; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon the exercise of the conversion privilege, such shares, securities or property as the holders of the Series C Convertible Preferred Stock, or other convertible securities received by the holders in place thereof, shall be entitled to receive pursuant to the provisions hereof, and to make provisions for the protection of the conversion right as above provided. In case securities or property other than Common Stock shall be issuable or deliverable upon conversion as aforesaid, then all references in this Section (g) to Common Stock shall be deemed to apply, so far as appropriate and as nearly as may be, to such other securities or property.

(v) In the event of

(1) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend at the same rate as the rate of the last cash dividend theretofore paid) or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or

(2) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation or any transfer of all or substantially all the assets of the Corporation to or consolidation or merger of the Corporation with or into another corporation, or

(3) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, or

(4) any proposed issue or grant after the Series C Original Issue Date by the Corporation of any shares of stock of any class or any other securities, or any right or option to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities (other than the issue of Common Stock on the exercise of the Series C Convertible Preferred Stock or other Convertible Securities or rights or options issued on or prior to the Series C Original Issue Date or the granting of options by the Corporation to officers and employees of and consultants to the Corporation or a subsidiary of the Corporation pursuant to a stock option or purchase plan approved by the Board of Directors of the Corporation),

then and in each such event the Corporation will mail to each holder of the Series C Convertible Preferred Stock then outstanding at such holder's address as it appears on the records of the Corporation a notice specifying (1) the date on which any such

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record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, (II) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up is to take place, and the time, if any is to be fixed, of which the holders of record of Common Stock shall be entitled to exchange their shares of Common Stock for securities or other properties deliverable upon such event, and (III) the amount and character of any stock or other securities, or rights or options with respect thereto, proposed to be issued or granted, the date of such proposed issue or grant, and the person or class of person to whom such proposed issue or grant is to be offered or made. Such notice shall be mailed at least 20 days prior to the date therein specified.

(vi) Upon each adjustment or readjustment in the Series C Conversion Price, in excess of \$0.10, or cumulative, the Corporation at its expense will cause the independent public accountants who regularly audit the books and accounts of the Corporation or other independent public accountants of recognized standing selected by the Corporation to compute such adjustment or readjustment in accordance with the provisions of this Section (g) and prepare a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or to be received by the Corporation for any additional shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the number of shares of Common Stock outstanding or deemed to be outstanding, and (3) the Series C Conversion Price in effect immediately prior to such issue or sale and as adjusted and readjusted (if required) on account thereof. The Corporation forthwith shall file such certificate with its corporate records and mail a copy to each holder of the Series C Convertible Preferred Stock then outstanding at such holder's address as it appears on the records of the Corporation.

(vii) In order to convert shares of the Series C Convertible Preferred Stock into shares of Common Stock, the holder thereof shall surrender at the principal office of the Corporation (or at such other place as the Board of Directors shall have designated for the purpose) the certificate or certificates for such shares of the Series C Convertible Preferred Stock properly endorsed in blank for transfer or accompanied by a proper instrument of assignment or transfer in blank and bearing any necessary transfer tax stamps thereto affixed and canceled, together with a written request for conversion in which shall be stated the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation will, as soon as practicable thereafter, deliver at said office to such holder of the Series C Convertible Preferred Stock, or to his nominee or nominees, a certificate or certificates for the number of full shares of Common Stock to which he shall be entitled as aforesaid, together with a cash payment in lieu of any fraction of a share

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of such Common Stock and full cumulative dividends on the shares of the Series C Convertible Preferred Stock surrendered for conversion accrued and unpaid to and including the date surrendered for conversion. No fraction of a share of Common Stock shall be issued upon any conversion but, in lieu thereof, shall be paid upon such conversion an amount in cash equal to the same fraction of the Series C Conversion Price at the time of conversion. No payment or adjustment for dividends on any shares of Common Stock that shall be issuable upon conversion of the Series C Convertible Preferred Stock shall be made. Shares of the Series C Convertible Preferred Stock shall be deemed to be converted and the person or persons in whose name or names any certificate or certificates for Common Stock shall be issuable upon such conversion shall be deemed to have become a holder or holders of record of the shares of Common Stock at the close of business on the date upon which the certificate representing shares of the Series C Convertible Preferred Stock has been surrendered to the Corporation for conversion. The Corporation will pay all issue taxes, if any, incurred upon the issue of Common Stock upon conversion of the Series C Convertible Preferred Stock, provided that the Corporation will not pay any transfer or other taxes incurred by reason of the issue of such Common Stock in a name or names other than that in which the shares of the Series C Convertible Preferred Stock so converted were registered.

(viii) Upon the closing of an issuance of New Securities at any time after the Series C Original Issue Date but before the Corporation issues shares of Common Stock in a Qualified Public Offering, if (a) a holder of Series C Convertible Preferred Stock does not purchase in such issuance all of such holder's pro rata portion (based on each holder's ownership of shares of Series C Convertible Preferred Stock) of any New Securities allocated by the Company for purchase by the holders of shares of Series C Convertible Preferred Stock and (b) the holders of a majority of the then outstanding shares of Series C Convertible Preferred Stock participate in such New Issuance, then such non-participating holder's shares of Series C Convertible Preferred Stock (and only such holder's shares of Series C Convertible Preferred Stock) shall automatically convert into shares of Common Stock pursuant to and in accordance with the terms relating to the conversion of shares of Series C Convertible Preferred Stock into shares of Common Stock set forth in this Section (g). The automatic conversion of a holder's shares of Series C Convertible Preferred Stock into shares of Common Stock shall be the Company's sole and exclusive remedy for the failure of such holder to participate in an issuance of New Securities as provided above. An issuance of New Securities means a bona fide arms-length issuance by the Company of equity securities (whether or not in conjunction with an issuance by the Company of debt securities).

(ix) All shares of the Series C Convertible Preferred Stock which shall have been converted as provided in this Section (g) shall no longer be deemed to be outstanding and all rights with respect to such shares (including all

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rights to receive cumulative dividends on the shares of the Series C Convertible Preferred Stock surrendered for conversion accrued and unpaid to and including the date surrendered for conversion) shall forthwith cease and terminate except for the right of the holders thereof to receive full shares of Common Stock, together with a cash payment in lieu of any fraction of a share of such Common Stock. All shares of the Series C Convertible Preferred Stock surrendered for conversion shall be canceled and retired and shall not be reissued.

(x) The Corporation will at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the shares of the Series C Convertible Preferred Stock, the full number of shares of Common Stock from time to time issuable upon conversion of all shares of the Series C Convertible Preferred Stock then outstanding.

ARTICLE VI - REGISTERED OFFICE AND REGISTERED AGENT

The name and street address of the registered office and registered agent of the Corporation is Hogan & Hartson L.L.P., 1111 Brickell Avenue, Suite 1900, Miami, FL 33131.

ARTICLE VII - BY-LAWS

The power to adopt, alter, amend or repeal By-laws shall be vested in the Board of Directors and the shareholders, except that the Board of Directors may not amend or repeal any By-law adopted by the shareholders if the shareholders specifically provide that the By-law is not subject to amendment or repeal by the Board of Directors.

ARTICLE VIII - AMENDMENT TO ARTICLES

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

ARTICLE IX - INDEMNIFICATION

The Corporation shall indemnify its directors, officers, employees and agents to the full extent permitted by the Florida Business Corporation Act.

OCT. 28. 2004 10:30AM


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004000214069 3

The foregoing Fifth Amended and Restated Articles were adopted by the Board of Directors of the Corporation at a Board Meeting held on September 21, 2004, and were adopted by the Shareholders of the Corporation by written consent approved as of October 13, 2004.

Z-KAT, INC.


Fritz LaPorte
Authorized Officer
Secretary

004000214069 3

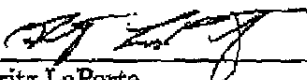
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**CERTIFICATE TO FIFTH AMENDED AND RESTATED ARTICLES OF
INCORPORATION OF Z-KAT, INC.**

The undersigned, Authorized Officer, of Z-KAT, Inc., a Florida corporation (the "Corporation"), does hereby certify as follows:

1. In accordance with Sections 607.0704, 607.1003, and 607.1007 of the Florida Statutes, the Board of Directors of the Corporation (the "Board") recommended by a vote at a Board Meeting held September 21, 2004, that the appropriate shareholders of the Corporation approve, and such shareholders having approved by written consent in lieu of a special meeting of the Corporation's shareholders effective as of October 13, 2004, the number of votes cast for the amendment by such shareholders being sufficient for such approval, amendment and restatement of the Corporation's Articles of Incorporation as attached hereto.
2. The undersigned officer of the Corporation has been duly authorized to submit these Fifth Amended and Restated Articles of Incorporation of the Corporation to the Department of State of Florida for filing in accordance with Section 607.1007, Florida Statutes.

Z-KAT, INC.


Fritz LaPorte
Authorized Officer
Secretary

004000214069 3