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BASIC AMENDMENT

YUPI INTERNET INC.

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**CERTIFICATE OF AMENDMENT AND RESTATEMENT
OF ARTICLES OF INCORPORATION OF YUPI INTERNET INC.**

In accordance with Sections 607.1003 and 607.1007 of the Florida Business Corporation Act, YUPI INTERNET INC., a Florida corporation (the "Corporation") certifies that:

First: The name of the Corporation is YUPI INTERNET INC.

Second: The First Amended and Restated Articles of Incorporation of YUPI INTERNET INC. shall be amended and restated to be and read as set forth in the Second Amended and Restated Articles of Incorporation of the Corporation attached hereto (the "Second Amended and Restated Articles of Incorporation").

Third: The Second Amended and Restated Articles of Incorporation were duly approved and adopted pursuant to unanimous written consent of the Board of Directors of the Corporation on October 15, 1999 and pursuant to a majority written consent of the Shareholders of the Corporation on October 15, 1999. The number of votes cast in favor of the Second Amended and Restated Articles of Incorporation by the Shareholders was sufficient for approval.

Fourth: The Second Amended and Restated Articles of Incorporation shall be effective as of the date of filing with the Secretary of State of Florida.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the 27th day of October, 1999.


Oscar Coen
Chief Executive Officer

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
YUPI INTERNET INC.**

In accordance with Section 607.1007 of the Florida Business Corporation Act, the Florida Statutes, as hereafter amended and modified (the "*FBCA*"), the Board of Directors of **YUPI INTERNET INC.**, a Florida corporation (the "*Corporation*"), hereby amends and restates in its entirety the Articles of Incorporation of the Corporation as follows:

ARTICLE I.

Name

The name of the Corporation is: **YUPI INTERNET INC.**

ARTICLE II.

Principal Address

The street address of the principal office and the mailing address of the Corporation is:
605 Lincoln Road, Suite 401, Miami Beach, Florida 33131.

ARTICLE III.

Purposes

The Corporation may engage in the transaction of any or all lawful business for which corporations may be incorporated under the laws of the State of Florida.

ARTICLE IV.

Capital Stock

4.1 **Authorized Shares.** The total number of shares of all classes of capital stock that the Corporation shall have the authority to issue shall be 60,000,000 shares, of which 50,000,000 shares shall be common stock, having a par value of \$.0001 per share (referred to in these Second Amended and Restated Articles of Incorporation as "*Common Stock*") and 10,000,000 shares shall be preferred stock, having a par value of \$.01 per share (referred to in these Second Amended and Restated Articles of Incorporation as "*Preferred Stock*"). The Board of Directors is expressly authorized, pursuant to Section 607.0602 of the FBCA, to provide for the classification and reclassification of any unissued shares of Common Stock or Preferred Stock and the issuance thereof in one or more classes or series without the approval or the

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shareholders of the Corporation, all within the limitations set forth in Section 607.0601 of the FBCA.

4.2 Common Stock.

(a) Relative Rights. The Common Stock shall be subject to all of the rights, privileges, preferences and priorities of the Preferred Stock as may be set by the Board of Directors and hereafter filed as Articles of Amendment to these Second Amended and Restated Articles of Incorporation pursuant to Section 607.0602 of the FBCA. Except as otherwise provided in these Second Amended and Restated Articles of Incorporation, each share of Common Stock shall have the same rights as and be identical in all respects to all the other shares of Common Stock.

(b) Voting Rights. Each holder of Common Stock shall, except as otherwise provided by the FBCA, be entitled to one vote for each share of Common Stock held by such holder.

(c) Dividends. Whenever there shall have been paid, or declared and set aside for payment, to the holders of the shares of any class of stock having preference over the Common Stock as to the payment of dividends, the full amount of dividends and of sinking fund or retirement payments, if any, to which such holders are respectively entitled in preference to the Common Stock, then the holders of record of the Common Stock and any class or series of stock entitled to participate therewith as to dividends, shall be entitled to receive dividends, when, as, and if declared by the Board of Directors, out of any assets legally available for the payment of dividends thereon.

(d) Dissolution, Liquidation, Winding Up. In the event of any dissolution, liquidation, or winding up of the Corporation, whether voluntary or involuntary, the holders of record of the Common Stock then outstanding, and all holders of any class or series of stock entitled to participate therewith in whole or in part, as to the distribution of assets, shall become entitled to participate in the distribution of assets of the Corporation remaining after the Corporation shall have paid, or set aside for payment, to the holders of any class of stock having preference over the Common Stock in the event of dissolution, liquidation, or winding up, the full preferential amounts (if any) to which they are entitled, and shall have paid or provided for payment of all debts and liabilities of the Corporation.

4.3 Preferred Stock.

(a) Terms of Class A Convertible Preferred. The Corporation is authorized to issue, from time to time, up to 428,762 shares of Class A Convertible Preferred Stock, having the designations, preferences, conversion and voting rights and other rights as set forth in Exhibit A hereto.

(b) Terms of Class B Convertible Preferred. The Corporation is authorized to issue, from time to time, up to 4,924,229 shares of Class B Convertible Preferred Stock having

the designations, preferences, conversion and voting rights and other rights as set forth in Exhibit A hereto.

(c) Additional Issuances, Designations, Powers, Etc. Subject to the limitations prescribed by the FBCA and the provisions of these Second Amended and Restated Articles of Incorporation, the Board of Directors is expressly authorized, to provide, by resolution and by filing Articles of Amendment to these Second Amended and Restated Articles of Incorporation (which, pursuant to Section 607.0602(4) of the FBCA shall be effective without shareholder action), for the issuance from time to time of additional shares of the Preferred Stock in one or more additional classes or series, to establish from time to time the number of shares to be included in each such class or series, and to fix the designations, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption relating to the shares of each such class or series. The authority of the Board of Directors with respect to each additional class or series of Preferred Stock shall include, but not be limited to, setting or changing the following:

(i) the dividend rate, if any, on shares of such class or series, the times of payment and the date from which dividends shall be accumulated, if dividends are to be cumulative;

(ii) whether the shares of such class or series shall be redeemable and, if so, the redemption price and the terms and conditions of such redemption;

(iii) the obligation, if any, of the Corporation to redeem shares of such class or series pursuant to a sinking fund;

(iv) whether shares of such class or series shall be convertible into, or exchangeable for, shares of stock of any other class or classes and, if so, the terms and conditions for such conversion or exchange, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(v) whether the shares of such class or series shall have voting rights, in addition to the voting rights provided by law, and, if so, the extent of such voting rights;

(vi) the rights of the shares of such class or series in the event of voluntary or involuntary liquidation, dissolution or winding-up of the Corporation; and

(vii) any other relative rights, powers, preferences, qualifications, limitations or restrictions thereof relating to such class or series.

(d) Dissolution, Liquidation, Winding Up. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of Preferred Stock of each additional class or series shall be entitled to receive only such amount or

amounts as shall have been fixed by the Articles of Amendment to these Second Amended and Restated Articles of Incorporation or by the resolution or resolutions of the Board of Directors providing for the issuance of such additional class or series.

4.4 Shares Acquired by the Corporation. Shares of Common Stock that have been acquired by the Corporation shall become treasury shares and may be resold or otherwise disposed of by the Corporation for such consideration as shall be determined by the Board of Directors, unless or until the Board of Directors shall by resolution provide that any or all treasury shares so acquired shall constitute authorized, but unissued shares.

4.5 No Preemptive Rights. Except as the Board of Directors may otherwise determine, no shareholder of the Corporation shall have any preferential or preemptive right to subscribe for or purchase from the Corporation any new or additional shares of capital stock, or securities convertible into shares of capital stock, of the Corporation, whether now or hereafter authorized.

ARTICLE V. Registered Office and Agent

The Corporation designates 605 Lincoln Road, Suite 401, Miami Beach, Florida 33131 as the street address of the registered office of the Corporation and names Ariel Bentata the Corporation's registered agent at that address to accept service of process within its state.

ARTICLE VI. Board of Directors

6.1 Number, Election. The number of directors constituting the Board of Directors as of the date of adoption of these Second Amended and Restated Articles of Incorporation is seven (7). The number of directors may be increased or decreased from time to time as provided in these Second Amended and Restated Articles of Incorporation or by the Bylaws, but in no event shall the number of directors be less than three (3). Directors shall be elected annually, at the annual meeting of the shareholders of the Corporation, by the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

6.2 Directors Elected by Holders of Preferred Stock. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect one or more directors at an annual or special meeting of shareholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of these Second Amended and Restated Articles of Incorporation, as amended by Articles of Amendment applicable to such classes or series of Preferred Stock.

6.3 Quorum and Voting. A majority of the number of directors fixed by or in accordance with these Second Amended and Restated Articles of Incorporation and the Bylaws

shall constitute a quorum for the transaction of business at any meeting of directors. Unless greater majority is required pursuant to the Bylaws, if a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present shall be the act of the Board of Directors.

6.4 Exercise of Business Judgment. In discharging the duties of their respective positions and in determining what is believed to be in the best interests of the Corporation, the Board of Directors, and individual directors, in addition to considering the effects of any action on the Corporation or its shareholders, may consider the interests of the employees, customers, suppliers and creditors of the Corporation and its subsidiaries, the communities in which offices or other establishments of the Corporation and its subsidiaries are located, and all other factors such directors consider pertinent; provided, however, that this provision solely grants discretionary authority to the directors and no constituency shall be deemed to have been given any right to consideration thereby.

ARTICLE VII.

Indemnification of Directors and Officers

7.1 Right to Indemnification. Each person (including the heirs, executors, administrators, or estate of such person) who is or was a director or officer of the Corporation, or who is or was serving at the request of the Corporation in the position of a director or officer, and as to whom the Corporation has agreed to grant indemnification by separate resolution adopted by the Board of Directors, shall be indemnified by the Corporation as of right to the fullest extent permitted or authorized by current or future legislation or by current or future judicial or administrative decision (but, in the case of any future legislation or decision, only to the extent that it permits the Corporation to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or her or incurred by him or her in his or her capacity as a director or officer, or arising out of his or her status as a director or officer. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Corporation may maintain insurance, at its expense, to protect itself and any current or future director or officer against any such fine, liability, cost or expense, including attorneys' fees, whether or not the Corporation would have the legal power to directly indemnify him or her against such liability.

7.2 Advances. Costs, charges and expenses, including attorneys' fees, incurred by any individual referred to in Section 7.1 in defending civil or criminal suit, action or proceeding may be paid (and, in the case of directors of the Corporation, shall be paid) by the Corporation in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Corporation as authorized by this Article, and upon satisfaction of other conditions established from time to time by the Board of Directors or required by current or future legislation (but, with respect to future legislation, only to the extent that it provides conditions less burdensome than those previously provided).

7.3 Personal Liability of Directors. No director of the Corporation shall be personally liable to the Corporation or its shareholders for monetary damages for breach of duty of care or other duty as a director, except as provided by Section 607.0831 of the FBCA. If the FBCA is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the FBCA, as amended.

7.4 Savings Clause. In the event that any of the provisions of this Article (including any provision within a single sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the fullest extent permitted by law.

ARTICLE VIII. Action By Shareholders

8.1 Annual Meetings. At an annual meeting of the shareholders of the Corporation, only such business shall be conducted, and only such proposals shall be acted upon, as shall have been brought before the annual meeting (a) by, or at the direction of, the Board of Directors, or (b) by any shareholder of the Corporation who complies with the notice procedures set forth in the Bylaws.

8.2 Special Meetings. Special meetings of the shareholders of the Corporation may be called at any time by (a) the Board of Directors; (b) the Chairman of the Board of Directors (if one is so appointed); (c) the President of the Corporation; or (d) the holders of not less than fifty (50%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting, if such shareholders sign, date and deliver to the Corporation's Secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. Special meetings of the shareholders of the Corporation may not be called by any other person or persons.

8.3 Shareholder Action Without a Meeting. Any action required or permitted to be taken at an annual or special meeting of shareholders of the Corporation may be taken without a meeting, without prior notice, and without a vote if the action is taken in the manner set forth under Section 607.0704 of the FBCA, as the same may be hereafter amended or superseded.

ARTICLE IX. Amendments

9.1 Articles of Incorporation. Except as provided in Section 4.3 hereof and in Exhibit A hereto, the affirmative vote of a majority of the total number of votes of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required (unless separate voting by classes is required by the FBCA, in which event the affirmative vote of a majority of the number of shares of each class or series entitled to vote as a class shall be required), to amend or repeal, or to adopt any provisions inconsistent with the purpose or intent of these Second Amended and

Restated Articles of Incorporation. Notice of any such proposed amendment, repeal or adoption shall be contained in the notice of the meeting at which it is to be considered. Subject to the provisions set forth herein, the Board of Directors shall have the right to amend, alter, repeal or rescind any provision contained in these Second Amended and Restated Articles of Incorporation in the manner now or hereafter prescribed by law.

9.2 Bylaws. The Board of Directors shall have the power to amend or repeal the Bylaws in such manner as shall be prescribed by the Bylaws, and nothing herein shall serve to limit such power. The shareholders of the Corporation may adopt or amend a provision to the Bylaws which fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by the FBCA. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum or voting requirement for shareholders must meet same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum or voting requirement then in effect or proposed to be adopted, whichever is greater.

IN WITNESS WHEREOF, YUPI INTERNET INC. has caused these Second Amended and Restated Articles of Incorporation to be executed, its corporate seal to be affixed, and its seal and execution hereof to be attested, all by its duly authorized officers, this 31st day of October, 1999.

YUPI INTERNET INC.

Attest:


Luis San Miguel
Assistant Secretary

By:


Oscar Coen
Chief Executive Officer

**Exhibit A to Second
Amended and Restated
Articles of Incorporation**

YUPI INTERNET INC.

**TERMS OF CLASS A CONVERTIBLE PREFERRED STOCK AND CLASS B
CONVERTIBLE PREFERRED STOCK**

Section 1. Dividends.

1.1A. General Obligation. When and as declared by the Corporation's Board of Directors and to the extent permitted under the Florida Business Corporation Act, the Corporation shall pay preferential dividends in cash to the holders of the Class A Convertible Preferred Stock (the "**Class A Preferred**") and the Class B Convertible Preferred Stock (the "**Class B Preferred**", together with the Class A Preferred, the "**Preferred Stock**") as provided in this Section 1. Each share of Preferred Stock shall be referred to herein as a "**Share**". The date on which the Corporation initially issues any Share of Class A Preferred or Class B Preferred shall be deemed to be its "**date of issuance**" regardless of the number of times transfer of such Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Share.

1.1B. Distribution of Partial Dividend Payments. Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Class A Preferred or Class B Preferred, such payment shall be distributed pro rata among the holders thereof based upon the number of Shares held by each such holder.

1.1C. Stock Dividends on Common Stock. If at any time the Corporation pays a dividend or other distribution in securities of the Corporation to the holders of the Common Stock, the holders of Preferred Stock shall be entitled to such dividends or distributions (to the same extent as if all Shares had been converted into Common Stock).

Section 2. Liquidation.

2.1A. Class A Liquidation Preference. Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), each holder of Class A Preferred shall be entitled to be paid, before any distribution or payment is made upon any Class A Junior Securities, an amount in cash equal to the aggregate Class A Liquidation Value of all such shares held by such holder (plus all accrued and unpaid dividends thereon), and the holders of Class A

Preferred shall not be entitled to any further payment. If upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of the Class A Preferred are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid under this Section 2.1A, then the holders of shares of Class A Preferred shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of such shares held by them upon such distribution if all amounts payable on or with respect to such shares pursuant to this Section 2.1A were paid in full.

2.1B. Class B Liquidation Preference. Subject to the rights of the Class A Preferred set forth in Section 2.1A, upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), each holder of Class B Preferred shall be entitled to be paid, before any distribution or payment is made upon Class B Junior Securities, an amount in cash equal to the aggregate Class B Liquidation Value of all such shares held by such holder (plus accrued and unpaid dividends thereon), and the holders of Class B Preferred shall not be entitled to any further payment. If upon any such liquidation, dissolution or winding up of the Corporation the Corporation's assets to be distributed among the holders of the Class B Preferred are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid under this Section 2.1B, then the holders of shares of Class B Preferred shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of such shares held by them upon such distribution if all amounts payable on or with respect to such shares pursuant to this Section 2.1B were paid in full.

2.1C. Liquidation Notice. Prior to the liquidation, dissolution or winding up of the Corporation, the Corporation shall declare for payment all accrued and unpaid dividends with respect to the Class A Preferred and Class B Preferred, but only to the extent of funds of the Corporation legally available for the payment of dividends. Not less than thirty (30) days prior to the payment date stated therein, the Corporation shall mail written notice of any such liquidation, dissolution or winding up to each record holder of Class A Preferred and Class B Preferred, setting forth in reasonable detail the amount of proceeds to be paid with respect to each Share and each share of Common Stock in connection with such liquidation, dissolution or winding up.

2.1D. Participation Feature. In addition to, but not before payment in full of all other amounts payable to the holders of the Class A Preferred and Class B Preferred under this Section 2, upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), the holders of the Class A Preferred and Class B Preferred shall be entitled to participate on an as if converted basis with the holders of Common Stock as a single class in the distribution of assets of the Corporation with respect to the Common Stock.

Section 3. Prohibition Against Redemption.

So long as any Preferred Stock remains outstanding, without the prior written consent of the holders of a majority of the outstanding shares of Preferred Stock (on an as if converted basis), the Corporation shall not, nor shall it permit any Subsidiary to, redeem, purchase

or otherwise acquire directly or indirectly any Class B Junior Securities (except for the repurchase pursuant to contractual rights of the Corporation of capital stock issued to current or former employees, consultants or other third parties who acquired such shares directly from the Corporation), nor shall the Corporation directly or indirectly pay or declare any dividend or make any distribution upon any Class B Junior Securities (except any subdivision of the Corporation's outstanding shares of Common Stock by stock split, stock dividend, recapitalization or otherwise).

Section 4. Redemptions.

4.1A. Redemption Payments. For each Share which is required to be redeemed by the Corporation pursuant to Section 4.1F hereof, the Corporation shall be obligated on the Redemption Date (as defined below) to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such Share) an amount in cash equal to, the Class A Liquidation Value (plus all accrued and unpaid dividends thereon) with respect to Class A Preferred, or the Class B Liquidation Value (plus all accrued and unpaid dividends thereon) with respect to the Class B Preferred. If the funds of the Corporation legally available for redemption of Shares on any Redemption Date are insufficient to redeem the total number of Shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of Shares pro rata among the holders of the Shares to be redeemed based upon the aggregate Class A Liquidation Value and Class B Liquidation Value of such Shares held by each such holder (plus all accrued and unpaid dividends thereon). At any time thereafter when additional funds of the Corporation are legally available for the redemption of Shares, such funds shall immediately be used to redeem the balance of the Shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed. Prior to any redemption of Class A Preferred or Class B Preferred, the Corporation shall pay all accrued and unpaid dividends with respect to the Shares which are to be redeemed, but only to the extent of funds of the Corporation legally available for the payment of dividends.

4.1B. Determination of the Number of Each Holder's Shares to be Redeemed. Except as otherwise provided herein, the number of Shares of Class A Preferred or Class B Preferred to be redeemed from each holder thereof in redemptions hereunder shall be the number of Shares determined by multiplying the total number of Shares to be redeemed times a fraction, the numerator of which shall be the total number of Shares then held by such holder and the denominator of which shall be the total number of Shares then outstanding.

4.1C. Dividends After Redemption Date. No Share shall be entitled to any dividends accruing after the date on which the Class A Liquidation Value or Class B Liquidation Value, as the case may be, of such Share (plus all accrued and unpaid dividends thereon) is paid to the holder of such Share. On such date, all rights of the holder of such Share shall cease, and such Share shall no longer be deemed to be issued and outstanding.

4.1D. Redeemed or Otherwise Acquired Shares. Any Shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares and shall not be reissued, sold or transferred.

4.1E. Payment of Accrued Dividends. The Corporation may not redeem any Preferred Stock, unless all dividends accrued on the outstanding Preferred Stock through the date of such redemption have been declared and paid in full.

4.1F. Special Redemptions.

(i) If a Change in Ownership has occurred or the Corporation obtains knowledge that a Change in Ownership is proposed to occur, the Corporation shall give prompt written notice of such Change in Ownership describing in reasonable detail the material terms and date of consummation thereof to each holder of Preferred Stock, but in any event such notice shall not be given later than ten (10) days after the occurrence of such Change in Ownership, and the Corporation shall give each holder of Preferred Stock prompt written notice of any material change in the terms or timing of such transaction. The holder or holders of a majority of the Preferred Stock (on an as if converted basis) then outstanding may require the Corporation to redeem all or any portion of the Preferred Stock owned by such holder or holders at a price per Share equal to, in the case of the Class A Preferred, the Class A Liquidation Value (plus all accrued and unpaid dividends thereon), and in the case of the Class B Preferred, the Class B Liquidation Value (plus all accrued and unpaid dividends thereon) by giving written notice to the Corporation of such election prior to the later of: (a) twenty-one (21) days after receipt of the Corporation's notice; or (b) five (5) days prior to the consummation of the Change in Ownership (the "Expiration Date"). The Corporation shall give prompt written notice of any such election to all other holders of Preferred Stock within five (5) days after the receipt thereof, and each such holder shall have until the later of: (a) the Expiration Date; or (b) ten (10) days after receipt of such second notice to request redemption hereunder (by giving written notice to the Corporation) of all or any portion of the Preferred Stock owned by such holder.

Upon receipt of such election(s), the Corporation shall be obligated to redeem the aggregate number of Shares specified therein on the later of: (a) the occurrence of the Change in Ownership; or (b) five (5) days after the Corporation's receipt of such election(s). If any proposed Change in Ownership does not occur, all requests for redemption in connection therewith shall be automatically rescinded, or if there has been a material change in the terms or the timing of the transaction, any holder of Preferred Stock may rescind such holder's request for redemption by giving written notice of such rescission to the Corporation.

The term "Change in Ownership" means any sale, transfer or issuance or series of sales, transfers and/or issuances of shares of the Corporation's capital stock by the Corporation or any holders thereof which results in any Person or group of Persons (as the term "group" is used under the Securities Exchange Act of 1934), other than the holders of Preferred Stock or Common Stock as of the original issuance date of the Class B Preferred, owning capital stock of the Corporation possessing the voting power (under ordinary circumstances) to elect a majority of the Corporation's Board of Directors.

(ii) If a Fundamental Change is proposed to occur, the Corporation shall give written notice of such Fundamental Change describing in reasonable detail the material terms and date of consummation thereof to each holder of Preferred Stock not more than forty-five (45) days

nor less than fifteen (15) days prior to the consummation of such Fundamental Change, and the Corporation shall give each holder of Preferred Stock prompt written notice of any material change in the terms or timing of such transaction. The holder or holders of a majority of the Preferred Stock (on an as if converted basis) then outstanding may require the Corporation to redeem all or any portion of the Preferred Stock owned by such holder or holders at a price per Share equal to, in the case of Class A Preferred, the Class A Liquidation Value (plus all accrued and unpaid dividends thereon), and in the case of Class B Preferred, the Class B Liquidation Value (plus all accrued and unpaid dividends thereon), by giving written notice to the Corporation of such election prior to the later of: (a) ten (10) days prior to the consummation of the Fundamental Change; or (b) ten (10) days after receipt of notice from the Corporation. The Corporation shall give prompt written notice of such election to all other holders of Preferred Stock (but in any event within five (5) days prior to the consummation of the Fundamental Change), and each such holder shall have until five (5) days after the receipt of such notice to request redemption (by written notice given to the Corporation) of all or any portion of the Preferred Stock owned by such holder.

Upon receipt of such election(s), the Corporation shall be obligated to redeem the aggregate number of Shares specified therein upon the consummation of such Fundamental Change. If any proposed Fundamental Change does not occur, all requests for redemption in connection therewith shall be automatically rescinded, or if there has been a material change in the terms or the timing of the transaction, any holder of Preferred Stock may rescind such holder's request for redemption by delivering written notice thereof to the Corporation prior to the consummation of the transaction.

The term "**Fundamental Change**" means: (a) any sale or transfer of more than fifty percent (50%) of the assets of the Corporation and its Subsidiaries on a consolidated basis (measured either by book value in accordance with generally accepted accounting principles consistently applied or by fair market value determined in the reasonable good faith judgment of the Corporation's Board of Directors) in any transaction or series of transactions (other than sales in the ordinary course of business); and (b) any merger or consolidation to which the Corporation is a party, except for (i) a merger of the Corporation into a Delaware Subsidiary the purpose of which is to change the state of incorporation of the Corporation; or (ii) a merger in which the Corporation is the surviving corporation, the terms of the Preferred Stock are not changed and the Preferred Stock is not exchanged for cash, securities or other property, and after giving effect to such merger, the holders of the Corporation's outstanding capital stock possessing a majority of the voting power (under ordinary circumstances) to elect a majority of the Corporation's Board of Directors immediately prior to the merger shall continue to own the Corporation's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the Corporation's Board of Directors. The transactions described in subsections (a) and (b) immediately above shall not constitute a liquidation, dissolution or winding up for purposes of Section 2 above.

Section 5. Voting Rights.

5.1A. Election of Directors. For so long as 10% of the Class A Preferred outstanding as of the original issuance date of the Class A Preferred remain outstanding, in the election of directors of the Corporation, the holders of the Class A Preferred, voting separately as a

single class to the exclusion of all other classes of the Corporation's capital stock and with each share of Class A Preferred entitled to one vote, shall be entitled to elect three (3) directors to serve on the Corporation's Board of Directors until their successors are duly elected by the holders of the Class A Preferred or they are removed from office by the holders of the Class A Preferred. Any director in office elected solely by the holders of the Class A Preferred voting separately as a class shall remain as a member of the Board, until such time as his successor shall be duly elected by the shareholders of the Corporation then entitled to vote for all directors. If the holders of the Class A Preferred for any reason fail to elect anyone to fill any such directorship, such position shall remain vacant until such time as the holders of the Class A Preferred elect a director to fill such position and shall not be filled by resolution or vote of the Corporation's Board of Directors or the Corporation's other shareholders. In order to protect the representation on the Board of Directors granted to the holders of the Class A Preferred, any expansion of the number of directors constituting the Board of Directors beyond eight (8) members, shall require, in addition to any other voting requirement set forth in the Articles of Incorporation, the vote of a majority of the Class A Preferred issued and outstanding, voting separately as a single class to the exclusion of all other classes of the Corporation's capital stock and with each Share of Class A Preferred entitled to one vote.

5.1B. Other Voting Rights. The holders of the Preferred Stock shall be entitled to notice of all shareholders meetings in accordance with the Corporation's bylaws, and except as set forth in Sections 5.1A and 5.1C and as otherwise required by applicable law, the holders of the Preferred Stock shall be entitled to vote on all matters submitted to the shareholders for a vote together with the holders of the Common Stock voting together as a single class with each share of Common Stock entitled to one vote per share and each Share of Preferred Stock entitled to one vote for each share of Common Stock issuable upon conversion of the Preferred Stock as of the record date for such vote or, if no record date is specified, as of the date of such vote.

5.1C. Special Class B Preferred Voting Right. At any time when any shares of Class B Preferred remain outstanding, except where the vote or written consent of holders of a greater number of shares of the Class B Preferred is required by law, and in addition to any other vote required by law or the Articles of Incorporation of the Corporation, without the approval of the holders of at least a majority of the outstanding shares of Class B Preferred, given in the manner required by law in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a single class, the Corporation shall not increase the number of shares of Class B Preferred authorized for issuance.

Section 6. Conversion.

6.1A. Conversion Procedure.

(i) At any time and from time to time the holders of a majority of the outstanding Preferred Stock (on an as if converted basis) may convert all or any portion of the Preferred Stock (including any fraction of a share) outstanding into a number of fully paid and non-assessable shares of Conversion Stock computed by adding (a) the product of the number of shares of Class A Preferred to be converted and \$31.32 and dividing the result by the Class A

Conversion Price then in effect; and (b) the product of the number of shares of Class B Preferred to be converted and \$11.60 and dividing the result by the Class B Conversion Price then in effect; *provided that* in the event the holders of a majority of the outstanding Preferred Stock (on an as if converted basis) elect to convert less than all of the outstanding Preferred Stock, the number of shares to be converted from each of the Class A Preferred and the Class B Preferred shall be pro rata, based upon the ratio of the number of shares of each such class outstanding to the total number of shares of Preferred Stock outstanding.

(ii) At any time and from time to time, any holder of Class A Preferred may convert all or any portion of the Class A Preferred (including any fraction of a share) held by such holder into a number of fully paid and non-assessable shares of Conversion Stock computed by multiplying the number of such shares to be converted by \$31.32 and dividing the result by the Class A Conversion Price then in effect. At any time and from time to time, the holders of a majority of the Class A Preferred may convert all or any portion of the Class A Preferred (including any fraction of a share) outstanding into a number of shares of Conversion Stock computed by multiplying the number of such shares to be converted by \$31.32 and dividing the result by the Class A Conversion Price then in effect.

(iii) At any time and from time to time, any holder of Class B Preferred may convert all or a portion of the Class B Preferred (including any fraction of a share) held by such holder into a number of fully paid and non-assessable shares of Conversion Stock computed by multiplying the number of such shares to be converted by \$11.60 and dividing the result by the Class B Conversion Price then in effect. At any time and from time to time the holders of a majority of the Class B Preferred may convert all or any portion of the Class B Preferred (including any fraction of a share) outstanding into a number of shares of Conversion Stock computed by multiplying the number of such shares to be converted by \$11.60 and dividing the result by the Class B Conversion Price then in effect.

(iv) Except as otherwise provided herein, each conversion of Preferred Stock shall be deemed to have been effected as of the close of business on the date on which the written notice shall have been received by the Corporation (unless a date is specified in such notice, in which case that date shall be the effective date) of any matters described in Sections 6.1A(i), (ii) or (iii) above. At the time any such conversion has been effected, the rights of the holder of the Shares converted as a holder of Preferred Stock shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Conversion Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Conversion Stock represented thereby.

(v) The conversion rights of any Share subject to redemption hereunder shall terminate on the Redemption Date for such Share unless the Corporation has failed to pay to the holder thereof the Class A Liquidation Value or Class B Liquidation Value, as the case may be, of such Share (plus all accrued and unpaid dividends thereon).

(vi) Notwithstanding any other provision hereof, if a conversion of Preferred Stock is to be made in connection with a Public Offering, a Change in Ownership, a Fundamental

Change or other transaction affecting the Corporation, the conversion of any Shares of Preferred Stock may, at the election of the holder thereof, be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated.

(vii) As soon as possible after a conversion has been effected (but in any event within five (5) business days in the case of subparagraph (xii) below), the Corporation shall deliver to the converting holder:

(a) subject to receipt by the Corporation of the certificates for the shares of Preferred Stock being converted, a certificate or certificates representing the number of shares of Conversion Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(b) payment in an amount equal to all accrued dividends with respect to each Share converted which have not been paid prior thereto, plus the amount payable under subparagraph (xii) below with respect to such conversion; and

(c) a certificate representing any Shares of Class A Preferred or Class B Preferred which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(viii) If for any reason the Corporation is unable to pay any portion of the accrued and unpaid dividends on Preferred Stock being converted, such dividends may, at the converting holder's option, be converted into an additional number of shares of Conversion Stock determined by dividing the amount of the unpaid dividends to be applied for such purpose, by the applicable Class A Conversion Price or Class B Conversion Price then in effect.

(ix) The issuance of certificates for shares of Conversion Stock upon conversion of Preferred Stock shall be made without charge to the holders of such Preferred Stock for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Conversion Stock. Upon conversion of each Share of Preferred Stock, the Corporation shall take all such actions as are necessary in order to insure that the Conversion Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof.

(x) The Corporation shall not close its books against the transfer of Preferred Stock or of Conversion Stock issued or issuable upon conversion of Preferred Stock in any manner which interferes with the timely conversion of Preferred Stock. The Corporation shall assist and cooperate with any holder of Shares required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of Shares hereunder (including, without limitation, making any filings required to be made by the Corporation).

(xi) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Conversion Stock, solely for the purpose of issuance upon the conversion of the Preferred Stock, such number of shares of Conversion Stock issuable upon the conversion of all outstanding Preferred Stock. All shares of Conversion Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of Conversion Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Conversion Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action which would cause the number of authorized but unissued shares of Conversion Stock to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Preferred Stock.

(xii) If any fractional interest in a share of Conversion Stock would, except for the provisions of this subparagraph, be delivered upon any conversion of the Preferred Stock, the Corporation, in lieu of delivering the fractional share therefor, shall pay an amount to the holder thereof equal to the Market Price of such fractional interest as of the date of conversion.

(xiii) If the shares of Conversion Stock issuable by reason of conversion of Preferred Stock are convertible into or exchangeable for any other stock or securities of the Corporation, the Corporation shall, at the converting holder's option, upon surrender of the Shares to be converted by such holder as provided herein together with any notice, statement or payment required to effect such conversion or exchange of Conversion Stock, deliver to such holder or as otherwise specified by such holder a certificate or certificates representing the stock or securities into which the shares of Conversion Stock issuable by reason of such conversion are so convertible or exchangeable, registered in such name or names and in such denomination or denominations as such holder has specified.

6.1B. Conversion Price.

(i) The initial Class A Conversion Price (i.e. \$31.32) as subsequently adjusted to reflect the May 1999 25-for-1 stock split shall be \$1.2528. In order to prevent dilution of the conversion rights granted under this Section 6, the Class A Conversion Price shall be subject to adjustment from time to time pursuant to this Section 6.1B. The initial Class B Conversion Price shall be \$11.60. In order to prevent dilution of the conversion rights granted pursuant to this Section 6, the Class B Conversion Price shall be subject to adjustment from time to time pursuant to this Section 6.1B. Notwithstanding anything to the contrary contained in Section 6.1C, the Class A Conversion Price shall never be increased above \$1.2528, as adjusted pursuant to Section 6.1D, and the Class B Conversion Price shall never be increased above \$11.60, as adjusted pursuant Section 6.1D.

(ii) If and whenever after the original date of issuance of the Class B Preferred, the Corporation issues or sells, or in accordance with Section 6.1C is deemed to have issued or sold, any share of Common Stock for a consideration per share less than the Class A Conversion Price in

effect immediately prior to such time, to any Person other than a holder of Class A Preferred, then immediately upon such issue or sale or deemed issue or sale the Class A Conversion Price shall be reduced to the lowest price per share at which any such share of Common Stock has been issued or sold or is deemed to have been issued or sold. If and whenever after the original date of issuance of the Class B Preferred the Corporation issues or sells, or in accordance with Section 6.1C is deemed to have issued or sold, any share of Common Stock for a consideration per share less than the Class B Conversion Price in effect immediately prior to such time, to any Person other than a holder of Class B Preferred, then immediately upon such issue or sale or deemed issue or sale the Class B Conversion Price shall be reduced to the Class B Conversion Price determined by dividing (a) the sum of (1) the product derived by multiplying the Class B Conversion Price in effect immediately prior to such issue or sale by the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (2) the consideration, if any, received by the Corporation upon such issue or sale, by (b) the number of shares of Common Stock Deemed Outstanding immediately after such sale.

(iii) Notwithstanding the foregoing, there shall be no adjustment to the Class A Conversion Price or to the Class B Conversion Price hereunder: (a) with respect to the granting or issuance of stock and/or stock options or warrants (or the exercise of any of them), for an aggregate of 9,037,624 shares of Common Stock (as such number of shares is equitably adjusted for subsequent stock splits, stock combinations, stock dividends and recapitalizations, and such stock options shall include all stock options currently outstanding), granted or issued by the Corporation's board of directors prior to July 28, 1999, and granted or to be granted by the Corporation's board of directors thereafter pursuant to a plan, in each case to employees or directors of, or consultants to, the Corporation and its Subsidiaries which stock, options or warrants: (X) granted after April 23, 1999, are issued with an exercise price per share of (in the case of stock purchases or awards, valued at an amount) in each case of not less than \$1.2528 per share, or (Y) prior to April 23, 1999, were granted or issued at any price to employees or directors of, or consultants to, the Corporation and its Subsidiaries; (b) with respect to shares sold pursuant to the Purchase Agreement or their conversion into Common Stock; (c) with respect to securities (or their conversion) or rights to acquire securities issued in consideration for the acquisition (whether by merger or otherwise) by the Corporation or any of its Subsidiaries of all or substantially all the stock or assets of another entity; (d) with respect to securities or rights to acquire securities issued pursuant to a firm commitment underwritten public offering registered under the Securities Act of 1933; (e) with respect to securities (or their conversion) or rights to acquire securities issued to one or more strategic partners or investors as determined by the Board of Directors of the Corporation, even if such issuance is in part for the purpose of financing the Corporation; (f) the issuance of the Class B Preferred or its conversion into Common Stock; and (g) with respect to securities issued in connection with any equipment financing transaction approved by the Board of Directors of the Corporation. Notwithstanding the foregoing, there shall be no adjustment to the Class A Conversion Price or Class B Conversion Price for any event or circumstances occurring before the original date of issuance of the Class B Preferred and there shall be no adjustment to the Class A Conversion Price or Class B Conversion Price for stock dividends not covered in Section 6.1D.

6.1C. Effect on Conversion Price of Certain Events. No adjustment to the Class B Conversion Price under Section 6.1B(ii) shall have the effect of adjusting the Class A Conversion Price, and no adjustment to the Class A Conversion Price under Section 6.1B(ii) shall have the effect of adjusting the Class B Conversion Price. In addition, for purposes of determining the adjusted Class A Conversion Price and Class B Conversion Price under Section 6.1B, the following shall be applicable:

(i) **Issuance of Rights or Options.** If the Corporation in any manner grants or sells any Option and the lowest price per share for which any one share of Common Stock is issuable upon the exercise of any such Option, or upon conversion or exchange of any Convertible Security issuable upon exercise of any such Option, is less than the Class A Conversion Price or Class B Conversion Price in effect immediately prior to the time of the granting or sale of such Option, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Option for such price per share. For purposes of this paragraph, the "lowest price per share for which any one share of Common Stock is issuable" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon the granting or sale of the Option, upon exercise of the Option and upon conversion or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Class A Conversion Price or Class B Conversion Price shall be made upon the actual issue of such Common Stock or such Convertible Security upon the exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Security.

(ii) **Issuance of Convertible Securities.** If the Corporation in any manner issues or sells any Convertible Security and the lowest price per share for which any one share of Common Stock is issuable upon conversion or exchange thereof is less than the Class A Conversion Price or Class B Conversion Price in effect immediately prior to the time of such issue or sale, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "lowest price per share for which any one share of Common Stock is issuable" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon the issuance or sale of the Convertible Security and upon the conversion or exchange of such Convertible Security. No further adjustment of the Class A Conversion Price or Class B Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of any Convertible Security, and if any such issue or sale of such Convertible Security is made upon exercise of any Options for which adjustments of the Class A Conversion Price and/or Class B Conversion Price had been or are to be made pursuant to other provisions of this Section 6, no further adjustment of the Class A Conversion Price and/or Class B Conversion Price shall be made by reason of such issue or sale.

(iii) **Change in Option Price or Conversion Rate.** If the exercise price provided for in any Option, the additional consideration (if any) payable upon the issue, conversion or exchange of any Convertible Security or the rate at which any Convertible Security is

convertible into or exchangeable for Common Stock changes at any time, the Class A Conversion Price and Class B Conversion Price in effect at the time of such change shall be adjusted immediately to the Class A Conversion Price and Class B Conversion Price which would have been in effect at such time had such Option or Convertible Security originally provided for such changed exercise price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; *provided that* if such adjustment of the Class A Conversion Price or Class B Conversion Price would result in an increase in the Class A Conversion Price or Class B Conversion Price then in effect, such adjustment shall not be effective until written notice thereof has been given to all holders of the Preferred Stock. For purposes of Section 6.1C, if the terms of any Option or Convertible Security which was outstanding as of the date of issuance of the Class B Preferred are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change; *provided that* no such change shall at any time cause the Class A Conversion Price or Class B Conversion Price hereunder to be increased.

(iv) **Treatment of Expired Options and Unexercised Convertible Securities.**

Upon the expiration or termination of any Option or any right to convert or exchange any Convertible Security without the exercise of any such Option or right, the Class A Conversion Price and Class B Conversion Price then in effect hereunder shall be adjusted immediately to the Class A Conversion Price and Class B Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued; *provided that* if such expiration or termination or any amendment would result in an increase in the Class A Conversion Price or Class B Conversion Price then in effect, such increase shall not be effective until written notice thereof has been given to all holders of the Class A Preferred or Class B Preferred. For purposes of Section 6.1C, the expiration, amendment or termination of any Option or Convertible Security which was outstanding as of the date of issuance of the Class B Preferred shall not cause the Class A Conversion Price or Class B Conversion Price hereunder to be adjusted unless, and only to the extent that, a change in the terms of such Option or Convertible Security caused it to be deemed to have been issued after the date of issuance of the Class B Preferred.

(v) **Calculation of Consideration Received.** If any Common Stock, Option or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor (net of discounts and commissions). If any Common Stock, Option or Convertible Security is issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration as determined by the Board of Directors in good faith, except where such consideration consists of securities, in which case the amount of consideration received by the Corporation shall be the Market Price thereof as of the date of receipt. If any Common Stock, Option or Convertible Security is issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Option or Convertible Security, as the case may be. The fair value of any

consideration other than cash and securities shall be determined jointly by the Corporation and the holders of a majority of the outstanding Preferred Stock (on an as if converted basis). If such parties are unable to reach agreement within a reasonable period of time, the fair value of such consideration shall be determined by an independent appraiser experienced in valuing such type of consideration jointly selected by the Corporation and the holders of a majority of the outstanding Preferred Stock (on an as if converted basis). The determination of such appraiser shall be final and binding upon the parties, and the fees and expenses of such appraiser shall be borne by the Corporation.

(vi) **Integrated Transactions.** In case any Option is issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties thereto, the Option shall be deemed to have been issued for a consideration of \$.0001.

(vii) **Treasury Shares.** The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

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

6.1D. Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Class A Conversion Price and Class B Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and if the Corporation at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Class A Conversion Price and Class B Conversion Price in effect immediately prior to such combination shall be proportionately increased. In case of any adjustment made pursuant to this Section 6.1D, no further adjustment shall be made pursuant to Section 6.1B by reason thereof.

6.1E. Reorganization, Reclassification, Consolidation, Merger or Sale. Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Corporation's assets or other transaction, in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, is referred to herein as an "Organic Change". Prior to the consummation of any Organic Change, the

Corporation shall make appropriate provisions (in form and substance reasonably satisfactory to the holders of a majority of the Preferred Stock (on an as if converted basis) then outstanding) to insure that each of the holders of Preferred Stock shall thereafter have the right to acquire and receive, in lieu of or in addition to (as the case may be) the shares of Conversion Stock immediately theretofore acquirable and receivable upon the conversion of such holder's Preferred Stock, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted its Preferred Stock immediately prior to such Organic Change. In each such case, the Corporation shall also make appropriate provisions (in form and substance reasonably satisfactory to the holders of a majority of the Preferred Stock (on an as if converted basis) then outstanding) to insure that the provisions of this Section 6 and Sections 7 and 8 hereof shall thereafter be applicable to the Preferred Stock (including, in the case of any such consolidation, merger or sale in which the successor entity or purchasing entity is other than the Corporation, an immediate adjustment of the Class A Conversion Price and Class B Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Conversion Stock acquirable and receivable upon conversion of Class A Preferred and Class B Preferred, if the value so reflected is less than the Class A Conversion Price or Class B Conversion Price, as the case may be, in effect immediately prior to such consolidation, merger or sale). The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor entity (if other than the Corporation) resulting from consolidation or merger or the entity purchasing such assets assumes by written instrument (in form and substance satisfactory to the holders of a majority of the Preferred Stock (on an as if converted basis) then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

6.1F. Certain Events. If any event occurs of the type contemplated by the provisions of this Section 6 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate adjustment in the Class A Conversion Price and Class B Conversion Price so as to protect the rights of the holders of Class A Preferred and Class B Preferred; *provided that* no such adjustment shall increase the Class A Conversion Price and Class B Conversion Price as otherwise determined pursuant to this Section 6 or decrease the number of shares of Conversion Stock issuable upon conversion of each Share of Class A Preferred or Class B Preferred.

6.1G. Notices.

(i) Immediately upon any adjustment of the Class A Conversion Price or Class B Conversion Price, the Corporation shall give written notice thereof to all holders of Preferred Stock, setting forth in reasonable detail and certifying the calculation of such adjustment.

(ii) The Corporation shall give written notice to all holders of Preferred Stock at least twenty (20) days prior to the date on which the Corporation closes its books or takes a record: (a) with respect to any dividend or distribution upon Common Stock; (b) with respect to any pro

rata subscription offer to holders of Common Stock; or (c) for determining rights to vote with respect to any Organic Change, dissolution or liquidation.

(iii) The Corporation shall also give written notice to the holders of Preferred Stock at least twenty (20) days prior to the date on which any Organic Change shall take place.

6.1H. Mandatory Conversion. The Corporation may at any time require the conversion of all of the outstanding Preferred Stock if the Corporation is at such time effecting a firm commitment underwritten Public Offering of shares of its Common Stock in which the aggregate offering price for the shares shall be at least \$22,500,000.

Section 7. Liquidating Dividends.

If the Corporation declares or pays a dividend upon the Common Stock payable otherwise than in cash out of earnings or earned surplus (determined in accordance with generally accepted accounting principles, consistently applied) except for a stock dividend payable in shares of Common Stock (a "Liquidating Dividend"), then the Corporation shall pay to the holders of Preferred Stock at the time of payment thereof the Liquidating Dividends which would have been paid on the shares of Conversion Stock had such Preferred Stock been converted immediately prior to the date on which a record is taken for such Liquidating Dividend, or, if no record is taken, the date as of which the record holders of Common Stock entitled to such dividends are to be determined.

Section 8. Purchase Rights.

If at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "Purchase Rights"), then each holder of Preferred Stock shall be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Conversion Stock acquirable upon conversion of such holder's Preferred Stock immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

Section 9. Events of Noncompliance.

9.1A. Definition. An Event of Noncompliance shall have occurred if any of the following has occurred, and the Corporation receives written notice from the holders of a majority of the outstanding shares of Preferred Stock (on an as if converted basis), specifying the circumstances giving rise to such Event of Noncompliance, and specifying the potential ramifications of such Event of Noncompliance under Section 9.1B:

(i) the Corporation fails to pay on any date of payment for any dividend the full amount of dividends then accrued on the Preferred Stock, whether or not such payment is legally permissible or is prohibited by any agreement to which the Corporation is subject;

(ii) the Corporation fails to make any redemption payment with respect to the Preferred Stock which it is required to make hereunder, whether or not such payment is legally permissible or is prohibited by any agreement to which the Corporation is subject;

(iii) the Corporation materially breaches or otherwise fails to perform or observe any other material covenant, representation, warranty or agreement set forth herein or in the Purchase Agreement or in any other agreement entered into by the Corporation pursuant to the Purchase Agreement, and the Corporation continues to do so for thirty (30) days after written notice from a holder of the Class A Preferred specifying such breach;

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

(v) a judgment in excess of \$250,000 is rendered against the Corporation or any Subsidiary and, within sixty (60) days after receiving written notice thereof, such judgment is not discharged or execution thereof stayed pending appeal, or within sixty (60) days after the expiration of any such stay, such judgment is not discharged;

(vi) the Corporation or any Subsidiary defaults in the performance of any obligation or agreement if the effect of such default is to cause an amount exceeding \$250,000 to become due prior to its stated maturity or to permit the holder or holders of any obligation to cause an amount exceeding \$250,000 to become due prior to its stated maturity, and the Corporation has not cured the same within thirty (30) days after receiving written notice thereof;

(vii) the Corporation or any Subsidiary defaults in the performance of any material covenant or material agreement under any credit facility with indebtedness greater than \$250,000 that is not cured or waived within ninety (90) days; or

(viii) the Corporation's chief executive officer (employed as of the date of the Purchase Agreement) or chief financial officer (employed as contemplated in the Purchase Agreement) shall cease to be employed by the Corporation for any reason and is not replaced within 120 days by the unanimous approval of the Board of Directors (such approval not to be unreasonably withheld by any director).

9.1B. Consequences of Events of Noncompliance.

(i) If an Event of Noncompliance of the type described in Section 9.1A has occurred and is continuing, the Preferred Stock shall immediately be entitled a dividend accruing daily at the rate of ten percent (10%) per annum (in addition to customary dividends), which shall be declared payable by the Board of Directors quarterly following the date of the Event of Noncompliance. Thereafter, until such time as no Event of Noncompliance exists, the dividend rate shall increase automatically at the end of each succeeding 90-day period by an additional increment of two (2) percentage point(s) (but in no event shall the dividend rate exceed fourteen percent (14%)). Any increase of the dividend rate resulting from the operation of this subparagraph shall terminate as of the close of business on the date on which no Event of Noncompliance exists, subject to subsequent increases pursuant to this paragraph.

(ii) If any Event of Noncompliance of the type described in Section 9.1A has occurred and is continuing, the number of directors constituting the Corporation's Board of Directors shall, immediately upon the request of the holder or holders of a majority of the Class A Preferred then outstanding, be increased by such number which, together with the number of directors elected by the Class A Preferred pursuant to the Shareholders Agreement shall constitute a minimum majority of the Board of Directors, and the holders of Class A Preferred shall have the special right, voting separately as a single class (with each share being entitled to one vote) and to the exclusion of all other classes of the Corporation's stock, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships. The special right of the holders of Class A Preferred to elect members of the Board of Directors may be exercised at the special meeting called pursuant to this Section 9.1B(ii), at any annual or other special meeting of shareholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a shareholders meeting. Such special right shall continue until such time as there is no longer any Event of Noncompliance in existence, at which time such special right shall terminate subject to reversion upon the occurrence and continuation of any Event of Noncompliance which gives rise to such special right hereunder.

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

such written request upon the secretary of the Corporation or within twenty (20) days after mailing the same to the secretary of the Corporation at its principal office, then the holders of at least ten percent (10%) of the Class A Preferred then outstanding may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such Person so designated upon the notice required for annual meetings of shareholders and shall be held at the Corporation's principal office, or at such other place designated by the holders of at least 10% of the Class A Preferred then outstanding. Any holder of Class A Preferred so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of shareholders to be called pursuant to this subparagraph.

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

Any director so elected by the holders of Class A Preferred shall continue to serve as a director until the expiration of the lesser of: (a) a period of thirty (30) days following the date on which there is no longer any Event of Noncompliance in existence; or (b) the remaining period of the full term for which such director has been elected. After the expiration of such thirty (30) day period or when the full term for which such director has been elected ceases (provided that the special right to elect directors has terminated), as the case may be, the number of directors constituting the board of directors of the Corporation shall decrease to such number as constituted the whole board of directors of the Corporation immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to the special right to elect directors.

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

Section 10. Registration of Transfer.

The Corporation shall keep at its principal office a register for the registration of Preferred Stock. Upon the surrender of any certificate representing Preferred Stock at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of Shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Preferred Stock represented by the surrendered certificate.

Section 11. Replacement.

Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Shares of Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 12. Definitions.

"Change in Ownership" has the meaning set forth in Section 4.1F hereof.

"Class A Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Class A Preferred.

"Class A Liquidation Value" of any share of Class A Preferred shall be equal to the greater of (i) the Market Price of the underlying Conversion Stock without regard to minority or illiquidity discounts; or (ii) the principal value of the Class A Preferred (initially \$31.32 per share).

"Class B Junior Securities" means any capital stock or other equity securities of the Corporation, except for Class A Preferred and Class B Preferred.

"Class B Liquidation Value" of any share of Class B Preferred shall be equal to the greater of (i) the Market Price of the underlying Conversion Stock without regard to minority or illiquidity discounts; or (ii) the principal value of the Class B Preferred (initially \$11.60 per share).

"Common Stock" means, collectively, the Corporation's Common Stock par value \$.0001 per share.

"Common Stock Deemed Outstanding" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Sections 6.1C(i) and 6.1C(ii) hereof whether or not the Options or Convertible Securities are actually exercisable at such time, plus, when computing the "Common Stock Deemed Outstanding" where it appears in Section 6.1B(ii), the shares of outstanding Preferred Stock on an as converted basis.

"Conversion Stock" means shares of the Corporation's Common Stock, par value \$.0001 per share, issuable upon conversion of the Class A Preferred or Class B Preferred; *provided that* if there is a change such that the securities issuable upon conversion of the Class A

Preferred or Class B Preferred are issued by an entity other than the Corporation or there is a change in the type or class of securities so issuable, then the term "Conversion Stock" shall mean one share of the security issuable upon conversion of the Class A Preferred or Class B Preferred, as the case may be, if such security is issuable in shares, or shall mean the smallest unit in which such security is issuable if such security is not issuable in shares.

"Convertible Securities" means any stock or securities directly or indirectly convertible into or exchangeable for Common Stock.

"Fundamental Change" has the meaning set forth in Section 4F hereof.

"Market Price" of any security means the average of the closing prices of such security's sales on all securities exchanges on which such security may at the time be listed, or, if there has been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, or, if on any day such security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of twenty-one (21) days consisting of the day as of which "Market Price" is being determined and the twenty (20) consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the "Market Price" shall be the fair value thereof determined jointly by the Corporation and the holders of a majority of the Preferred Stock (on an as if converted basis). If such parties are unable to reach agreement within a reasonable period of time, such fair value shall be determined by an independent appraiser experienced in valuing securities jointly selected by the Corporation and the holders of a majority of the Preferred Stock (on an as if converted basis). The determination of such appraiser shall be final and binding upon the parties, and the Corporation shall pay the fees and expenses of such appraiser.

"Options" means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities; *provided, however*, that the term "Options" shall expressly exclude options or securities issued as expressly contemplated by Section 6.1B(iii).

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

"Public Offering" means any offering by the Corporation of its capital stock or equity securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force.

"Purchase Agreement" means the Purchase Agreement, dated as of April 23, 1999, by and among the Corporation and certain investors, as such agreement may from time to time be amended in accordance with its terms.

"Redemption Date" as to any share of Preferred Stock means the date that the Corporation shall be obligated to redeem such Share pursuant to Section 4.1F hereof, *provided that* no such date shall be a Redemption Date unless the Class A Liquidation Value or Class B Liquidation Value, as the case may be, of such Share (plus all accrued and unpaid dividends thereon and any required premium with respect thereto) is actually paid in full on such date, and if not so paid in full, the Redemption Date shall be the date on which such amount is fully paid.

"Shareholders Agreement" has the meaning set forth in the Purchase Agreement and as amended and restated from time to time in accordance with its terms.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability company, partnership, association or other business entity.

Section 13. Amendment and Waiver.

No amendment, modification or waiver shall be binding or effective with respect to any provision of Sections 1 to 14 hereof without the prior written consent of the holders of a majority of the Preferred Stock (on an as if converted basis) outstanding at the time such action is taken; *provided that* no such action shall change (a) the rate at which or the manner in which dividends on the Class A Preferred and Class B Preferred accrue or the times at which such dividends become payable or the amount payable on redemption of the Class A Preferred and Class B Preferred or the times at which redemption of Class A Preferred and Class B Preferred is to occur, without the prior written consent of the holders of at least two-thirds of the Preferred Stock (on an as if converted basis) then outstanding, (b) the Class A Conversion Price or Class B Conversion Price or the number of shares or class of stock into which the Class A Preferred or Class B Preferred is convertible, without the prior written consent of the holder of at least two-thirds of the Preferred Stock (on an as if converted basis) then outstanding or (c) the percentage required to approve any change described in clauses (a) and (b) above, without the prior written consent of the holders of at least two-thirds of the Preferred Stock (on an as if converted basis) then outstanding; and provided further that no change in the terms hereof may be accomplished by

merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of the applicable percentage of the Preferred Stock (on an as if converted basis) then outstanding. Notwithstanding the foregoing, no amendment will be valid as to any class or series of Preferred Stock which would materially and adversely affect the rights of the holders of such class or series of Preferred Stock without the consent of the holders of a majority of the outstanding shares of such class or series of Preferred Stock so materially and adversely affected by such amendment.

Section 14. Adjustments.

All numbers set forth herein which refer to share prices or numbers or amounts will be appropriately adjusted to reflect stock splits, stock dividends, combinations of shares, and other recapitalizations affecting the subject class of stock.

Section 15. Notices.

Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, or by reputable overnight courier service, charges prepaid, and shall be deemed to have been given when so mailed or sent (i) to the Corporation, at its principal executive offices and (ii) to any shareholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

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