

P99000059287

Florida Department of State
Division of Corporations
Public Access System
Katherine Harris, Secretary of State

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H99000031814 9)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations
Fax Number : (850) 922-4000

From: Account Name : HOLLAND & KNIGHT OF JACKSONVILLE
Account Number : 074323003114
Phone : (904) 353-2000
Fax Number : (904) 358-1872

FILED
99 DEC 14 PM 1:08
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

BASIC AMENDMENT

E-DR. NETWORK, INC.

RECEIVED
99 DEC 15 PM 1:31
DIVISION OF CORPORATIONS

Certificate of Status	0
Certified Copy	0
Page Count	30
Estimated Charge	\$35.00

AMEND
12-16



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

December 15, 1999

E-DR. NETWORK, INC.
3107 SAWGRASS VILLAGE CIRCLE
PONTE VEDRA BEACH, FL 32082

SUBJECT: E-DR. NETWORK, INC.
REF: P99000059287

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

The amendment must be signed by an incorporator if adopted by the incorporators or by a director if adopted by the directors.

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

If you have any questions concerning the filing of your document, please call (850) 487-6906.

Darlene Connell
Corporate Specialist

FAX Aud. #: H99000031814
Letter Number: 399A00058797

Please use December 14, 1999
as the filing date.

H990000318149

**ARTICLES OF AMENDMENT
TO THE ARTICLES OF INCORPORATION OF
E-DR. NETWORK, INC.**

Pursuant to Sections 607.1002 and 607.1006 of the Florida Business Corporation Act, the Articles of Incorporation of E-DR. NETWORK, INC., a Florida corporation (the "Company"), are hereby amended according to these Articles of Amendment:

FIRST: The name of the corporation is E-DR. NETWORK, INC.

SECOND: The Articles of Incorporation of the Company shall be amended to add to Article IV the provisions set forth in Exhibits "A" and "B" attached hereto.

THIRD: The foregoing amendment was adopted effective December 14, 1999, by written consent of the sole director of the Company, in accordance with sections 607.0821 of the Florida Statutes, constituting a sufficient number of votes for the amendment to be approved. Pursuant to authority granted to the board of directors by the articles of incorporation of the Company and Sections 607.0602 and 607.1002 of the Florida Statutes, the foregoing amendment does not require shareholder approval.

IN WITNESS WHEREOF, the undersigned director of the Company has executed this instrument effective December 14, 1999.

E-DR. NETWORK, INC.

By: Jerome A. Hayes *OP*
Jerome A. Hayes, O. B., Director

JAX1 #524253 v1

H990000318149

H99000031814 9

Exhibit "A"**Series A Preferred Stock:**

There is hereby created a series of 5,200,000 shares of preferred stock, \$0.001 par value per share, designated "Series A Preferred Stock", having the following powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof in addition to those specified in the Articles of Incorporation.

For the purposes of this Certificate of Designation, the following terms shall have the meanings specified:

"Authorized Option Plan or Agreement" shall have the meaning provided in Subsection (4)(g)(E)(z) hereof.

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

"Common Stock" shall mean the common stock, \$0.001 par value per share, of the Corporation.

"Conversion Price" shall have the meaning provided in Subsection (4)(g) hereof.

"Conversion Rate" shall have the meaning provided in Subsection (4)(c) hereof.

"Corporation" shall mean E-Dr.Network, Inc., a Florida corporation.

"Designations" shall mean the preferences, powers, limitations and relative rights of the Series A Preferred Stock established hereby and set forth hereinafter.

"Invested Amount" per share of Series A Preferred Stock shall mean \$2.50 (as adjusted for changes in the Series A Preferred Stock by stock split, stock dividend or the like occurring after the Original Issue Date).

"Liquidation" shall have the meaning specified in Subsection (2).

"Original Issue Date" shall mean the date of that certain Stock Purchase Agreement to be dated on or about December 14, 1999, by and among the Corporation, Noro-Moseley Partners IV, L.P., Noro-Moseley Partners IV-B, L.P., CIBA Vision Corporation and Benchmark Capital, pursuant to which the initial issuance of shares of Series A Preferred Stock is to occur.

"Qualified Public Offering" shall mean the underswritten offer and sale of Common Stock to the public at a public offering price at least equal to 300% of the Invested Amount (as adjusted for changes in the Series A Preferred Stock by stock split, stock dividend or the like occurring after the Original Issue Date) and having aggregate net proceeds to the Corporation of not less than \$25,000,000.

"Sale or Merger" shall have the meaning specified in Subsection (2).

H99000031814 9

DEC. 15. 1999 12:54PM

HOLLAND AND KNIGHT

NO. 1191 P. 5/32

H99000031814 9

"*Series A Preferred Stock*" shall mean the 5,200,000 shares of Series A Preferred Stock, \$0.001 par value per share, of the Corporation.

"*Series B Designations*" shall mean the preferences, powers, limitations and relative rights of the Series B Preferred Stock constituting a part of the Corporation's Articles of Incorporation.

"*Series B Preferred Stock*" shall mean the 500,000 shares of Series B Preferred Stock, \$0.001 par value per share, of the Corporation

The Designations granted to and imposed upon the Series A Preferred Stock are as follows:

(1) Dividend Rights. From and after the Original Issue Date (the "Dividend Commencement Date"), the holders of outstanding shares of Series A Preferred Stock shall be entitled to receive, and shall be paid whenever funds are legally available therefor, when and if declared by the Board of Directors, dividends at an annual rate of \$.20 per share, prior and in preference to any declaration of payment of any dividend on the Common Stock. Such dividend shall be cumulative and shall accrue on a daily basis from the Dividend Commencement Date whether or not declared by the Board of Directors of the Corporation; provided, however, that if a Qualified Public Offering occurs on or prior to the third anniversary of the Original Issue Date, then the Company's obligations to pay any such dividends not theretofore declared and paid shall be cancelled. Subject to Section (7)(a)(i) hereof, no dividends may be paid with respect to the Common Stock of the Corporation so long as shares of the Series A Preferred Stock are issued and outstanding. Except as expressly set forth in Section (4), the Corporation shall be under no obligation to pay such dividends unless so declared by the Board of Directors.

(2) Liquidation Rights. In the event of (i) the liquidation, dissolution or winding up of the Corporation, or such of the Corporation's subsidiaries the assets of which constitute all or substantially all the assets of the business of the Corporation and its subsidiaries taken as a whole (a "Liquidation") or (ii) a "Sale or Merger" (defined below), unless, in the case of a Sale or Merger, the holders of the Series A Preferred Stock have elected by a vote of at least a majority of the total number of shares of such series outstanding, voting separately as a class, to exclude such Sale or Merger from the application of this Subsection (2) (in which case this Subsection (2) shall not apply to such transaction), the holders of the outstanding shares of the Series A Preferred Stock shall, at their election, be entitled to receive in exchange for and in redemption of their Series A Preferred Stock, prior and in preference to the holders of Common Stock, the holders of any currently issued preferred stock and the holders of any other class or series of stock of the Corporation ranking junior to the Series A Preferred Stock by reason of their ownership thereof, (i) in the case of a Liquidation, from any funds legally available for distribution to stockholders, and (ii) in the case of a Sale or Merger to which this Subsection (2) applies, from the net proceeds therefrom (defined for these purposes to mean the proceeds, whether cash, securities or property, available for distribution to stockholders or payable to the stockholders by reason of the Sale or Merger), an amount per share equal to the Invested Amount plus all accrued but unpaid dividends.

H99000031814 9

H99000031814 9

For purposes of these Designations, a "Sale or Merger" shall mean any of the following: (x) the merger or consolidation of the Corporation into or with another corporation in which the stockholders of the Corporation immediately preceding such merger or consolidation (solely by virtue of their shares or other securities of the Corporation) shall own less than fifty percent (50%) of the voting securities of the surviving corporation; (y) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions or plan, of all or substantially all the assets of the Corporation, which assets shall include for these purposes fifty percent (50%) or more of the outstanding voting capital stock of any subsidiaries of the Corporation, the assets of which constitute all or substantially all the assets of the Corporation and its subsidiaries taken as a whole; or (z) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions, of all or substantially all the assets of the subsidiaries of the Corporation, the assets of which constitute all or substantially all of the assets of the Corporation and such subsidiaries taken as a whole.

To the extent necessary, the Corporation shall cause such actions to be taken by any of its subsidiaries so as to enable the proceeds of a Liquidation or a Sale or Merger to be distributed to the holders of shares of Series A Preferred Stock in accordance with this Subsection (2). All the preferential amounts to be paid to the holders of the Series A Preferred Stock under this Subsection (2) and to be paid to the holders of the Series B Preferred Stock under Subsection (2) of the Series B Designations shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to, the holders of the Common Stock, the holders of any currently issued preferred stock or any class or series of stock of the Corporation ranking junior to the Series A Preferred Stock and Series B Preferred Stock in connection with a Liquidation or a Sale or Merger as to which this Subsection (2) applies. Any assets remaining after such preferential amounts have been paid to the holders of the Series A Preferred Stock under this Subsection (2) shall be distributed on a per share pro rata basis to the holders of the Series A Preferred Stock, Series B Preferred Stock and Common Stock in an amount as would have been payable had each share of Series A Preferred Stock been converted to Common Stock immediately prior to such Liquidation or Sale or Merger.

(3) Voting Rights. Except as set forth specifically below, the holder of each share of the Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series A Preferred Stock would be convertible under the circumstances described in Subsection (4) hereof on the record date for the vote or consent of stockholders, and shall otherwise have voting rights and powers equal to the voting rights and powers of the Common Stock. The foregoing notwithstanding, with respect to the election of directors, the holders of Series A Preferred Stock shall vote together as a single class to elect two members of the Board of Directors. The holders of Series A Preferred Stock shall vote together with the holders of Common Stock and other capital stock of the Corporation to elect the remaining members of the Board of Directors on which the holders of Common Stock are entitled to vote. In the event the holders of Series A Preferred Stock do not exercise their right to elect two members of the Board of Directors, such holders will be permitted to send at least two representatives to all meetings of the Board of Directors of the Corporation, with respect to which reasonable notice shall be provided to such holders, including notice of all written consents taken in lieu of a meeting of the Board of Directors of the Corporation prior to

H99000031814 9

DEC. 15. 1999 12:55PM

HOLLAND AND KNIGHT

NO. 1191 P. 7/32

H99000031814 9

execution of any such consents. Each holder of a share of the Series A Preferred Stock shall be entitled to receive the same prior notice of any stockholders' meeting as provided to the holders of Common Stock in accordance with the Bylaws of the Corporation, as well as prior notice of all stockholder actions to be taken by legally available means in lieu of meeting, and shall vote with holders of the Common Stock upon any matter submitted to a vote of stockholders, except those matters required by law, or by the terms hereof, to be submitted to a class vote of the holders of Series A Preferred Stock. Fractional votes shall not, however, be permitted, and any fractions shall be disregarded in computing voting rights.

Notwithstanding anything contained in this Subsection (3) to the contrary, in the event (A) the Corporation pursuant to or within the meaning of Title 11, U.S. Code or any other federal or state law for the relief of debtors, as any such laws may be amended from time to time ("Bankruptcy Law"): (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a custodian or receiver of it or for all or substantially all of its property, or (iv) makes a general assignment for the benefit of its creditors (each, a "Bankruptcy Event"), then for so long as such Bankruptcy Event continues; or (B) the Corporation fail for any reason (i) to make distributions to the holders of Series A Preferred Stock under the conditions and in accordance with the terms of Section (2) hereof, (ii) to issue Common Stock in conversion of the Series A Preferred Stock as provided in Section (4) hereof, (iii) to redeem the Series A Preferred Stock under the conditions and in accordance with the terms of Section (5) hereof, (iv) to honor the preemptive rights granted to holders of Series A Preferred Stock in Section (6) hereof, or (v) to comply with the protective provisions of Section (7) hereof, and should any such failure continue for a period of ninety (90) consecutive days, then, at the end of such period and for so long as said failure remains uncured, the holders of Series A Preferred shall be entitled, at any annual meeting of the shareholders or any special meeting called for such purpose, voting together as a single class, to elect the smallest number of members of the Board of Directors necessary to constitute a majority of the full Board of Directors, and the holders of Common Stock shall elect the remaining directors. If, prior to the end of the term of any director elected as aforesaid by the holders of shares of the Series A Preferred Stock, a vacancy in the office of such director shall occur by reason of death, resignation, removal or disability, or for any other reason, the right to fill such vacancy shall be vested in the holders of the Series A Preferred Stock unless the right of such holders to elect such director shall have ceased as provided hereafter. At any time after such power to elect a majority of directors shall have so vested in the Series A Preferred Stock, the Secretary of the Company may, and, upon the written request of the holders of record of ten percent (10%) or more of the then outstanding shares of the Series A Preferred Stock, addressed to the Secretary at the principal office of the Company, shall, call a special meeting of the holders of Series A Preferred Stock for the election of the directors to be elected by them as hereinabove provided, to be held within thirty (30) days after such call and at the place and upon the notice provided by law and in the Bylaws of the Company for the holding of meetings of shareholders. If any such special meeting required to be called as above provided shall not be called by the Secretary within thirty (30) days after receipt of any such request, then the holders of record of ten percent (10%) or more in amount of the Series A Preferred Stock then outstanding may designate in writing one of their number to call such meeting, and the person so designated may call such meeting to be held at the place and upon the notice above provided, and for that purpose shall have access to the stock ledger of the Company. If any such special meeting shall be called by the Secretary of the Company or by the holders of the Series A Preferred Stock as above provided, and if the holders

H99000031814 9

H99000031814 9

of at least a majority of the Series A Preferred Stock then outstanding and entitled to vote at such meeting shall be present or represented by proxy at such meeting or any adjournment thereof, then, by vote of the holders of at least a majority of such Series A Preferred Stock present or so represented at such meeting, the then authorized number of directors of the Company shall be increased by twofold plus one and, at such meeting, the holders of the Series A Preferred Stock shall be entitled to elect the additional directors so provided for, but any directors so elected shall hold office only until their respective successors are duly elected and qualified at the annual meeting of shareholders or special meeting held in place thereof next succeeding their election (giving effect to the foregoing rights of the holders of Series A Preferred). At such time, if any, as the Bankruptcy Event is cured or as the holders of the Series A Preferred Stock shall receive the distribution specified in (i) above, receive the Common Stock specified in (ii) above, obtain the redemption referred to in (iii) above or obtain rectification of the failure to respect, or restoration of, the rights referenced in (iv) or (v) above, then the terms of office of all persons elected as directors by such holders shall forthwith terminate, the number of directors shall be reduced accordingly, and the holders of Series A Preferred Stock shall once again have rights with respect to the election of directors as are provided in the first sentence of this Subsection (3). The foregoing remedy shall not be deemed exclusive and shall be in addition to all other rights and remedies available at law or equity to the holders of Series A Preferred Stock.

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

(a) Optional. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series A Preferred Stock, into Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the Conversion Rate of the Series A Preferred Stock (determined as provided in Subsection (4)(c) below) by the number of shares of Series A Preferred Stock being converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of the shares of Series A Preferred Stock to be converted in accordance with the procedures described in Subsection (4)(d) below.

(b) Automatic.

(A) If the holders of at least a majority of the then outstanding shares of Series A Preferred Stock so elect, by delivery of written notice or notices to the Corporation, each and every outstanding share of Series A Preferred Stock held by such holders of Series A Preferred Stock shall automatically be converted into Common Stock at the then effective Conversion Rate. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of receipt of the written notice described above necessary to effect such conversion. Such conversion shall be automatic, without need for any further action by such holders of shares of Series A Preferred Stock and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of

H99000031814 9

H99000031814 9

Series A Preferred Stock so converted are surrendered to the Corporation in accordance with the procedures described in Subsection (4)(d) below.

(B) The Corporation shall notify each holder of Series A Preferred Stock at least ninety (90) days prior to the anticipated effective date of a registration statement filed by the Corporation under the federal Securities Act of 1933, as amended, covering a Qualified Public Offering. Upon the closing of, but effective immediately prior to, the first sale in a Qualified Public Offering, each and every share of outstanding Series A Preferred Stock held by all holders of Series A Preferred Stock shall automatically be converted into Common Stock at the then effective Conversion Rate. Such conversion shall be automatic, without need for any further action by the holders of shares of Series A Preferred Stock and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Series A Preferred Stock so converted are surrendered to the Corporation in accordance with the procedures described in Subsection (4)(d) below. Upon the conversion of the Series A Preferred Stock pursuant to this Subsection (4)(d)(B), the Corporation shall promptly send written notice thereof, by registered or certified mail return receipt requested and postage prepaid, by hand delivery or by overnight delivery, to each holder of record of Series A Preferred Stock at his or its address then shown on the records of the Corporation, which notice shall state that certificates evidencing shares of Series A Preferred Stock must be surrendered at the office of the Corporation (or of its transfer agent for the Common Stock, if applicable) in the manner described in Subsection (4)(d) below.

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

(c) Conversion Rate. Subject to the provisions of this Subsection (4), the conversion rate in effect at any time with respect to the Series A Preferred Stock (the "Conversion Rate") shall be the quotient obtained by dividing \$2.50 by the Conversion Price, as defined in Subsection (4)(g) hereof.

(d) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to receive certificates representing the shares of Common Stock into which shares of Series A Preferred Stock are converted in accordance with Subsections (4)(a) or (B)(4)(b) above, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock, and shall give written notice to the Corporation at such office of the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued, if different from the name shown on the books and records of the Corporation. Said conversion notice shall also contain such representations as may reasonably be required by the Corporation to the effect that the shares to be received upon conversion are not being acquired and will not be transferred in any way that might violate the then applicable securities laws. The Corporation shall, as soon as practicable thereafter and in no event later than

H99000031814 9

H99000031814 9

thirty (30) days after the delivery of said certificates, issue and deliver at such office to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder as provided in such notice, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion pursuant to Subsections (4)(a) or (4)(b) shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of the effective date of conversion specified in such section. All certificates issued upon the exercise or occurrence of the conversion shall contain a legend governing restrictions upon such shares imposed by law or agreement of the holder or his or its predecessors.

(e) Adjustment for Subdivisions or Combinations of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date effects a subdivision or combination of the outstanding Common Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of the outstanding Series A Preferred Stock, then and in each such event the Conversion Price (and the corresponding Conversion Rate) shall be increased or decreased proportionately.

(f) Adjustments for Distributions and Common Stock Equivalents. In the event that (subject to Subsection (4)(g)(E) hereof) the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into or entitling the holder thereof to receive additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder of such Common Stock Equivalents or the additional shares of Common Stock, and without a proportionate and corresponding dividend or other distribution to holders of Series A Preferred Stock, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents shall be deemed, for purposes of this Subsection (4)(f), to be issued and outstanding as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date. In each such event the Conversion Price shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price by a fraction,

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

(B) the denominator of which shall be the total number of shares of Common Stock (x) issued and outstanding or deemed pursuant to the terms hereof to be issued and outstanding (not including any shares described in clause (y) immediately below), immediately prior to the time of such issuance or the close of business on such record date, *plus* (y) the number of shares of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents; provided, however, that (i) if such record date shall have been fixed and such dividend is not fully paid or if such

H99000031814 9

H99000031814 9

distribution is not fully made on the date fixed therefor, the Conversion Price (and the corresponding Conversion Rate) shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price (and the corresponding Conversion Rate) shall be adjusted pursuant to this Subsection (4)(f) as of the time of actual payment of such dividend or distribution; or (ii) if such Common Stock Equivalents provide, with the passage of time or otherwise, for any decrease in the number of shares of Common Stock issuable upon conversion or exercise thereof (or upon the occurrence of a record date with respect thereto), the Conversion Price (and the corresponding Conversion Rate) computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall upon any such decrease becoming effective, be recomputed to reflect such decrease insofar as it affects the rights of conversion or exercise of the Common Stock Equivalents then outstanding; or (iii) upon the expiration of any rights of conversion or exercise under any unexercised Common Stock Equivalents, the Conversion Price (and the corresponding Conversion Rate) computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall upon such expiration, be recomputed as if the only additional shares of Common Stock issued were the shares of such stock, if any, actually issued upon the conversion or exercise of such Common Stock Equivalents; or (iv) in the event of issuance of Common Stock Equivalents that expire by their terms not more than sixty (60) days after the date of issuance thereof, no adjustments of the Conversion Price (or the corresponding Conversion Rate) shall be made until the expiration or exercise of all such Common Stock Equivalents, whereupon the adjustment otherwise required by this Subsection (4)(f) shall be made in the manner provided herein.

(g) Adjustment of Conversion Rate for Diluting Issues.

(A) Except as otherwise adjusted as provided herein, the "Conversion Price" shall be \$2.50. Except as otherwise provided in this Subsection (4)(g), in the event, and each time as, the Corporation sells or issues any Common Stock or Common Stock Equivalents following the Original Issue Date, at a per share consideration (as defined below) less than the Conversion Price then in effect, then the Conversion Price shall be adjusted as provided in subsection (4)(g)(B) below, and the Conversion Rate shall be appropriately adjusted. For purposes of the foregoing, the per share consideration with respect to the sale or issuance of a share of Common Stock shall be the price per share received by the Corporation, prior to the payment of any expenses, commissions, discounts and other applicable costs. With respect to the sale or issuance of Common Stock Equivalents that are convertible into or exchangeable for Common Stock without further consideration, the per share consideration shall be determined by dividing the minimum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents. With respect to the issuance of other Common Stock Equivalents, the per share consideration shall be determined by dividing the minimum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents plus the total consideration receivable by the Corporation upon the conversion or exercise of such Common Stock Equivalents. The issuance

H99000031814 9

H99000031814 9

of Common Stock or Common Stock Equivalents for no consideration shall be deemed to be an issuance at a per share consideration of \$.01. In connection with the sale or issuance of Common Stock and/or Common Stock Equivalents for non-cash consideration, the amount of consideration shall be determined by the Board of Directors of the Corporation in good faith.

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

For the purposes of this Subsection (4)(g)(A), the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (i) the number of shares of Common Stock actually outstanding, (ii) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (iii) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(B) Upon each issuance of Common Stock for a per share consideration less than the Conversion Price as in effect on the date of such issuance, the Conversion Price as in effect on such date shall be adjusted by multiplying it by a fraction:

(x) the numerator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to the issuance of such Additional Shares of Common Stock plus the number of shares of Common Stock that the aggregate net consideration received by the Corporation for the total number of such Additional Shares of Common Stock so issued would purchase at the Conversion Price then in effect; and

(y) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to the issuance of such Additional Shares of Common Stock plus the number of Additional Shares of Common Stock so issued.

For the purposes of this Subsection (4)(g)(B), the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (i) the number of shares of Common Stock actually outstanding, (ii) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (iii) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(C) Upon each issuance of Common Stock Equivalents that are exchangeable without further consideration into Common Stock for a per share consideration less than the Conversion Price as in effect on the date of such issuance, the Conversion Price

H99000031814 9

H99000031814 9

shall be adjusted as provided in this Subsection (4)(g) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of the Common Stock Equivalents, and the aggregate consideration received by the Corporation for such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(D) Upon each issuance of Common Stock Equivalents other than those described in paragraph (C) of this Subsection (4)(g) for a per share consideration less than the Conversion Price as in effect on the date of such issuance, the Conversion Price shall be adjusted as provided in this Subsection (4)(g) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of such Common Stock Equivalents, and the aggregate consideration received and receivable by the Corporation on conversion or exercise of such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(E) Once any Additional Shares of Common Stock have been treated as having been issued for the purpose of this Subsection (4)(g), they shall be treated as issued and outstanding shares of Common Stock whenever any subsequent calculations must be made pursuant hereto; provided that on the expiration of any options, warrants or rights to purchase Additional Shares of Common Stock, the termination of any rights to convert or exchange for Additional Shares of Common Stock, or the expiration of any options or rights related to such convertible or exchangeable securities on account of which an adjustment in the Conversion Price has been made previously pursuant to this Subsection (4)(g), such Conversion Price shall forthwith be readjusted to the Conversion Price as would have obtained had the adjustment made upon the issuance of such options, warrants, rights, securities or options or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options, warrants or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(F) The foregoing notwithstanding, no adjustment of the Conversion Price and the Conversion Rate shall be made pursuant to this Subsection (4)(g) as a result of the issuance of:

(u) up to 3,806,349 shares of Common Stock pursuant to those certain warrant agreements dated as of December 14, 1999;

(v) up to 500,000 shares of Series B Preferred Stock;

(w) any shares of Common Stock upon the conversion of shares of Series A Preferred Stock or Series B Preferred Stock;

(x) any shares of Common Stock pursuant to which the Conversion Price and the Conversion Rate are adjusted under Subsections (e) or (f) of this Subsection (4);

H99000031814 9

H99000031814 9

(y) any shares of Common Stock issued pursuant to the exchange, conversion or exercise of any Common Stock Equivalents that were outstanding on the Original Issue Date; or

(z) up to 1,000,000 shares of Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or singular events), issued pursuant to options, warrants or rights that may be granted at any time after the Original Issue Date to purchase shares of Common Stock in favor of employees, directors, officers or consultants of the Corporation or any subsidiary thereof pursuant to *bona fide* employee stock option plans created in accordance with Section 422 of the Internal Revenue Code of 1986, as amended, or similar subsequent legislation or pursuant to a non-statutory stock option plan or non-statutory stock option agreements (any such stock option plan or agreement described in this clause (z) being referred to as an "Authorized Option Plan or Agreement").

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

(i) No Impairment. Except as provided in Subsection (7) hereof, the Corporation shall not, by amendment of its Articles of Incorporation or Bylaws or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in the carrying out of all the provisions of this Subsection (4) and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Subsection (4), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and cause independent public accountants selected by the Corporation to verify such computation and prepare and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price and the Conversion Rate at that time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at that time would be received upon the conversion of Series A Preferred Stock.

(k) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities other than Series A Preferred Stock for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any Common Stock Equivalents or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any

H99000031814 9

H99000031814 9

other right, the Corporation shall mail to each holder of Series A Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or rights, and the amount and character of such dividend, distribution or rights.

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

(5) Redemption of Preferred Stock. The Corporation shall at any time on or after December 14, 2004, upon the receipt of written notice or notices delivered to the Corporation by any holders of Series A Preferred Stock electing to cause a redemption of such holders' shares of Series A Preferred Stock (the "Electing Holders"), redeem all of the then outstanding shares of Series A Preferred Stock held by such Electing Holders by paying in cash to the holders thereof in respect of each such share the Redemption Price (defined below), with one-half of such payment due thirty (30) days after receipt of such notice of redemption and one-half of such payment due on the first anniversary of the date of receipt of such notice of redemption. The price payable for each redeemed share of Series A Preferred Stock (the "Redemption Price") shall be equal to the greater of (i) the Appraised Value (as defined below) of each such share as of the date of the request for redemption or (ii) the Invested Amount *plus* a per annum amount for the period such share has been issued and outstanding equal to (a) ten percent (10%), compounded annually, of the Invested Amount, prorated for any partial year, *less* (b) the aggregate amount of all dividends actually paid on such share from the date of issuance thereof; and no accrued dividends shall be payable with respect to such share.

The Appraised Value shall be the fair market value of such shares, as established by the Board of Directors in good faith following such request for redemption (which Appraised Value shall not include a discount for minority ownership interest or illiquidity), and each holder of the Series A Preferred Stock shall be notified in writing of such value upon receipt by the Corporation of a request for redemption. If, however, any Electing Holders shall give the Corporation written notice prior to the scheduled redemption that he, it or they disagree with the value placed upon the Series A Preferred Stock, then the Electing Holders and the Corporation shall attempt to agree upon an Appraised Value. Should the Electing Holders and the Corporation be unable to agree during the twenty (20)-day period immediately following the giving of the written notice of such disagreement as to the Appraised Value without the employment of appraisers, then they shall each select an appraiser experienced in the business of evaluating or appraising the market value of stock. The appraisers so selected (the "Initial Appraisers") shall, on or prior to the scheduled redemption, appraise such shares to be redeemed as of the date of the scheduled redemption. The appraisers shall not discount the shares of Series A Preferred Stock for minority ownership interest or illiquidity. If the difference between the

H99000031814 9

H99000031814 9

resulting appraisals is not greater than ten percent (10%), then the average of the appraisals shall be deemed the Appraised Value; otherwise, the Initial Appraisers shall select an additional appraiser (the "Additional Appraiser"), who shall be experienced in a manner similar to the Initial Appraisers. If they fail to select such Additional Appraiser as provided above, then either the Electing Holders or the Corporation may apply, after written notice to the other, to any judge of any court of general jurisdiction for the appointment of such Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of the Series A Preferred Stock, and such value shall be the Appraised Value. The Additional Appraiser shall forthwith give written notice of his determination to the Corporation and the Electing Holders. Each party shall pay the expenses and fees of the appraiser selected by him or it, and, if an Additional Appraiser is employed, the party who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

On or before the date of a scheduled redemption, each holder of shares required to be redeemed shall surrender the certificate representing such shares to the Corporation and shall receive payment of the first installment of the Redemption Price for such shares in cash. If less than all the shares represented by a surrendered certificate are redeemed, the Corporation shall issue a new certificate representing the unredeemed shares.

The right to redemption established by this Subsection (5) shall be deemed absolute and vested upon the occurrence of the conditions specified herein; however, actual redemption under this Subsection (5) shall be subject to the legal availability of funds and, to the extent delayed, shall occur as soon thereafter as and when funds are legally available therefor, with interest at the per annum rate announced by NationsBank, N.A., as its prime lending rate plus two percent (2%) per annum for the period of each delay.

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

(a) New Securities Defined. "New Securities" shall mean any common stock or preferred stock of the Corporation, whether now authorized or not, and rights, options or warrants to purchase said common stock or preferred stock, and securities of any type whatsoever that are, or may become, convertible into said common stock or preferred stock; provided that "New Securities" does not include (A) up to 3,806,349 shares of Common Stock pursuant to those certain warrant agreements dated as of December 14, 1999 (B) the issuance of up to 500,000 shares of Series B Preferred Stock; (C) any shares of Common Stock issuable upon the conversion of shares of Series A Preferred Stock or Series B Preferred Stock; (D) up to 1,000,000 shares of Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events), issued pursuant to options, warrants or rights that may be granted at any time after the Original Issue Date to purchase shares of Common Stock in favor of employees, directors, officers or consultants of the Corporation or any subsidiary thereof pursuant to an Authorized Option Plan or Agreement; (E) any shares of Common Stock issued pursuant to the exchange, conversion or exercise of any Common Stock

H99000031814 9

H99000031814 9

Equivalents that were outstanding on the Original Issue Date; (F) securities offered to the public pursuant to a registration statement under the federal Securities Act of 1933, as amended; (G) shares of the Common Stock or the Series A Preferred Stock issued in connection with any stock split, stock dividend or recapitalization by the Corporation; or (H) up to 240,000 shares of Common Stock (or warrants to acquire 240,000 shares of Common Stock) issued prior to February 1, 2000 in connection with supplier or employment relationships so long as such issuances and relationships are approved by the Company's Board of Directors.

(b) In the event the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of Series A Preferred Stock written notice of its intention, describing the type of New Securities, the price, the closing date of the offering thereof, and the general terms upon which the Corporation proposes to issue the same. Such holder shall be entitled at any time during the offering of the New Securities to purchase some or all of his or its *pro rata* portion of such New Securities for the price and upon the general terms specified in the notice (and in any case at a price and upon general terms no more favorable to any of the other purchasers in such offering), by giving, within twenty (20) days after receiving such notice from the Corporation, written notice to the Corporation of such election stating therein the time and place of the closing of such purchase, which must be a date no later than ten (10) days following the closing date of the offering specified in the notice given by the Corporation or any extended closing date thereof. For purposes of this Section (6), each holder's *pro rata* portion of New Securities shall be equal to a fraction, (i) the numerator of which is the sum of the number of shares of Common Stock into which shares of Series A Preferred Stock held by such holder immediately prior to such issuance have been converted since the Original Issuance Date and the number of shares of Common Stock into which such holder's shares of Series A Preferred Stock could be converted if fully converted immediately prior to such issuance and (ii) the denominator of which is the sum of the number of shares of Common Stock into which any shares of Series A Preferred Stock have been converted since the Original Issuance Date and the number of shares of Common Stock into which all shares of Series A Preferred Stock could be converted if fully converted immediately prior to such issuance.

Should any holder of Series A Preferred Stock not elect to purchase his or its *pro rata* portion of such New Securities in full, the remaining holders of Series A Preferred Stock having elected to purchase their *pro rata* portions shall have the right to purchase such remaining, unpurchased portion in addition to their own, with each such holder having the right to purchase in the proportion that the number of shares of Series A Preferred Stock owned by such holder (prior to receipt of the above described written notice by the Corporation) bears to the number of shares owned by all holders of Series A Preferred Stock also electing to purchase such remaining New Securities. All such purchases shall be made within the same period specified for closing above.

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

(d) The rights granted in this Subsection (6) shall terminate immediately prior to a Qualified Public Offering.

H99000031814 9

H99000031814 9

(7) Protective Provisions.

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

(i) pay any dividends with respect to the Common Stock of the Corporation; provided, however, this restriction shall terminate effective upon a Qualified Public Offering; or

(ii) amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws,

(iii) file any certificate of designations, preferences, limitations and relative rights of any series of preferred stock or otherwise amend the Corporation's Articles of Incorporation, if such action would alter, change or affect the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series A Preferred Stock;

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

(v) increase or decrease the authorized number of shares of the Series A Preferred Stock;

(vi) enter into any agreement, commitment or plan regarding a Liquidation or a Sale or Merger;

(vii) issue, or agree or otherwise commit to issue, any shares of its capital stock or right to acquire any shares of its capital stock, other than pursuant to an Authorized Option Plan Agreement or Qualified Public Offering;

(viii) acquire, or enter into an agreement to acquire, any business, product, technology, know-how or another corporation, whether by merger, purchase of all or a substantial portion of the assets of an entity or any other reorganization whereby the Corporation owns over fifty percent (50%) of the voting power of an entity;

H99000031814 9

DEC. 15. 1999 1:02PM

HOLLAND AND KNIGHT

NO. 1191 P. 19/32

H99000031814 9

(ix) enter into, or agree or otherwise commit to enter into, any joint venture, license agreement or exclusive marketing or other distribution agreement with respect to the Corporation's products, other than in the ordinary course of business; or

(x) increase or decrease the number of directors of the Corporation;

(xi) except as provided in Section 6 hereof, redeem any shares of any class of its capital stock or cause or permit any Employee Stock Ownership Plan as defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, or other employee stock ownership plan to purchase shares of any class of its capital stock; or

(xii) amend the provisions of this Subsection (7).

(b) Actions Requiring Super-Majority Approval of Series A Preferred Stock.

In addition to any other rights provided by law and so long as any shares of Series A Preferred Stock are then outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles of Incorporation, without first obtaining the affirmative vote or written consent of the holders of at least 66.67% of the total number of shares of Series A Preferred Stock outstanding, voting together as a single class, the Corporation shall not make any material change in the nature of its business as described in its Business Plan, dated October 1999, or enter into any material business activities not contemplated in its Business Plan, dated October 1999.

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

H99000031814 9

H99000031814 9

EXHIBIT "B"

Series B Preferred Stock:

There is hereby created a series of 500,000 shares of preferred stock, \$0.001 par value per share, designated "Series B Preferred Stock", having the following powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof in addition to those specified in the Articles of Incorporation.

For the purposes of this Certificate of Designation, the following terms shall have the meanings specified:

"*Authorized Option Plan or Agreement*" shall have the meaning provided in Subsection (4)(g)(E)(z) hereof.

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

"*Common Stock*" shall mean the common stock, \$0.001 par value per share, of the Corporation.

"*Conversion Price*" shall have the meaning provided in Subsection (4)(g) hereof.

"*Conversion Rate*" shall have the meaning provided in Subsection (4)(c) hereof.

"*Corporation*" shall mean E-Dr.Network, Inc., a Florida corporation.

"*Designations*" shall mean the preferences, powers, limitations and relative rights of the Series B Preferred Stock established hereby and set forth hereinafter.

"*Liquidation*" shall have the meaning specified in Subsection (2).

"*Original Issue Date*" shall mean the date of that certain Stock Purchase Agreement to be dated on or about December 14, 1999, by and among the Corporation, Noro-Moseley Partners IV, L.P., Noro-Moseley Partners IV-B, L.P., CIBA Vision Corporation and Benchmark Capital, pursuant to which the initial issuance of shares of Series B Preferred Stock is to occur.

"*Qualified Public Offering*" shall mean the underwritten offer and sale of Common Stock to the public at a public offering price at least equal to 300% of the Series A Invested Amount (as adjusted for changes in the Series A Preferred Stock by stock split, stock dividend or the like occurring after the Original Issue Date) and having aggregate net proceeds to the Corporation of not less than \$25,000,000.

"*Sale or Merger*" shall have the meaning specified in Subsection (2).

"*Series A Designations*" shall mean the preferences, powers, limitations and relative rights of the Series A Preferred Stock constituting a part of the Corporation's Articles of Incorporation.

H99000031814 9

H99000031814 9

"*Series A Invested Amount*" per share of Series A Preferred Stock shall mean \$2.50 (as adjusted for changes in the Series A Preferred Stock by stock split, stock dividend or the like occurring after the Original Issue Date).

"*Series A Preferred Stock*" shall mean the 5,200,000 shares of Series A Preferred Stock, \$0.001 par value per share, of the Corporation.

"*Series B Preferred Stock*" shall mean the 500,000 shares of Series B Preferred Stock, \$0.001 par value per share, of the Corporation.

The Designations granted to and imposed upon the Series B Preferred Stock are as follows:

(1) Dividend Rights. The holders of outstanding shares of Series B Preferred Stock shall be entitled to receive, and shall be paid whenever funds are legally available therefor, dividends with respect to each share of Series B Preferred Stock in an amount equal to (i) any dividend declared and paid with respect to each share of Common Stock multiplied by (ii) the number of shares of Common Stock (including fractional shares) into which each share of Series B Preferred Stock is convertible as of the record date of such dividend. The Corporation shall be under no obligation to pay such dividends except to the extent that a dividend is declared and paid by the Board of Directors with respect to the Common Stock.

(2) Liquidation Rights. In the event of (i) the liquidation, dissolution or winding up of the Corporation, or such of the Corporation's subsidiaries the assets of which constitute all or substantially all the assets of the business of the Corporation and its subsidiaries taken as a whole (a "Liquidation") or (ii) a "Sale or Merger" (defined below), unless, in the case of a Sale or Merger, the holders of the Series A Preferred Stock have elected by a vote of at least a majority of the total number of shares of such series outstanding, voting separately as a class, to exclude such Sale or Merger from the application of Subsection (2) of the Series A Designations (in which case this Subsection (2) shall not apply to such transaction), any assets remaining after preferential amounts have been paid to the holders of the Series A Preferred Stock under Subsection (2) of the Series A Designations shall be distributed on a per share pro rata basis to the holders of the Series A Preferred Stock, Series B Preferred Stock and Common Stock in an amount as would have been payable had each share of Series B Preferred Stock been converted to Common Stock immediately prior to such Liquidation or Sale or Merger.

For purposes of these Designations, a "Sale or Merger" shall mean any of the following: (x) the merger or consolidation of the Corporation into or with another corporation in which the stockholders of the Corporation immediately preceding such merger or consolidation (solely by virtue of their shares or other securities of the Corporation) shall own less than fifty percent (50%) of the voting securities of the surviving corporation; (y) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions or plan, of all or substantially all the assets of the Corporation, which assets shall include for these purposes fifty percent (50%) or more of the outstanding voting capital stock of any subsidiaries of the Corporation, the assets of which constitute all or substantially all the assets of the Corporation and its subsidiaries taken as a whole; or (z) the sale, transfer or lease (but not including a transfer or lease by pledge or

H99000031814 9

H99000031814 9

mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions, of all or substantially all the assets of the subsidiaries of the Corporation, the assets of which constitute all or substantially all of the assets of the Corporation and such subsidiaries taken as a whole.

(3) Voting Rights. Except as set forth specifically below, the holder of each share of the Series B Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series B Preferred Stock would be convertible under the circumstances described in Subsection (4) hereof on the record date for the vote or consent of stockholders, and shall otherwise have voting rights and powers equal to the voting rights and powers of the Common Stock. Each holder of a share of the Series B Preferred Stock shall be entitled to receive the same prior notice of any stockholders' meeting as provided to the holders of Common Stock in accordance with the Bylaws of the Corporation, as well as prior notice of all stockholder actions to be taken by legally available means in lieu of meeting, and shall vote with holders of the Common Stock upon any matter submitted to a vote of stockholders, except those matters required by law, or by the terms hereof, to be submitted to a class vote of the holders of Series B Preferred Stock. Fractional votes shall not, however, be permitted, and any fractions shall be disregarded in computing voting rights.

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

(a) Optional. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series B Preferred Stock, into Common Stock. The number of shares of Common Stock to which a holder of Series B Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the Conversion Rate of the Series B Preferred Stock (determined as provided in Subsection (4)(c) below) by the number of shares of Series B Preferred Stock being converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of the shares of Series B Preferred Stock to be converted in accordance with the procedures described in Subsection (4)(d) below.

(b) Automatic.

(A) If the holders of at least a majority of the then outstanding shares of Series B Preferred Stock so elect, by delivery of written notice or notices to the Corporation, each and every outstanding share of Series B Preferred Stock held by such holders of Series B Preferred Stock shall automatically be converted into Common Stock at the then effective Conversion Rate. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of receipt of the written notice described above necessary to effect such conversion. Such conversion shall be automatic, without need for any further action by such holders of shares of Series B Preferred Stock and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of

H99000031814 9

H99000031814 9

Series B Preferred Stock so converted are surrendered to the Corporation in accordance with the procedures described in Subsection (4)(d) below.

(B) The Corporation shall notify each holder of Series B Preferred Stock at least ninety (90) days prior to the anticipated effective date of a registration statement filed by the Corporation under the federal Securities Act of 1933, as amended, covering a Qualified Public Offering. Upon the closing of, but effective immediately prior to, the first sale in a Qualified Public Offering, each and every share of outstanding Series B Preferred Stock held by all holders of Series B Preferred Stock shall automatically be converted into Common Stock at the then effective Conversion Rate. Such conversion shall be automatic, without need for any further action by the holders of shares of Series B Preferred Stock and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Series B Preferred Stock so converted are surrendered to the Corporation in accordance with the procedures described in Subsection (4)(d) below. Upon the conversion of the Series B Preferred Stock pursuant to this Subsection (4)(d)(B), the Corporation shall promptly send written notice thereof, by registered or certified mail return receipt requested and postage prepaid, by hand delivery or by overnight delivery, to each holder of record of Series B Preferred Stock at his or its address then shown on the records of the Corporation, which notice shall state that certificates evidencing shares of Series B Preferred Stock must be surrendered at the office of the Corporation (or of its transfer agent for the Common Stock, if applicable) in the manner described in Subsection (4)(d) below.

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

(c) Conversion Rate. Subject to the provisions of this Subsection (4), the conversion rate in effect at any time with respect to the Series B Preferred Stock (the "Conversion Rate") shall be the quotient obtained by dividing \$2.50 by the Conversion Price, as defined in Subsection (4)(g) hereof.

(d) Mechanics of Conversion. Before any holder of Series B Preferred Stock shall be entitled to receive certificates representing the shares of Common Stock into which shares of Series B Preferred Stock are converted in accordance with Subsections (4)(a) or (E)(4)(b) above, such holder shall surrender the certificate or certificates for such shares of Series B Preferred Stock duly endorsed, at the office of the Corporation or of any transfer agent for the Series B Preferred Stock, and shall give written notice to the Corporation at such office of the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued, if different from the name shown on the books and records of the Corporation. Said conversion notice shall also contain such representations as may reasonably be required by the Corporation to the effect that the shares to be received upon conversion are not being acquired and will not be transferred in any way that might violate the then applicable securities laws. The Corporation shall, as soon as practicable thereafter and in no event later than

H99000031814 9

DEC. 15. 1999 1:04PM

HOLLAND AND KNIGHT

NO. 1191 P. 24/32

H99000031814 9

thirty (30) days after the delivery of said certificates, issue and deliver at such office to such holder of Series B Preferred Stock, or to the nominee or nominees of such holder as provided in such notice, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion pursuant to Subsections (4)(a) or (4)(b) shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of the effective date of conversion specified in such section. All certificates issued upon the exercise or occurrence of the conversion shall contain a legend governing restrictions upon such shares imposed by law or agreement of the holder or his or its predecessors.

(e) Adjustment for Subdivisions or Combinations of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date effects a subdivision or combination of the outstanding Common Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of the outstanding Series B Preferred Stock, then and in each such event the Conversion Price (and the corresponding Conversion Rate) shall be increased or decreased proportionately.

(f) Adjustments for Distributions and Common Stock Equivalents. In the event that (subject to Subsection (4)(g)(E) hereof) the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into or entitling the holder thereof to receive additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder of such Common Stock Equivalents or the additional shares of Common Stock, and without a proportionate and corresponding dividend or other distribution to holders of Series B Preferred Stock, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents shall be deemed, for purposes of this Subsection (4)(f), to be issued and outstanding as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date. In each such event the Conversion Price shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price by a fraction,

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

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

H99000031814 9

DEC. 15. 1999 1:05PM

HOLLAND AND KNIGHT

NO. 1191 P. 25/32

H99000031814 9

distribution is not fully made on the date fixed therefor, the Conversion Price (and the corresponding Conversion Rate) shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price (and the corresponding Conversion Rate) shall be adjusted pursuant to this Subsection (4)(f) as of the time of actual payment of such dividend or distribution; or (ii) if such Common Stock Equivalents provide, with the passage of time or otherwise, for any decrease in the number of shares of Common Stock issuable upon conversion or exercise thereof (or upon the occurrence of a record date with respect thereto), the Conversion Price (and the corresponding Conversion Rate) computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall upon any such decrease becoming effective, be recomputed to reflect such decrease insofar as it affects the rights of conversion or exercise of the Common Stock Equivalents then outstanding; or (iii) upon the expiration of any rights of conversion or exercise under any unexercised Common Stock Equivalents, the Conversion Price (and the corresponding Conversion Rate) computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall upon such expiration, be recomputed as if the only additional shares of Common Stock issued were the shares of such stock, if any, actually issued upon the conversion or exercise of such Common Stock Equivalents; or (iv) in the event of issuance of Common Stock Equivalents that expire by their terms not more than sixty (60) days after the date of issuance thereof, no adjustments of the Conversion Price (or the corresponding Conversion Rate) shall be made until the expiration or exercise of all such Common Stock Equivalents, whereupon the adjustment otherwise required by this Subsection (4)(f) shall be made in the manner provided herein.

(g) Adjustment of Conversion Rate for Diluting Issues.

(A) Except as otherwise adjusted as provided herein, the "Conversion Price" shall be \$2.50. Except as otherwise provided in this Subsection (4)(g), in the event, and each time as, the Corporation sells or issues any Common Stock or Common Stock Equivalents following the Original Issue Date, at a per share consideration (as defined below) less than the Conversion Price then in effect, then the Conversion Price shall be adjusted as provided in subsection (4)(g)(B) below, and the Conversion Rate shall be appropriately adjusted. For purposes of the foregoing, the per share consideration with respect to the sale or issuance of a share of Common Stock shall be the price per share received by the Corporation, prior to the payment of any expenses, commissions, discounts and other applicable costs. With respect to the sale or issuance of Common Stock Equivalents that are convertible into or exchangeable for Common Stock without further consideration, the per share consideration shall be determined by dividing the minimum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents. With respect to the issuance of other Common Stock Equivalents, the per share consideration shall be determined by dividing the minimum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents plus the total consideration receivable by the Corporation upon the conversion or exercise of such Common Stock Equivalents. The issuance

H99000031814 9

H99000031814 9

of Common Stock or Common Stock Equivalents for no consideration shall be deemed to be an issuance at a per share consideration of \$.01. In connection with the sale or issuance of Common Stock and/or Common Stock Equivalents for non-cash consideration, the amount of consideration shall be determined by the Board of Directors of the Corporation in good faith.

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

For the purposes of this Subsection (4)(g)(A), the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (i) the number of shares of Common Stock actually outstanding, (ii) the number of shares of Common Stock into which the then outstanding shares of Series B Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (iii) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(B) Upon each issuance of Common Stock for a per share consideration less than the Conversion Price as in effect on the date of such issuance, the Conversion Price as in effect on such date shall be adjusted by multiplying it by a fraction:

(x) the numerator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to the issuance of such Additional Shares of Common Stock plus the number of shares of Common Stock that the aggregate net consideration received by the Corporation for the total number of such Additional Shares of Common Stock so issued would purchase at the Conversion Price then in effect; and

(y) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to the issuance of such Additional Shares of Common Stock plus the number of Additional Shares of Common Stock so issued.

For the purposes of this Subsection (4)(g)(B), the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (i) the number of shares of Common Stock actually outstanding, (ii) the number of shares of Common Stock into which the then outstanding shares of Series B Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (iii) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(C) Upon each issuance of Common Stock Equivalents that are exchangeable without further consideration into Common Stock for a per share consideration less than the Conversion Price as in effect on the date of such issuance, the Conversion Price

H99000031814 9

DEC. 15. 1999 1:06PM

HOLLAND AND KNIGHT

NO. 1191 P. 27/32

H99000031814 9

shall be adjusted as provided in this Subsection (4)(g) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of the Common Stock Equivalents, and the aggregate consideration received by the Corporation for such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(D) Upon each issuance of Common Stock Equivalents other than those described in paragraph (C) of this Subsection (4)(g) for a per share consideration less than the Conversion Price as in effect on the date of such issuance, the Conversion Price shall be adjusted as provided in this Subsection (4)(g) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of such Common Stock Equivalents, and the aggregate consideration received and receivable by the Corporation on conversion or exercise of such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(E) Once any Additional Shares of Common Stock have been treated as having been issued for the purpose of this Subsection (4)(g), they shall be treated as issued and outstanding shares of Common Stock whenever any subsequent calculations must be made pursuant hereto; provided that on the expiration of any options, warrants or rights to purchase Additional Shares of Common Stock, the termination of any rights to convert or exchange for Additional Shares of Common Stock, or the expiration of any options or rights related to such convertible or exchangeable securities on account of which an adjustment in the Conversion Price has been made previously pursuant to this Subsection (4)(g), such Conversion Price shall forthwith be readjusted to the Conversion Price as would have obtained had the adjustment made upon the issuance of such options, warrants, rights, securities or options or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options, warrants or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(F) The foregoing notwithstanding, no adjustment of the Conversion Price and the Conversion Rate shall be made pursuant to this Subsection (4)(g) as a result of the issuance of:

- (u) up to 3,806,349 shares of Common Stock pursuant to those certain warrant agreements dated as of December 14, 1999;
- (v) up to 5,200,000 shares of Series A Preferred Stock;
- (w) any shares of Common Stock upon the conversion of shares of Series A Preferred Stock or Series B Preferred Stock;
- (x) any shares of Common Stock pursuant to which the Conversion Price and the Conversion Rate are adjusted under Subsections (e) or (f) of this Subsection (4);

H99000031814 9

H99000031814 9

(y) any shares of Common Stock issued pursuant to the exchange, conversion or exercise of any Common Stock Equivalents that were outstanding on the Original Issue Date; or

(z) up to 1,000,000 shares of Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or singular events), issued pursuant to options, warrants or rights that may be granted at any time after the Original Issue Date to purchase shares of Common Stock in favor of employees, directors, officers or consultants of the Corporation or any subsidiary thereof pursuant to *bona fide* employee stock option plans created in accordance with Section 422 of the Internal Revenue Code of 1986, as amended, or similar subsequent legislation or pursuant to a non-statutory stock option plan or non-statutory stock option agreements (any such stock option plan or agreement described in this clause (z) being referred to as an "Authorized Option Plan or Agreement").

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

(i) No Impairment. Except as provided in Subsection (7) hereof, the Corporation shall not, by amendment of its Articles of Incorporation or Bylaws or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in the carrying out of all the provisions of this Subsection (4) and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series B Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Subsection (4), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and cause independent public accountants selected by the Corporation to verify such computation and prepare and furnish to each holder of Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price and the Conversion Rate at that time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at that time would be received upon the conversion of Series B Preferred Stock.

(k) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities other than Series B Preferred Stock for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any Common Stock Equivalents or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any

H99000031814 9

H99000031814 9

other right, the Corporation shall mail to each holder of Series B Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or rights, and the amount and character of such dividend, distribution or rights.

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

(5) Redemption of Preferred Stock. The Corporation shall at any time on or after December 14, 2004, upon the receipt of written notice or notices delivered to the Corporation by any holders of Series B Preferred Stock electing to cause a redemption of such holders' shares of Series B Preferred Stock (the "Electing Holders"), redeem all of the then outstanding shares of Series B Preferred Stock held by such Electing Holders by paying in cash to the holders thereof in respect of each such share the Redemption Price (defined below), with one-half of such payment due thirty (30) days after receipt of such notice of redemption and one-half of such payment due on the first anniversary of the date of receipt of such notice of redemption. The price payable for each redeemed share of Series B Preferred Stock (the "Redemption Price") shall be equal to the Appraised Value (as defined below) of each such share as of the date of the request for redemption.

The Appraised Value shall be the fair market value of such shares, as established by the Board of Directors in good faith following such request for redemption (which Appraised Value shall not include a discount for minority ownership interest or illiquidity), and each holder of the Series B Preferred Stock shall be notified in writing of such value upon receipt by the Corporation of a request for redemption. If, however, any Electing Holders shall give the Corporation written notice prior to the scheduled redemption that he, it or they disagree with the value placed upon the Series B Preferred Stock, then the Electing Holders and the Corporation shall attempt to agree upon an Appraised Value. Should the Electing Holders and the Corporation be unable to agree during the twenty (20)-day period immediately following the giving of the written notice of such disagreement as to the Appraised Value without the employment of appraisers, then they shall each select an appraiser experienced in the business of evaluating or appraising the market value of stock. The appraisers so selected (the "Initial Appraisers") shall, on or prior to the scheduled redemption, appraise such shares to be redeemed as of the date of the scheduled redemption. The appraisers shall not discount the shares of Series B Preferred Stock for minority ownership interest or illiquidity. If the difference between the resulting appraisals is not greater than ten percent (10%), then the average of the appraisals shall be deemed the Appraised Value; otherwise, the Initial Appraisers shall select an additional appraiser (the "Additional Appraiser"), who shall be experienced in a manner similar to the Initial Appraisers. If they fail to select such Additional Appraiser as provided above, then either

H99000031814 9

H99000031814 9

the Electing Holders or the Corporation may apply, after written notice to the other, to any judge of any court of general jurisdiction for the appointment of such Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of the Series B Preferred Stock, and such value shall be the Appraised Value. The Additional Appraiser shall forthwith give written notice of his determination to the Corporation and the Electing Holders. Each party shall pay the expenses and fees of the appraiser selected by him or it, and, if an Additional Appraiser is employed, the party who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

On or before the date of a scheduled redemption, each holder of shares required to be redeemed shall surrender the certificate representing such shares to the Corporation and shall receive payment of the first installment of the Redemption Price for such shares in cash. If less than all the shares represented by a surrendered certificate are redeemed, the Corporation shall issue a new certificate representing the unredeemed shares.

The right to redemption established by this Subsection (5) shall be deemed absolute and vested upon the occurrence of the conditions specified herein; however, actual redemption under this Subsection (5) shall be subject to the legal availability of funds and, to the extent delayed, shall occur as soon thereafter as and when funds are legally available therefor, with interest at the per annum rate announced by NationsBank, N.A., as its prime lending rate plus two percent (2%) per annum for the period of each delay.

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

(a) New Securities Defined. "New Securities" shall mean any common stock or preferred stock of the Corporation, whether now authorized or not, and rights, options or warrants to purchase said common stock or preferred stock, and securities of any type whatsoever that are, or may become, convertible into said common stock or preferred stock; provided that "New Securities" does not include (A) up to 3,806,349 shares of Common Stock pursuant to those certain warrant agreements dated as of December 14, 1999; (B) the issuance of up to 5,200,000 shares of Series A Preferred Stock; (C) any shares of Common Stock issuable upon the conversion of shares of Series A Preferred Stock or Series B Preferred Stock; (D) up to 1,000,000 shares of Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events), issued pursuant to options, warrants or rights that may be granted at any time after the Original Issue Date to purchase shares of Common Stock in favor of employees, directors, officers or consultants of the Corporation or any subsidiary thereof pursuant to an Authorized Option Plan or Agreement; (E) any shares of Common Stock issued pursuant to the exchange, conversion or exercise of any Common Stock Equivalents that were outstanding on the Original Issue Date; (F) securities offered to the public pursuant to a registration statement under the federal Securities Act of 1933, as amended; (G) shares of the Common Stock, Series A Preferred Stock or Series B Preferred Stock issued in connection with any stock split, stock dividend or recapitalization by the Corporation; or (H) up

H99000031814 9

H99000031814 9

to 240,000 shares of Common Stock (or warrants to acquire 240,000 shares of Common Stock) issued prior to February 1, 2000 in connection with supplier or employment so long as such issuances and relationships are approved by the Company's Board of Directors.

(b) In the event the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of Series B Preferred Stock written notice of its intention, describing the type of New Securities, the price, the closing date of the offering thereof, and the general terms upon which the Corporation proposes to issue the same. Such holder shall be entitled at any time during the offering of the New Securities to purchase some or all of his or its *pro rata* portion of such New Securities for the price and upon the general terms specified in the notice (and in any case at a price and upon general terms no more favorable to any of the other purchasers in such offering), by giving, within twenty (20) days after receiving such notice from the Corporation, written notice to the Corporation of such election stating therein the time and place of the closing of such purchase, which must be a date no later than ten (10) days following the closing date of the offering specified in the notice given by the Corporation or any extended closing date thereof. For purposes of this Section (6), each holder's *pro rata* portion of New Securities shall be equal to a fraction, (i) the numerator of which is the sum of the number of shares of Common Stock into which shares of Series A Preferred Stock and Series B Preferred Stock held by such holder immediately prior to such issuance have been converted since the Original Issuance Date and the number of shares of Common Stock into which such holder's shares of Series A Preferred Stock and Series B Preferred Stock could be converted if fully converted immediately prior to such issuance and (ii) the denominator of which is the sum of the number of shares of Common Stock into which any shares of Series A Preferred Stock and Series B Preferred Stock have been converted since the Original Issuance Date and the number of shares of Common Stock into which all shares of Series A Preferred Stock and Series B Preferred Stock could be converted if fully converted immediately prior to such issuance.

Should any holder of Series A Preferred Stock and Series B Preferred Stock not elect to purchase his or its *pro rata* portion of such New Securities in full, the remaining holders of Series A Preferred Stock and Series B Preferred Stock having elected to purchase their *pro rata* portions shall have the right to purchase such remaining, unpurchased portion in addition to their own, with each such holder having the right to purchase in the proportion that the number of shares of Series A Preferred Stock and Series B Preferred Stock owned by such holder (prior to receipt of the above described written notice by the Corporation) bears to the number of shares owned by all holders of Series A Preferred Stock and Series B Preferred Stock also electing to purchase such remaining New Securities. All such purchases shall be made within the same period specified for closing above.

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

(d) The rights granted in this Subsection (6) shall terminate immediately prior to a Qualified Public Offering.

H99000031814 9

H99000031814 9

(7) Protective Provisions.

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

(i) file any certificate of designations, preferences, limitations and relative rights of any series of preferred stock or otherwise amend the Corporation's Articles of Incorporation, if such action would alter, change or affect the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series B Preferred Stock;

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

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

(iv) amend the provisions of this Subsection (7).

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

JAX1 #523726 v1

H99000031814 9