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CT CORPORATION SYSTEM

CORPORATION(S) NAME

BitTime.com, Inc.

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10/24/01--01055--008

\*\*\*\*\*35.00 \*\*\*\*\*35.00

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\*\*\*\*\*38.75 \*\*\*\*\*38.75

<input type="checkbox"/> Profit	<input checked="" type="checkbox"/> Amendment	<input type="checkbox"/> Merger
<input type="checkbox"/> Nonprofit		
<input type="checkbox"/> Foreign	<input type="checkbox"/> Dissolution/Withdrawal	<input type="checkbox"/> Mark
	<input type="checkbox"/> Reinstatement	
<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Annual Report	<input type="checkbox"/> Other
<input type="checkbox"/> LLC	<input type="checkbox"/> Name Registration	<input type="checkbox"/> Change of RA
	<input type="checkbox"/> Fictitious Name	<input type="checkbox"/> UCC
<input checked="" type="checkbox"/> Certified Copy	<input type="checkbox"/> Photocopies	<input type="checkbox"/> CUS
<input type="checkbox"/> Call When Ready	<input type="checkbox"/> Call If Problem	<input type="checkbox"/> After 4:30
<input checked="" type="checkbox"/> Walk In	<input type="checkbox"/> Will Wait	<input checked="" type="checkbox"/> Pick Up
<input type="checkbox"/> Mail Out		

FILED  
2001 OCT 24 PM 2:42  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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Availability \_\_\_\_\_  
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Examiner \_\_\_\_\_  
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Verifier \_\_\_\_\_  
W.P. Verifier \_\_\_\_\_

10/24/01

Order#: 4867296

Ref#: \_\_\_\_\_

RECEIVED  
01 OCT 24 PM 2:11  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

660 East Jefferson Street  
Tallahassee, FL 32301  
Tel. 850 222 1092  
Fax 850 222 7615

Exhibit "B"

**THIRD ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
BITTIME.COM, INC.**

2001 OCT 24 PM 2:42  
FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

*Pursuant to the provisions of Section 607.0704, Florida Statutes, this Florida profit corporation adopts the following articles of amendment to its articles of incorporation:*

**FIRST:** The following amendment was adopted by the Board of Directors on October 23, 2001.

**ARTICLE V** is hereby amended to read in its entirety as follows:

The capital stock of BitTime.com, Inc. (the "Corporation") shall consist of 40,000,000 shares of Common Stock, each share with a par value of \$0.01 per share; and 20,000,000 shares of Preferred Stock, each share with a par value of \$0.01 per share.

Authority is hereby vested in the Board of Directors to issue from time to time the preferred stock of any series and to state in the resolution or resolutions providing for the issuance of shares of preferred stock of any series of the voting powers, if any, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions of such series to the full extent now or hereafter permitted by the law of the State of Florida in respect of matters set forth in the following clauses (a) to (h) inclusive:

- a. the number of shares to constitute such series, and the distinctive designations thereof;
- b. the voting powers, full or limited, if any of such series;
- c. the rate of dividends payable on shares of such series, the conditions on which and the times when such dividends are payable, the preference to, or the relation to, the payment of the dividends payable on any other class, classes or series of stock, whether cumulative or non-cumulative and, if cumulative, the date from which dividends on shares of such series shall be cumulative;
- d. the redemption price or prices, if any, and the terms and conditions on which shares of such series shall be redeemable;

- e. the requirement of any sinking fund or funds to be applied to the purchase or redemption of shares of such series and, if so, the amount of such fund or funds and the manner of application;
- f. the rights of shares of such series upon the liquidation, dissolution or winding up of, or upon any distribution of the assets of, the Corporation;
- g. the rights, if any, of the holders of shares of such series to convert such shares into, or to exchange such shares for, shares of any other class, classes or series of stock and the price or prices or the rates of exchange and the adjustments at which such shares shall be convertible or exchangeable, and any other terms and conditions of such conversion or exchange;
- h. any other preferences and relative, participating, optional or other special rights of shares of such series, and qualifications, limitations or restrictions including, without limitation, any restriction on an increase in the number of shares of any series theretofore authorized and any qualifications, limitations or restrictions of rights or powers to which shares of any future series shall be subject.

1,143,750 shares of Preferred Stock are hereby designated as "Series A Convertible Preferred Stock," 3,071,958 shares of Preferred Stock are hereby designated as "Series B Convertible Preferred Stock," and 8,164,993 shares of Preferred Stock are hereby designated as "Series C Convertible Preferred Stock," each with the preferences and rights as follows:

1. Definitions. The following definitions shall apply:

- (a) "Board" shall mean the Board of Directors of the Corporation.
- (b) "Change of Control Event" shall mean (i) the consolidation or merger of the Corporation with or into any other corporation, or other sale of stock by the Corporation or similar transaction in which the holders of record of the Corporation's outstanding shares of stock immediately before such transaction or series of transaction hold (by virtue of securities issued as consideration in such transaction or otherwise) less than a majority of the voting power of the surviving corporation of such transaction or series of transaction, or (ii) the sale of all or substantially all of the assets of the Corporation.
- (c) "Common Stock" shall mean the Common Stock, \$0.01 par value per share, of the Corporation.
- (d) "Common Stock Dividend" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.

- (e) "Distribution" shall mean the transfer of cash or property by the Corporation to one or more of its stockholders without consideration regardless of whether such transfer is in the form of a dividend or otherwise (except a dividend in shares of Corporation's stock), but not including Permitted Repurchases (as defined below).
- (f) "Permitted Repurchases" shall mean the repurchase by the Corporation of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Corporation or a Subsidiary (as defined below) that are subject to a stockholders agreement, restricted stock purchase agreements or stock option agreements under which the Corporation has the option to repurchase such shares: (i) at such holder's cost, upon the occurrence of certain events, such as the termination of employment or services; or (ii) at any price pursuant to the Corporation's exercise of a right of first refusal to repurchase such shares.
- (g) "Preferred Stock" shall mean the Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock and the Series C Convertible Preferred Stock collectively.
- (h) "Securities Act" means the Securities Act of 1933, as amended.
- (i) "Series A Original Issue Date" shall mean the date on which the first share of Series A Preferred Stock is issued by the Corporation.
- (j) "Series A Original Issue Price" shall mean \$.80 per share for the Series A Preferred Stock.
- (k) "Series A Preferred Stock" shall mean the Series A Convertible Preferred Stock, \$0.01 par value per share, of the Corporation.
- (l) "Series B Original Issue Date" shall mean the date on which the first share of Series B Preferred Stock is issued by the Corporation.
- (m) "Series B Original Issue Price" shall mean \$1.3021 per share for the Series B Preferred Stock.
- (n) "Series B Preferred Stock" shall mean the Series B Convertible Preferred Stock, \$0.01 par value per share, of the Corporation.
- (o) "Series C Original Issue Date" shall mean the date on which the first share of Series C Preferred Stock issued by the Corporation.
- (p) "Series C Original Issue Price" shall mean \$0.122474 per share for the Series C Preferred Stock.

- (q) "Series C Preferred Stock" shall mean the Series C Convertible Preferred Stock, \$0.01 par value per share, of the Corporation.
- (r) "Subsidiary" shall mean any corporation of which at least fifty percent (50%) of the outstanding voting stock is at the time owned directly or indirectly by the Corporation or by one or more of such subsidiary corporations.

2. Dividend Rights.

- (a) Series C Preferred Stock. The holders of shares of Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Common Stock or any other series of Preferred Stock, at a rate of 8.0% of the Series C Original Purchase Price per share per annum, beginning on the Series C Original Issue date, payable when, as, and if declared by the Board. Such dividends shall be cumulative. The holders of the outstanding Series C Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 2(a) upon the affirmative vote or written consent of the holders of at least a majority of the Series C Preferred Stock then outstanding.
- (b) Series B Preferred Stock. The holders of shares of Series B Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, after payment of any dividends pursuant to Section 2(a) above and prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) on the Common Stock, at the rate of 8.0% of the Series B Original Purchase Price per share per annum, beginning on the Series B Original Issue Date, payable when, as, and if declared by the Board. Such dividends shall be cumulative. The holders of the outstanding Series B Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 2(b) upon the affirmative vote or written consent of the holders of at least a majority of the Series B Preferred Stock then outstanding.
- (c) Participation Rights. Following the payment of the preferential dividends described above, any additional dividends declared by the Board out of funds legally available therefor in any calendar year shall be declared among the holders of the then outstanding Common Stock and the Preferred Stock pro rata according to the number of shares of Common Stock held by such holders, where, for this purpose, holders of shares of Preferred Stock will be deemed to hold (in lieu of their Preferred Stock) the greatest whole number of shares of Common Stock then

issuable upon conversion in full of such shares of Preferred Stock pursuant to Section 5, Section 6 and Section 7, as the case may be...

- (d) Non-Cash Dividends. Whenever a dividend provided for in this Section 2 shall be payable in property other than cash, the value of such dividend or Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board including the affirmative vote of the Series B and Series C Designees.
- (e) Payment on Conversion. If the Corporation shall have any accrued and unpaid dividends with respect to any Preferred Stock, then immediately prior to, and upon a conversion of any of the Preferred Stock as provided in Section 5, Section 6 and Section 7, the Corporation shall, subject to the legal availability of funds and assets therefor, pay in cash or Common Stock (or a combination thereof) to the holder of the shares of Preferred Stock being converted the full amount of any dividends accrued and unpaid on such shares. Upon any such conversion, if the Board elects to pay dividends with respect to any Preferred Stock in Common Stock, the Board shall determine in good faith the total fair market value of such shares, equal to the balance of all declared but unpaid dividends not paid in cash.

3. Liquidation Rights. In the event of any liquidation, dissolution or winding up of the Corporation (a "Liquidation"), whether voluntary or involuntary, the funds and assets of the Corporation that may be legally distributed to the Corporation's stockholders after payment to creditors including any creditors or parties charging transaction fees (the "Available Funds and Assets") shall be distributed to stockholders in the following manner (for purposes of this Section 3, a Liquidation includes any Change in Control Event).

- (a) Series C Preferred Stock Liquidation Preference. The holders of each share of Series C Preferred Stock then outstanding shall be entitled to be paid out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Series B Preferred Stock, Series A Preferred Stock or Common Stock, an amount per share equal to five (5) times the Series C Original Issue Price, plus all declared but unpaid dividends thereon; provided, however, in the event the Available Funds and Assets are less than or equal to \$16,722,000, such dividends shall not be paid (the "Series C Liquidation Preference"). If upon any Liquidation the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series C Preferred Stock of their full Series C Liquidation Preference, then all remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series C Preferred Stock pro rata in proportion to the amount of stock owned by such holder.
- (b) Liquidation Preferences for Series A and Series B. After payment in full of the Series C Liquidation Preference, the holders of each share of Series A Preferred

Stock and Series B Preferred Stock then outstanding shall be entitled to be paid, pari passu, out of the remaining Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an amount per share equal to 1.753 times the Series A Original Issue Price or Series B Original Issue Price, respectively, plus all declared but unpaid dividends thereon; provided, however, in the event the Available Funds and Assets prior to the payment of the Series C Liquidation Preference is less than or equal to \$16,722,000, such dividends shall not be paid (the "Series B and Series A Liquidation Preference"). If upon any Liquidation the remaining Available Funds and Assets shall be insufficient to permit the payment to holders of the Series B Preferred Stock and Series A Preferred Stock of their full preferential amounts described in this subsection after the payment in full of the Series C Liquidation Amount, then all the remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series B Preferred Stock and Series A Preferred Stock pro rata in proportion to the amount of stock owned by such holder.

- (c) Pro Rata Participation Rights. If there are any Available Funds and Assets remaining after the payment of the Series C Liquidation Preference and Series B and Series A Liquidation Preference described above in this Section 3, then the entire remaining Available Funds and Assets, if any, shall be distributed among the holders of the then outstanding Common Stock and the Preferred Stock pro rata according to the number of shares of Common Stock held by such holders, where, for this purpose, holders of shares of Preferred Stock will be deemed to hold (in lieu of their Preferred Stock) the greatest whole number of shares of Common Stock then issuable upon conversion in full of such shares of Preferred Stock pursuant to Section 5, Section 6 and Section 7; provided, however, in the event the Available Funds and Assets at the time of Liquidation are equal to an amount between \$13,616,000 and \$16,722,000, then the holders of the Preferred Stock shall be entitled to receive only ten percent (10%) of the distribution they would have otherwise been entitled to receive pursuant to this Section 3(c).
- (d) Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any Liquidation are other than cash, then the value of such assets shall be their fair market value as reasonably determined by the Board, including the approval of the Series C Designees, in good faith, except that any securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:
  - (1) The method of valuation of securities not subject to investment letter or other similar restrictions on free marketability shall be as follows:

- (i) if the securities are then traded on a national securities exchange or the NASDAQ National Market System (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period ending three (3) days prior to the distribution; and
  - (ii) if actively traded over-the-counter, then the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the closing of such merger, consolidation or sale; and
  - (iii) if there is no active public market, then the value shall be the fair market value thereof, as determined in good faith by the Board including the approval of the Series C Designees.
- (2) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in Section 3(d)(1)(i),(ii) or (iii) to reflect the approximate fair market value thereof, as reasonably determined in good faith by the Board.

#### 4. Voting Rights.

- (a) Common Stock. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.
- (b) Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such shares of Preferred Stock could be converted pursuant to the provisions of Section 5, Section 6 and Section 7 below at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of stockholders is solicited.
- (c) General. Subject to the foregoing provisions of this Section 4, each holder of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may otherwise be provided by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.



- (d) Election of the Board of Directors. The number of directors as of the date of filing hereof shall be six (6).
- (1) The holders of Series C Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board (the "Series C Designees") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.
  - (2) The holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board (the "Series B Designee") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.
  - (3) The holders of Series A Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board (the "Series A Designee") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.
  - (4) The holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board which such director initially shall be the Chief Executive Officer of the Corporation (the "Common Stock Designee") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.
  - (5) The directors of the Corporation shall designate any and all remaining members of the Board at each meeting or pursuant to such consent of the Corporation's shareholders for the election of directors, and to remove from office such directors and to fill vacancy caused by their resignation, death or removal of such directors. Such directors shall not be employees of the Corporation and shall otherwise be independent from the Corporation.
- (e) Voting. All decisions of the Company's Board shall require the consent of at least four (4) directors.
- (f) Special Series B and Series A Voting Rights. The Corporation shall not, without the approval, by vote or written consent, of the holders of at least 75% of the

outstanding shares of Series B Preferred Stock and Series A Preferred Stock, voting as a single class on an as-converted basis:

- (i) amend its Articles of Incorporation in any manner that would alter or change any of the rights, preferences, privileges or restrictions of the Series B Preferred Stock or Series A Preferred Stock;
  - (ii) reclassify any outstanding shares of its securities into shares having rights, preferences or privileges senior to or on a parity with the Series B Preferred Stock or Series A Preferred Stock;
  - (iii) authorize or issue any additional Series B Preferred Stock or any other class of equity capital having rights or preferences senior to or on a parity with the Series B Preferred Stock or Series A Preferred Stock;
  - (iv) merge or consolidate with or into any entity;
  - (v) sell all or substantially all of its assets in a single transaction or series of related transactions;
  - (vi) liquidate or dissolve;
  - (vii) amend the Corporation's Articles of Incorporation or Bylaws to alter any rights of Series A Designee or the holders of the Series B Preferred Stock, the Series A Preferred Stock or to increase the size of the Board to more than six (6) directors;
- (g) Special Series C Voting Rights. The Corporation shall not, without the approval, by vote or written consent, of the holders of at least a majority of the Series C Preferred Stock:
- (i) amend its Articles of Incorporation or Bylaws in any manner, including any manner that would alter or change any of the rights, preferences, privileges or restrictions of the Series C Preferred Stock;
  - (ii) reclassify any outstanding shares of its securities into shares having rights, preferences or privileges senior to or on a parity with the Series C Preferred Stock;
  - (iii) authorize or issue any additional Series C Preferred Stock or any other class of equity capital having rights or preferences senior to or on a parity with the Series C Preferred Stock;

- (iv) merge or consolidate with or into any entity;
- (v) sell all or substantially all of its assets in a single transaction or series of related transactions;
- (vi) liquidate or dissolve;
- (vii) amend the Corporation's Articles of Incorporation or Bylaws to alter any rights of Series C Designee or the holders of the Series C Preferred Stock or to increase the size of the Board to more than six (6) directors;
- (viii) authorize the increase or decrease (other than by conversion or exercise of options) of the total number of Authorized Shares of Preferred Stock or Common Stock, or authorize or issue, or obligate itself to issue any Common Stock or Preferred Stock of the Corporation, or any securities convertible into or exercisable or exchangeable for Common Stock of the Corporation;
- (ix) redeem, declare or make a payment of any dividend on any Common Stock or Preferred Stock (other than a dividend payable solely in shares of Common Stock); or
- (x) enter into any transactions with an affiliate, shareholder, employee, officer or director other than in the ordinary course of business.

5. Series A Conversion Rights. The outstanding shares of Series A Preferred Stock shall be convertible into Common Stock as follows:

(a) Optional Conversion.

- (1) At the option of the holder thereof, each share of Series A Preferred Stock shall be convertible, at any time or from time to time prior to the close of business on the business day before any date fixed for automatic conversion of such shares pursuant to Section 5(b), into fully paid and nonassessable shares of Common Stock as provided herein.
- (2) Each holder of Series A Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series A Preferred Stock or Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Series A Preferred Stock being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or

certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Series A Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(b) Automatic Conversion.

- (1) Each share of Series A Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein, (i) immediately prior to the closing of a firmly underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933 covering the offer and sale of Common Stock for the account of the Corporation in which the aggregate gross proceeds received (before deduction of underwriters' discounts and commissions) equals or exceeds \$20 million and immediately following such offering, the aggregate fair market value of all shares of Common Stock on a fully diluted basis equals or exceeds \$65 million (a "Qualifying IPO"); or (ii) upon the Corporation's receipt of the written consent of the holders of not less than a majority of the then outstanding shares of Series A Preferred Stock (excluding shares held by officers or employees of the Corporation and their affiliates), to the conversion of all then outstanding Series A Preferred Stock.
- (2) Upon the occurrence of any event specified in Section 5(b)(1) above, the outstanding shares of Series A Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares and whether or not 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 the certificates evidencing such shares of Series A Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series A Preferred Stock, the holders of Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series A Preferred Stock or

Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

- (c) Conversion Price. Each share of Series A Preferred Stock shall be convertible in accordance with Section 5(a) or Section 5(b) above into the number of shares of Common Stock which results from dividing the Series A Original Issue Price for such share of Series A Preferred Stock by the conversion price for the Series A Preferred Stock that is in effect at the time of conversion (as used in this Section 5, the "Conversion Price"). The initial Conversion Price for the Series A Preferred Stock shall be the Series A Original Issue Price. The Conversion Price shall be subject to adjustment from time to time as provided below.
- (d) Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event (as hereinafter defined), the Conversion Price of the Series A Preferred Stock shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price of the Series A Preferred Stock in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock (which shall include the actual number of shares outstanding plus all shares issuable upon conversion or exercise of all outstanding convertible securities, warrants and options) issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event (including the shares deemed outstanding as provided in clause (i) above), and the product so obtained shall thereafter be the Conversion Price for the Series A Preferred Stock. The Conversion Price for a series of Preferred Stock shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event. As used herein, the term "Common Stock Event" shall mean (i) the issue by the Corporation of additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock.
- (e) Adjustments for Other Dividends and Distributions. If at any time or from time to time after the Series A Original Issue Date the Corporation pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Corporation other than shares of Common Stock, then in each such event provision shall be made so that the holders of the Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares

of Common Stock receivable upon conversion thereof, the amount of securities of the Corporation which they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Series A Preferred Stock or with respect to such other securities by their terms.

- (f) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Series A Original Issue Date the Common Stock issuable upon the conversion of the Series A Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), then in any such event each holder of Series A Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series A Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

- (g) Sale of Shares Below Conversion Price.

- (1) Adjustment Formula. If at any time or from time to time after the Series A Original Issue Date the Corporation issues or sells, or is deemed by the provisions of this Section 5(g) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in Section 5(d), a dividend or distribution as provided in Section 5(e) or a recapitalization, reclassification or other change as provided in Section 5(f), for an Effective Price (as hereinafter defined) that is less than the Conversion Price for the Series A Preferred Stock in effect immediately prior to such issue or sale, then, and in each such case, the Conversion Price for the Series A Preferred Stock shall be reduced, as of the close of business on the date of such issue or sale, to a new Conversion Price determined pursuant to the following formula:

$$ACP = \frac{(CS/O \times CP) + AC}{CS/I}$$

ACP = Adjusted Conversion Price.

CS/O = Number of shares of Common Stock Outstanding immediately prior to the issuance of Additional Shares of Common Stock.

CP = Conversion Price in effect immediately prior to the issuance of Additional Shares of Common Stock.

AC = Aggregate Consideration Received (as defined below) from the issuance of Additional Shares of Common Stock.

CS/I = Number of shares of Common Stock Outstanding and deemed outstanding immediately following the issuance of Additional Shares of Common Stock.

(2) Certain Definitions. For the purpose of making any adjustment required under this Section 5(g):

- (i) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued or deemed issued pursuant to Section 5(g)(3) by the Corporation, whether or not subsequently reacquired or retired by the Corporation, other than: (A) shares of Common Stock issued or issuable upon conversion of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, (B) up to one million (1,000,000) shares of Common Stock (or options, warrants or rights therefor) issued to officers, employees, contractors, consultants or advisers to the Corporation under its stock option plan (such number of shares to be calculated net of any repurchases of such shares by the Corporation and net of any such expired or terminated options, warrants or rights and to be proportionally adjusted to reflect any subsequent Common Stock Event), and (C) shares issued in strategic transactions or in equity incentive agreements with service providers.
- (ii) "Aggregate Consideration Received" by the Corporation for any issue or sale (or deemed issue or sale) of securities shall (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Corporation before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale and without deduction of any expenses payable by the Corporation; (B) to the extent it consists of property other than

cash, be computed at the fair value of that property as determined in good faith by the Board (with the consent of the Series A Designee, which shall not be unreasonably withheld); and (C) if Additional Shares of Common Stock, Convertible Securities or Rights or Options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options.

- (iii) "Common Stock Outstanding" shall mean the actual number of shares of Common Stock outstanding plus all shares issuable upon conversion or exercise of all outstanding securities, warrants and options.
  - (iv) "Convertible Securities" shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.
  - (v) "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Corporation under this Section 5(g), into the Aggregate Consideration Received, or deemed to have been received, by the Corporation under this Section 5(g), for the issue of such Additional Shares of Common Stock; and
  - (vi) "Rights or Options" shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.
- (3) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price of the Series A Preferred Stock required under this Section 5(g), if the Corporation issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect for the Series A Preferred Stock, then the Corporation shall be deemed to have issued, at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of such Rights, Options or Convertible Securities upon their



issuance and to have received, as the Aggregate Consideration Received for the issuance of such shares, an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise in full of such Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

- (i) if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, then the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses;
- (ii) if the minimum amount of consideration payable to the Corporation upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events other than by reason of antidilution or similar protective adjustments, then the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; and
- (iii) if the minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities.

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price which would have been in

effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that there actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Preferred Stock.

- (h) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for the Series A Preferred Stock, the Corporation, at its expense, shall cause its Chief Financial Officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Series A Preferred Stock at the holder's address as shown in the Corporation's books.
- (i) Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of the Series A Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion.
- (j) 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 not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation will 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.

- (k) Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of the Series A Preferred Stock shall be deemed given upon the earlier of actual receipt or deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Corporation.
- (l) No Impairment. The Corporation shall not 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 carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

6. Series B Conversion Rights. The outstanding shares of Series B Preferred Stock shall be convertible into Common Stock as follows:

(a) Optional Conversion.

- (1) At the option of the holder thereof, each share of Series B Preferred Stock shall be convertible, at any time or from time to time prior to the close of business on the business day before any date fixed for automatic conversion of such shares pursuant to Section 6(b), into fully paid and nonassessable shares of Common Stock as provided herein.
- (2) Each holder of Series B Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series B Preferred Stock or Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Series B Preferred Stock being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Series B Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(b) Automatic Conversion.

- (1) Each share of Series B Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein, (i) immediately prior to the closing of a Qualifying IPO; or (ii) upon the Corporation's receipt of the written consent of the holders of not less than a two-thirds of the then outstanding shares of Series B Preferred Stock, to the conversion of all then outstanding Series B Preferred Stock.
- (2) Upon the occurrence of any event specified in Section 6(b)(1) above, the outstanding shares of Series B Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares and whether or not 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 the certificates evidencing such shares of Series B Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series B Preferred Stock, the holders of Series B Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series B Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series B Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.
- (c) Conversion Price. Each share of Series B Preferred Stock shall be convertible in accordance with Section 6(a) or Section 6(b) above into the number of shares of Common Stock which results from dividing the Series B Original Issue Price for such share of Series B Preferred Stock by the conversion price for the Series B Preferred Stock that is in effect at the time of conversion (as used in this Section 6, the "Conversion Price"). The initial Conversion Price for the Series B Preferred Stock shall be the Series B Original Issue Price. The Conversion Price shall be subject to adjustment from time to time as provided below.
- (d) Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event, the Conversion Price of the Series B Preferred Stock shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price of the Series B Preferred Stock in effect

immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock (which shall include the actual number of shares outstanding plus all shares issuable upon conversion or exercise of all outstanding convertible securities, warrants and options) issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event (including the shares deemed outstanding as provided in clause (i) above), and the product so obtained shall thereafter be the Conversion Price for the Series B Preferred Stock. The Conversion Price for a series of Preferred Stock shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event.

- (e) Adjustments for Other Dividends and Distributions. If at any time or from time to time after the Series B Original Issue Date the Corporation pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Corporation other than shares of Common Stock, then in each such event provision shall be made so that the holders of the Series B Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Corporation which they would have received had their Series B Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 6 with respect to the rights of the holders of the Series B Preferred Stock or with respect to such other securities by their terms.
- (f) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Series B Original Issue Date the Common Stock issuable upon the conversion of the Series B Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 6), then in any such event each holder of Series B Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series B Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(g) Sale of Shares Below Conversion Price.

- (1) Adjustment Formula. If at any time or from time to time after the Series B Original Issue Date the Corporation issues or sells, or is deemed by the provisions of this Section 6(g) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in Section 6(d), a dividend or distribution as provided in Section 6(e) or a recapitalization, reclassification or other change as provided in Section 6(f), for an Effective Price (as hereinafter defined) that is less than the Conversion Price for the Series B Preferred Stock in effect immediately prior to such issue or sale, then, and in each such case, the Conversion Price for the Series B Preferred Stock shall be reduced, as of the close of business on the date of such issue or sale, to a new Conversion Price determined pursuant to the following formula:

$$ACP = \frac{(CS/O \times CP) + AC}{CS/I}$$

ACP = Adjusted Conversion Price.

CS/O = Number of shares of Common Stock Outstanding immediately prior to the issuance of Additional Shares of Common Stock.

CP = Conversion Price in effect immediately prior to the issuance of Additional Shares of Common Stock.

AC = Aggregate Consideration Received (as defined below) from the issuance of Additional Shares of Common Stock.

CS/I = Number of shares of Common Stock Outstanding and deemed outstanding immediately following the issuance of Additional Shares of Common Stock.

- (2) Certain Definitions. For the purpose of making any adjustment required under this Section 6(g):

- (i) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued or deemed issued pursuant to Section 5(g)(3) by the Corporation, whether or not subsequently reacquired or retired by the Corporation, other than: (A) shares of Common Stock issued or issuable upon conversion of Series A Preferred

Stock, Series B Preferred Stock and Series C Preferred Stock; (B) up to one million (1,000,000) shares of Common Stock (or options, warrants or rights therefor) issued to officers, employees, contractors, consultants or advisers to the Corporation under its stock option plan (such number of shares to be calculated net of any repurchases of such shares by the Corporation and net of any such expired or terminated options, warrants or rights and to be proportionally adjusted to reflect any subsequent Common Stock Event), and (C) shares issued in a merger or acquisition.

- (ii) "Aggregate Consideration Received" by the Corporation for any issue or sale (or deemed issue or sale) of securities shall (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Corporation before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale and without deduction of any expenses payable by the Corporation; (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board (with the consent of the Series B Designee, which shall not be unreasonably withheld); and (C) if Additional Shares of Common Stock, Convertible Securities or Rights or Options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options.
- (iii) "Common Stock Outstanding" shall mean the actual number of shares of Common Stock outstanding plus all shares issuable upon conversion or exercise of all outstanding securities, warrants and options.
- (iv) "Convertible Securities" shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.
- (v) "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Corporation under this Section 6(g), into the Aggregate Consideration Received, or deemed to

have been received, by the Corporation under this Section 6(g), for the issue of such Additional Shares of Common Stock; and

(vi) "Rights or Options" shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

(3) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price of the Series B Preferred Stock required under this Section 6(g), if the Corporation issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect for the Series B Preferred Stock, then the Corporation shall be deemed to have issued, at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of such Rights, Options or Convertible Securities upon their issuance and to have received, as the Aggregate Consideration Received for the issuance of such shares, an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise in full of such Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

(i) if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, then the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses;

(ii) if the minimum amount of consideration payable to the Corporation upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events other than by reason of antidilution or similar protective adjustments, then the Effective Price shall be recalculated using the



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figure to which such minimum amount of consideration is reduced;  
and

- (iii) if the minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities.

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that there actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Preferred Stock.

- (h) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for the Series B Preferred Stock, the Corporation, at its expense, shall cause its Chief Financial Officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first

class mail, postage prepaid, to each registered holder of the Series B Preferred Stock at the holder's address as shown in the Corporation's books.

- (i) Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of the Series B Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion.
- (j) 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 not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock, the Corporation will 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.
- (k) Notices. Any notice required by the provisions of this Section 6 to be given to the holders of shares of the Series B Preferred Stock shall be deemed given upon the earlier of actual receipt or deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Corporation.
- (l) No Impairment. The Corporation shall not 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 carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series B Preferred Stock against impairment.

7. Series C Conversion Rights. The outstanding shares of Series C Preferred Stock shall be convertible into Common Stock as follows:

- (a) Optional Conversion.
  - (1) At the option of the holder thereof, each share of Series C Preferred Stock shall be convertible, at any time or from time to time prior to the close of business on the business day before any date fixed for automatic

conversion of such shares pursuant to Section 7(b), into fully paid and nonassessable shares of Common Stock as provided herein.

- (2) Each holder of Series C Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series C Preferred Stock or Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Series C Preferred Stock being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Series C Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(b) Automatic Conversion.

- (1) Each share of Series C Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein, (i) immediately prior to the closing of a Qualifying IPO; or (ii) upon the Corporation's receipt of the written consent of the holders of not less than a majority of the then outstanding shares of Series C Preferred Stock, to the conversion of all then outstanding Series C Preferred Stock.
- (2) Upon the occurrence of any event specified in Section 7(b)(1) above, the outstanding shares of Series C Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares and whether or not 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 the certificates evidencing such shares of Series C Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series C Preferred Stock, the holders of Series C Preferred Stock shall

surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series C Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series C Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

- (c) Conversion Price. Each share of Series C Preferred Stock shall be convertible in accordance with Section 7(a) or Section 7(b) above into the number of shares of Common Stock which results from dividing the Series C Original Issue Price for such share of Series C Preferred Stock by the conversion price for the Series C Preferred Stock that is in effect at the time of conversion (as used in this Section 7, the "Conversion Price"). The initial Conversion Price for the Series C Preferred Stock shall be the Series C Original Issue Price. The Conversion Price shall be subject to adjustment from time to time as provided below.
- (d) Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event (as hereinafter defined), the Conversion Price of the Series C Preferred Stock shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price of the Series C Preferred Stock in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock (which shall include the actual number of shares outstanding plus all shares issuable upon conversion or exercise of all outstanding convertible securities, warrants and options) issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event (including the shares deemed outstanding as provided in clause (i) above), and the product so obtained shall thereafter be the Conversion Price for the Series C Preferred Stock. The Conversion Price for a series of Preferred Stock shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event.
- (e) Adjustments for Other Dividends and Distributions. If at any time or from time to time after the Series C Original Issue Date the Corporation pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Corporation other than shares of Common Stock, then in each such event provision shall be made so that the holders of the Series C Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Corporation which they would have received had their Series C Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date

of such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 7 with respect to the rights of the holders of the Series C Preferred Stock or with respect to such other securities by their terms.

- (f) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Series C Original Issue Date the Common Stock issuable upon the conversion of the Series C Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 7), then in any such event each holder of Series C Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series C Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

- (g) Sale of Shares Below Conversion Price.

- (1) Adjustment Formula. If at any time or from time to time after the Series C Original Issue Date the Corporation issues or sells, or is deemed by the provisions of this Section 7(g) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in Section 7(d), a dividend or distribution as provided in Section 7(e) or a recapitalization, reclassification or other change as provided in Section 7(f), for an Effective Price (as hereinafter defined) that is less than the Conversion Price for the Series C Preferred Stock in effect immediately prior to such issue or sale, then, and in each such case, the Conversion Price for the Series C Preferred Stock shall be reduced, as of the close of business on the date of such issue or sale, to a new Conversion Price equal to the Effective Price of such Additional Shares of Common Stock.

- (2) Certain Definitions. For the purpose of making any adjustment required under this Section 7(g):

- (i) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued or deemed issued pursuant to Section 5(g)(3) by the Corporation, whether or not subsequently reacquired or retired by the Corporation, other than: (A) shares of Common Stock issued or issuable upon conversion of Series A Preferred

Stock, Series B Preferred Stock and Series C Preferred Stock; (B) up to one million (1,000,000) shares of Common Stock (or options, warrants or rights therefor) issued to officers, employees, contractors, consultants or advisers to the Corporation under its stock option plan (such number of shares to be calculated net of any repurchases of such shares by the Corporation and net of any such expired or terminated options, warrants or rights and to be proportionally adjusted to reflect any subsequent Common Stock Event); (C) an authorized increase in the size of the Employee's Stock Option Plan; and (D) shares issued in a merger or acquisition.

- (ii) "Aggregate Consideration Received" by the Corporation for any issue or sale (or deemed issue or sale) of securities shall (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Corporation before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale and without deduction of any expenses payable by the Corporation; (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board (with the consent of the Series C Designee, which shall not be unreasonably withheld); and (C) if Additional Shares of Common Stock, Convertible Securities or Rights or Options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options.
- (iii) "Common Stock Outstanding" shall mean the actual number of shares of Common Stock outstanding plus all shares issuable upon conversion or exercise of all outstanding securities, warrants and options.
- (iv) "Convertible Securities" shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.
- (v) "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Corporation under this Section

7(g), into the Aggregate Consideration Received, or deemed to have been received, by the Corporation under this Section 7(g), for the issue of such Additional Shares of Common Stock; and

(vi) "Rights or Options" shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

(3) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price of the Series C Preferred Stock required under this Section 7(g), if the Corporation issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect for the Series C Preferred Stock, then the Corporation shall be deemed to have issued, at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of such Rights, Options or Convertible Securities upon their issuance and to have received, as the Aggregate Consideration Received for the issuance of such shares, an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise in full of such Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

(i) if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, then the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses;

(ii) if the minimum amount of consideration payable to the Corporation upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events other than by reason of antidilution or similar protective adjustments, then the Effective Price shall be recalculated using the

figure to which such minimum amount of consideration is reduced;  
and

- (iii) if the minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities.

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that there actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Preferred Stock.

- (h) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for the Series C Preferred Stock, the Corporation, at its expense, shall cause its Chief Financial Officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Series C Preferred Stock at the holder's address as shown in the Corporation's books.



- (i) Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of the Series C Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion.
- (j) 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 C 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 C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series C Preferred Stock, the Corporation will 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.
- (k) Notices. Any notice required by the provisions of this Section 7 to be given to the holders of shares of the Series C Preferred Stock shall be deemed given upon the earlier of actual receipt or deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Corporation.
- (l) No Impairment. The Corporation shall not 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 carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series C Preferred Stock against impairment.

8. Adjustments for Stock Splits, Etc. Wherever in this Certificate there is a reference to a specific number of shares of Common Stock or Preferred Stock of the Corporation of any class or series, then, upon the occurrence of any subdivision, combination or stock dividend of such class or series of stock, the specific number of shares so referenced in this Certificate shall automatically be proportionally adjusted to reflect the effect on the outstanding shares of such class or series of stock by such subdivision, combination or stock dividend.

9. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

10. Preemptive Rights.

- (a) General. Each holder of at least thirty thousand (30,000) shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock or of Common Stock issued upon conversion of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock (a "Rights Holder") shall have the preemptive right to purchase all or any part of such Rights Holder's Pro Rata Share (as defined below), of any "New Securities" (as defined in below) that the Corporation may from time to time issue. A Rights Holder's "Pro Rata Share" for purposes of this preemptive right shall mean a fraction, the numerator of which is (a) the number of "Common Stock Equivalent Shares" (as defined below) as to which such Rights Holder is the holder, and the denominator of which is (b) (i) the total number of shares of Common Stock then outstanding or reserved under the Corporation's employee stock option plan (whether or not options have been granted) plus (ii) the total number of shares of Common Stock into which all then outstanding shares of Preferred Stock are then convertible. "Common Stock Equivalent Shares" shall mean (1) all the shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock eligible for conversion; (2) any shares of Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, all such shares of Common Stock described in clause (1) above and (3) any other shares of Common Stock now owned or hereafter acquired.
- (b) New Securities. "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 such Common Stock or preferred stock, and securities of any type whatsoever that are, or may become, convertible or exchangeable into such Common Stock or preferred stock; provided, however, that the term "New Securities" does not include:
- (i) up to one million (1,000,000) shares of Common Stock (or options or warrants therefor) issued to employees, officers, directors, contractors, advisors or consultants of the Corporation pursuant to incentive agreements or plans approved by the Board of Directors of the Corporation;
  - (ii) up to one million (1,000,000) shares of Common Stock (or options or warrants therefor) issued to participants in the Corporation's loyalty program network;
  - (iii) shares of Common Stock (or options or warrants therefor) issued in strategic transactions or as equity incentives for service providers;

- (iv) any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;
  - (v) any securities issuable upon conversion of or with respect to any then outstanding shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock of the Corporation or Common Stock or other securities issuable upon conversion thereof;
  - (vi) any securities issuable upon exercise of any options, warrants or rights to purchase any securities of the Corporation outstanding on the Series A Original Issue Date (with respect to Series A Preferred Stock), the Series B Original Issue Date (with respect to Series B Preferred Stock), the Series C Original Issue Date (with respect to Series C Preferred Stock) ("Warrant Securities"), and any securities issuable upon the conversion of any Warrant Securities;
  - (vii) shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock issued in connection with any stock split or stock dividend or similar event;
  - (viii) securities offered by the Corporation to the public pursuant to a registration statement filed under the Securities Act; or
  - (ix) securities issued in the acquisition of another corporation or entity by the Corporation by consolidation, merger, purchase of all or substantially all of the assets, or other reorganization in which the Corporation acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty-one percent (51%), or more of the voting power of such other corporation or entity or fifty-one percent (51%), or more of the equity ownership of such other entity, provided that, such acquisition was approved by holders of at least 75% of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting as a single class on an as-converted basis and by holders of a majority of the Series C Preferred Stock.
- (c) Procedures. In the event that the Corporation proposes to undertake an issuance of New Securities, it shall give to each Rights Holder written notice of its intention to issue New Securities (the "Notice"), describing the type of New Securities and the price and the general terms upon which the Corporation proposes to issue such New Securities. Each Rights Holder shall have ten (10) days from the date of mailing of any such Notice to agree in writing to purchase

such Rights Holder's Pro Rata Share of such New Securities for the price and upon the general terms specified in the Notice by giving written notice to the Corporation and stating therein the quantity of New Securities to be purchased (not to exceed such Rights Holder's Pro Rata Share). If any Rights Holder fails to so agree in writing within such ten (10) day period to purchase such Rights Holder's full Pro Rata Share of an offering of New Securities (a "Nonpurchasing Holder"), then such Nonpurchasing Holder shall forfeit the right hereunder to purchase that part of his Pro Rata Share of such New Securities that he did not so agree to purchase.

- (d) Failure to Exercise. To the extent that the Rights Holders fail to exercise in full the right of first refusal within such ten (10) day period, then the Corporation shall have one hundred twenty (120) days thereafter to sell the New Securities with respect to which the Rights Holders' rights of first refusal hereunder were not exercised, at a price and upon general terms not materially more favorable to the purchasers thereof than specified in the Corporation's Notice to the Rights Holders. In the event that the Corporation has not issued and sold the New Securities within such 120 day period, then the Corporation shall not thereafter issue or sell any New Securities without again first offering such New Securities to the Rights Holders pursuant to this Section 10(d). If any Rights Holder fails to exercise its right of first refusal with respect to any New Securities in full (but not including any right of overallotment), and such New Securities are issued and sold in full by the Corporation under the terms of this Section, such Rights Holder shall have no further right of first refusal with respect to New Securities.
- (e) Termination. This right of first refusal shall terminate (a) upon consummation of a Qualifying IPO; or (b) upon a Change of Control Event.

11. Redemption of Series C Preferred Stock.

- (a) At the written election of holders of at least a majority of the then outstanding shares of Series C Preferred Stock made on or after the fourth anniversary of the Series C Original Issue Date (the "Redemption Notice"), the Corporation shall, to the extent it may lawfully do so, call for redemption, and shall redeem from such holders 50% of all shares of Series C Preferred Stock being redeemed on the 60<sup>th</sup> day following the date of notification of such election to the Corporation, and an additional 50% of such shares on the first anniversary thereof, at a redemption price (the "Series C Redemption Price") equal to the greater of (A) (x) the product of (i) the number of shares of Series C Preferred Stock being redeemed multiplied by (ii) the Series C Original Issue Price (appropriately adjusted to take account of any stock dividend, stock split, combination of shares, reclassification or other similar event) multiplied by (iii) five plus (y) all dividends accrued or declared but unpaid on, and any and all other amounts owing with respect to, such shares of Series C Preferred Stock on the redemption date and (B) the fair market value

of such redeemed shares of Series C Preferred Stock on the basis of a sale of the entire equity of the Company as determined by a major investment bank selected by the Board.

- (b) Within thirty (30) days after receipt of the Redemption Notice, the Corporation shall send copies of the Redemption Notice to all holders of Series C Preferred Stock that were not parties to the Redemption Notice offering them the right to have their shares of Series C Preferred Stock redeemed, provided they notify the Corporation in writing of their acceptance within ten (10) days of receipt of the Redemption Notice from the Corporation. Any notices sent under this Subsection (b) shall comply with the notice requirements of Subsection (c) below.
- (c) The Corporation shall then send a notice of redemption by first class mail, postage prepaid or by fax or DHL, Federal Express or other recognized express international courier service in the case of non-U.S. stockholders, to each holder of record of the Series C Preferred Stock to be redeemed, not less than thirty (30) days nor more than sixty (60) days prior to the redemption date set forth therein, at his or her or its address as it appears on the books of the Corporation. Such notice shall set forth (i) the date and place of redemption; and (ii) the number of shares to be redeemed and the Redemption Price. The Corporation, if advised to do so before the close of business on the relevant redemption date by written notice from any holder of record of Series C Preferred Stock to be redeemed, shall credit against the number of shares of Series C Preferred Stock required to be redeemed from such holder, and shall not redeem, the number of shares of Series C Preferred Stock called for redemption which have been converted by such holder after such holder made the written election with respect to such shares described in Subsection 11(a) and on or before such redemption date.
- (d) If, on or before a redemption date, the funds necessary for such redemption shall have been set aside by the Corporation and deposited with a bank or trust company, in trust for the pro rata benefit of the holders of the Series C Preferred Stock that has been called for redemption, then, notwithstanding that any certificates for shares that have been called for redemption shall not have been surrendered for cancellation, the shares represented thereby shall no longer be deemed outstanding from and after such redemption date, and all rights of holders of such shares so called for redemption shall forthwith, after such redemption date, cease and terminate with respect to such shares, excepting only the right to receive the applicable Series C Redemption Price therefor to which they are entitled. Any interest accrued on funds so deposited and unclaimed by stockholders entitled thereto shall be paid to such stockholders at the time their respective shares are redeemed or to the Corporation at the time unclaimed amounts are paid to it. In case the holders of Series C Preferred Stock which shall have been called for redemption shall not, within three years after the final redemption date, claim the amounts so deposited with respect to the redemption

thereof, any such bank or trust company shall, upon demand, pay over to the Corporation such unclaimed amounts and thereupon such bank or trust company shall be relieved of all responsibility in respect thereof to such holder and such holder shall look only to the Corporation for the payment thereof. Any funds so deposited with a bank or trust company that shall not be required for such redemption by reason of the exercise subsequent to the date of such deposit of the right of conversion of any shares or otherwise shall be returned to the Corporation forthwith.

- (e) If the Eligible Funds (as herein defined) available for redemption of shares of Series C Preferred Stock on a redemption date are insufficient to redeem the total number of shares of Series C Preferred Stock submitted for redemption, those funds will be used to redeem the maximum possible number of whole shares ratably among the holders of such shares in proportion to the redemption amounts otherwise payable to them. All rights of the shares of Series C Preferred Stock that have been redeemed shall cease and terminate with respect to those shares. The shares of Series C Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional Eligible Funds are available for the redemption of such shares of Series C Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available. "Eligible Funds" mean all funds legally available by the Corporation for redemption minus \$1,000,000; provided, however, that the Corporation's management shall use their best efforts to ensure that funds will be available to redeem the Series C Preferred Stock.

IN WITNESS WHEREOF, BitTime.com, Inc., has caused this Third Article of Amendment to be executed this 23rd day of October, 2001.

**BitTime.com, Inc.,**  
a Florida corporation

By: 

Alberto Gross, President