

P99000079482
Glaster Yonder - Nancy
Requester's Name

Address
272-6660
City/State/Zip Phone #

Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. Gocruise Direct.com, Inc P99000079482
(Corporation Name) (Document #)
Amended & Restated
2. _____
(Corporation Name) (Document #)
3. _____
(Corporation Name) (Document #)
4. _____
(Corporation Name) (Document #)

- ☒ Walk in ☐ Pick up time ☒ Certified Copy
☐ Mail out ☒ Will wait ☐ Photocopy ☐ Certificate of Status

NEW FILINGS

- ☐ Profit
☐ Not for Profit
☐ Limited Liability
☐ Domestication
☐ Other

OTHER FILINGS

- ☐ Annual Report
☐ Fictitious Name

AMENDMENTS

- ☒ Amendment
☐ Resignation of R.A., Officer/Director
☐ Change of Registered Agent
☐ Dissolution/Withdrawal
☐ Merger

REGISTRATION/QUALIFICATION

- ☐ Foreign
☐ Limited Partnership
☐ Reinstatement
☐ Trademark
☐ Other

FILED
01 NOV 19 PM 3:51
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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Examiner's Initials *RL*
11/19/01

**THIRD AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
GOCRUISEDIRECT.COM, INC.**

FILED
01 NOV 19 PM 3:51
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned President and Assistant Secretary of **GoCruiseDirect.com, Inc.** (the "**Corporation**"), pursuant to Section 607.1007 of the Florida Business Corporation Act, hereby submit the following Third Amended and Restated Articles of Incorporation and in connection therewith certify as follows:

1. The name of this corporation is **GoCruiseDirect.com, Inc.**
2. The corporation was originally incorporated on September 7, 1999, under document number P99000079482.
3. These Third Amended and Restated Articles of Incorporation were duly adopted pursuant to Sections 607.1003 and 607.1007 of the Florida Business Corporation Act (i) by resolution of the Board of Directors of the Corporation on November 19, 2001; (ii) by resolution of (a) the holders of the issued and outstanding shares of the Common Stock and (b) the holders of the issued and outstanding shares of the Series A Convertible Redeemable Preferred Stock (the "**Series A Preferred**"), voting together as a single class, on November 19, 2001; and (iii) by resolution of the holders of at least 66 2/3% of the shares of Series A Preferred, voting separately as a class on November 19, 2001. There are no shares of Series B Convertible Redeemable Preferred Stock (the "**Series B Preferred**") outstanding. The number of votes cast in favor of these Third Amended and Restated Articles of Incorporation by the holders of Common Stock voting together as a class, was sufficient for the approval by such holders.
4. These Third Amended and Restated Articles of Incorporation shall become effective at 9:00 a.m., E.T., on November 19, 2001 (the "**Effective Date**").
5. The Articles of Incorporation of **GoCruiseDirect.com, Inc.**, as amended and restated to date, are hereby amended, restated and superceded in their entirety as follows:

ARTICLE I
NAME AND PRINCIPAL PLACE OF BUSINESS

The name of this corporation is **GoCruiseDirect.com, Inc.** (hereinafter, the "**Corporation**").

The Corporation's principal place of business shall be: 8000 Governor Square Blvd., Suite 200, Miami Lakes, Florida 33016, or such other place as the Board of Directors may designate from time to time.

ARTICLE II
DURATION

The Corporation shall exist perpetually.

ARTICLE III
NATURE OF BUSINESS

The Corporation is organized for the purpose of transacting any or all lawful business.

ARTICLE IV
MAILING ADDRESS

The mailing address of the Corporation is 2 South Biscayne Boulevard, Suite 3400, One Biscayne Tower, Miami, Florida 33131.

ARTICLE V
CAPITAL STOCK

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 10,000,000, consisting of (i) 7,000,000 shares of common stock, \$.001 par value per share (the "**Common Stock**"), and (ii) 3,000,000 shares of preferred stock, \$.001 par value per share (the "**Preferred Stock**").

Unless otherwise provided hereinafter or in any articles of amendment providing for the determination of a class or series of stock, shares of capital stock of the Corporation that have been issued and which are subsequently acquired by the Corporation shall constitute issued but not outstanding shares of the same class and series, until canceled or disposed of (whether by resale or otherwise) by the Corporation, and upon cancellation, the canceled shares shall constitute authorized and unissued shares of the same class and shall be undesignated as to series.

For purposes of determining funds lawfully available for any dividends or other distribution upon shares of stock, amounts needed to satisfy the rights of shareholders upon dissolution who have preferential rights superior to those of shareholders of the stock receiving such dividend or distribution shall not be deducted from the Corporation's total assets.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

Section 1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

Section 2. Voting. The holders of the Common Stock are entitled to one vote for each share held at all meetings of shareholders (and written actions in lieu of meetings). There shall be no cumulative voting.

Section 3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor if, as and when determined by the Board of Directors, at its sole discretion, and subject to any preferential or pari passu dividend rights of any then outstanding Preferred Stock.

Section 4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its shareholders, subject to any preferential rights of any then outstanding Preferred Stock.

B. PREFERRED STOCK.

Shares of the Preferred Stock shall initially be designated as follows: 886,133 shares as the "Series A Convertible Redeemable Preferred Stock" (the "*Series A Preferred*"), 1,092,973 shares as the "Series B Convertible Redeemable Preferred Stock" (the "*Series B Preferred*") and 588,812 shares as the "Series C Convertible Redeemable Preferred Stock" (the "*Series C Preferred*"). The Series A Preferred, Series B Preferred and Series C Preferred are collectively referred to herein as the "*Preferred*". Certain other capitalized terms used herein are defined in *Section 10* of this *Article VB*.

Section 1. Preferred Dividends

1A. Dividends. If, as and when declared by the Board of Directors, at its sole discretion, and to the extent permitted under the Florida Business Corporation Act, the Corporation shall pay non-cumulative preferential dividends to the holders of the Preferred as provided in *Section B1B*.

1B. Dividends on Preferred. If after the Effective Date hereof the Corporation declares a dividend or other distribution (other than in Common Stock pro rata to all holders of Common Stock) upon the Common Stock (a "*Dividend*"), then the Corporation shall at the same

time declare upon the Preferred, and if the Corporation pays a Dividend upon the Common Stock, then the Corporation shall at the same time pay to the holders of Preferred, in each case, the Dividend which would have been declared or paid, as applicable, on the shares of Series A Conversion Stock, Series B Conversion Stock, and Series C Conversion Stock, as applicable, had such Preferred been converted immediately prior to the date on which a record is taken for such Dividend, or, if no record is taken, the date as of which the record holders of Common Stock entitled to such Dividend is to be determined.

Section 2. Liquidation.

2A. Priority of Preferred. Upon any liquidation, dissolution or winding up of the Corporation, before any distribution or payment is made upon any Junior Securities, each holder of Preferred shall be entitled to be paid an amount equal to the aggregate Stated Value (plus unpaid dividends that have been declared or that, pursuant to **Section B1B**, the Corporation was obligated to declare, upon such share) of the shares of Preferred held by such holder. After the distribution or payment by the Corporation of (i) such preference payments, and (ii) payments to the holders of any other preferred stock of the preferential amounts to which such holders may be entitled, each holder of Preferred shall be entitled to participate on an equal basis in the distribution or liquidation of any remaining assets of the Corporation with the holders of Common Stock and any other equity securities entitled to participate with the Common Stock in any such distribution, and shall be paid an amount equal to the quotient of (x) any remaining assets of the Corporation, divided by (y) the number of (a) outstanding shares of the Common Stock, (b) outstanding shares of any other equity securities entitled to participate with the Common Stock in any such distribution, (c) Series A Conversion Stock into which all of the outstanding shares of Series A Preferred are convertible into if such Series A Preferred were converted into Series A Conversion Stock, (d) Series B Conversion Stock into which all of the outstanding shares of Series B Preferred are convertible into if such Series B Preferred were converted into Series B Conversion Stock and (e) Series C Conversion Stock into which all of the outstanding shares of Series C Preferred are convertible into if such Series C Preferred were converted into Series C Conversion Stock. The Corporation shall mail written notice of such liquidation, dissolution or winding up, not less than sixty (60) days prior to the payment date stated therein, to each record holder of Preferred. The following shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this **Section B2**: any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, any sale or transfer of all or substantially all of the Corporation's assets to another Person, any consolidation or statutory share exchange with or merger into any other Person in which the Corporation does not survive (other than a wholly-owned subsidiary of the Corporation or a merger effected exclusively for the purpose of changing the domicile of the Corporation), or a Change of Control of the Corporation.

2B. Pro-Rated Distribution. Upon any liquidation, dissolution or winding up of the Corporation, if the assets of the Corporation to be distributed among the holders of Preferred are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid, then the assets of the Corporation to be distributed to such holders shall be distributed ratably among the holders of Preferred based upon the number of shares of the Preferred held by each such holder.

Section 3. Redemptions.

3A. Redemption Payment. For each share which is to be redeemed, the Corporation shall be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder for cancellation at the Corporation's principal office of the certificate representing such share accompanied by a duly endorsed stock power) an amount in immediately available funds (except as otherwise provided herein) equal to the Redemption Price of such share. If the funds of the Corporation legally available for redemption of shares on any Redemption Date are insufficient to redeem the total number of shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of shares of Preferred ratably among the holders of the shares of Preferred to be redeemed based upon the aggregate number of such shares held by such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares, such funds shall immediately be used to redeem the balance of the shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

3B. Dividends After Redemption Date. No share is entitled to any dividends accruing after the date on which the Redemption Price of such share is paid to the holder thereof or, if a Redemption Deposit has been made with respect to such share, the Redemption Date. On such date all rights of the holder of such share shall cease, and such share shall not be deemed to be outstanding.

3C. Redeemed or Otherwise Acquired Shares. Any shares of Preferred which are redeemed or otherwise acquired by the Corporation shall be canceled and shall not be reissued, sold or transferred.

3D. Other Redemptions or Acquisitions. The Corporation shall not redeem or otherwise acquire any Preferred, except as expressly authorized herein or pursuant to a purchase offer made pro-rata to all holders of the Preferred on the basis of the number of shares of such class owned by each such holder.

3E. Redemptions on Request. On, or within ten days of, May 1, 2005, each of the holders of the Preferred may request redemption of all of their shares of the Preferred by delivering written notice of such request to the Corporation. The Corporation shall be required to redeem all shares with respect to which such redemption requests have been made at a price per share equal to the Redemption Price thereof within ninety (90) days after receipt of the redemption request.

Section 4. Voting Rights.

4A. Voting With Common Stock. All holders of Preferred shall be entitled to notice of all shareholders meetings in accordance with the Corporation's bylaws. Except as otherwise required by law, the holders of the Preferred shall be entitled to vote on all matters submitted to the shareholders for a vote together with the holders of the Common Stock voting together as a single class, with each share of Common Stock entitled to one vote per share and each

share of Preferred entitled to one vote for each share of Common Stock issuable upon conversion of the Preferred at the time the vote is taken.

4B. Action Requiring Affirmative Vote of Holders of Series A Preferred. Until the occurrence of a Qualified Public Offering, so long as 66 2/3% of the Series A Preferred initially issued by the Corporation (*i.e.*, 590,755 shares of Series A Preferred) remains issued and outstanding, the Corporation shall not, without the prior written consent or vote of the holders of at least 66 2/3% of the shares of Series A Preferred then outstanding, voting separately as a class:

(i) directly or indirectly declare or pay any cash dividends or make any cash distributions upon any of its capital stock or other equity securities;

(ii) directly or indirectly redeem, purchase or otherwise acquire any of the Corporation's capital stock or other equity securities (including, without limitation, warrants, options and other rights to acquire such capital stock or other equity securities) other than the Preferred pursuant to the terms of these Articles of Incorporation, or directly or indirectly redeem, purchase or make any payments with respect to any stock appreciation rights, phantom stock plans or similar rights or plans, other than for options granted by the Compensation Committee of the Board of Directors or under the Stock Option Plan;

(iii) authorize, issue or enter into any agreement providing for the issuance (contingent or otherwise) of, (a) any indebtedness for borrowed money or other debt, or (b) any capital stock or other equity securities (or any securities convertible into or exchangeable for or any rights to acquire any shares of any capital stock or other equity securities) of the Corporation which are pari passu or senior (with respect to dividends or liquidation preference) with or to the Preferred; provided however, that notwithstanding the foregoing, the Corporation may, without the prior written consent or vote of the holders of the Series A Preferred create, incur or assume obligations or debt (or issue or enter into any agreement providing for the issuance of any notes or debt) pursuant to or arising under:

(a) capitalized leases, installment sales contracts, deferred purchase arrangements and/or other types of indebtedness for borrowed money in an amount not to exceed \$500,000 in the aggregate outstanding at any point of determination; and

(b) trade payables and other current liabilities incurred in the ordinary course of business;

(iv) merge, consolidate or consummate any statutory share exchange with any Person;

(v) sell or otherwise dispose of all or substantially all of the assets of the Corporation in any transaction or series of related transactions (other than sales in the ordinary course of business);

(vi) enter into any transaction or agreement on terms less favorable to the Company than could be obtained from unaffiliated parties on an arm's length basis;

(vii) petition or apply to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or of any substantial part of the assets of the Corporation, or commence any proceeding regarding the Corporation under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction;

(viii) engage in any new lines of business which is materially different from the businesses carried on or proposed to be carried on by the Corporation as of the closing under the Purchase Agreement;

(ix) make any amendment to these Articles of Incorporation or the Bylaws which would increase the number of authorized shares of the Series A Preferred or adversely affect the holders of the Series A Preferred under the Purchase Agreement, these Articles of Incorporation, the Bylaws, or the other Investment Documents, including any change in the redemption provisions, any change in the quorum requirements for a Board of Directors meeting or the number of votes required to constitute the act of the Board of Directors, any reduction in the stated value, liquidation preference or dividend, any change in the place or currency of payment, impairment of any enforcement rights, or any adverse change to the conversion rights;

(x) change its fiscal year;

(xi) adopt any stock option plan or employee stock ownership plan, other than the Stock Option Plan, the Outside Director Plan or other employee compensation arrangements for the issuance of Common Stock or options to acquire Common Stock (other than grants and issuances approved by the Compensation Committee of the Board of Directors under the Stock Option Plan) at an exercise price or other consideration determined at the grant date of not less than the fair market value of the Common Stock, in an aggregate amount not to exceed 15% of the then outstanding shares of Common Stock (on a fully diluted basis); or

(xii) establish any committee of the Board of Directors, other than the Compensation Committee.

4C. Action Requiring Affirmative Vote of Holders of Series B Preferred. Until the occurrence of a Qualified Public Offering, so long as 267,608 shares of Series B Preferred remains issued and outstanding, the Corporation shall not, without the prior written consent or vote of the holders of at least 66 2/3% of the shares of Series B Preferred then outstanding, voting separately as a class:

(i) directly or indirectly declare or pay any cash dividends or make any cash distributions upon any of its capital stock or other equity securities;

(ii) directly or indirectly redeem, purchase or otherwise acquire any of the Corporation's capital stock or other equity securities (including, without limitation, warrants, options and other rights to acquire such capital stock or other equity securities) other than the Preferred pursuant to the terms of these Articles of Incorporation, or directly or indirectly redeem, purchase or make any payments with respect to any stock appreciation rights, phantom stock plans or similar rights or plans, other than for options granted by the Compensation Committee of the Board of Directors or under the Stock Option Plan;

(iii) authorize, issue or enter into any agreement providing for the issuance (contingent or otherwise) of, (a) any indebtedness for borrowed money or other debt, or (b) any capital stock or other equity securities (or any securities convertible into or exchangeable for or any rights to acquire any shares of any capital stock or other equity securities) of the Corporation which are pari passu or senior (with respect to dividends or liquidation preference) with or to the Preferred; provided however, that notwithstanding the foregoing, the Corporation may, without the prior written consent or vote of the holders of the Series B Preferred create, incur or assume obligations or debt (or issue or enter into any agreement providing for the issuance of any notes or debt) pursuant to or arising under:

(a) capitalized leases, installment sales contracts, deferred purchase arrangements and/or other types of indebtedness for borrowed money in an amount not to exceed \$500,000 in the aggregate outstanding at any point of determination; and

(b) trade payables and other current liabilities incurred in the ordinary course of business;

(iv) merge, consolidate or consummate any statutory share exchange with any Person;

(v) sell or otherwise dispose of all or substantially all of the assets of the Corporation in any transaction or series of related transactions (other than sales in the ordinary course of business);

(vi) enter into any transaction or agreement on terms less favorable to the Company than could be obtained from unaffiliated parties on an arm's length basis;

(vii) petition or apply to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or of any substantial part of the assets of the Corporation, or commence any proceeding regarding the Corporation under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction;

(viii) engage in any new lines of business which is materially different from the businesses carried on or proposed to be carried on by the Corporation as of the closing under the Purchase Agreement;

(ix) make any amendment to these Articles of Incorporation or the Bylaws which would increase the number of authorized shares of the Series A Preferred or adversely affect the holders of the Series A Preferred under the Purchase Agreement, these Articles of Incorporation, the Bylaws, or the other Investment Documents, including any change in the redemption provisions, any change in the quorum requirements for a Board of Directors meeting or the number of votes required to constitute the act of the Board of Directors, any reduction in the stated value, liquidation preference or dividend, any change in the place or currency of payment, impairment of any enforcement rights, or any adverse change to the conversion rights;

(x) change its fiscal year;

(xi) adopt any stock option plan or employee stock ownership plan, other than the Stock Option Plan, the Outside Director Plan or other employee compensation arrangements for the issuance of Common Stock or options to acquire Common Stock (other than grants and issuances approved by the Compensation Committee of the Board of Directors under the Stock Option Plan) at an exercise price or other consideration determined at the grant date of not less than the fair market value of the Common Stock, in an aggregate amount not to exceed 15% of the then outstanding shares of Common Stock (on a fully diluted basis); or

(xii) establish any committee of the Board of Directors, other than the Compensation Committee.

4D. Action Requiring Affirmative Vote of Holders of Series C Preferred. Until the occurrence of a Qualified Public Offering, so long as 96,112 shares of the Series C Preferred remains issued and outstanding, the Corporation shall not, without the prior written consent or vote of the holders of at least 75% of the shares of Series C Preferred then outstanding, voting separately as a class:

(i) directly or indirectly declare or pay any cash dividends or make any cash distributions upon any of its capital stock or other equity securities;

(ii) directly or indirectly redeem, purchase or otherwise acquire any of the Corporation's capital stock or other equity securities (including, without limitation, warrants, options and other rights to acquire such capital stock or other equity securities) other than the Preferred pursuant to the terms of these Articles of Incorporation, or directly or indirectly redeem, purchase or make any payments with respect to any stock appreciation rights, phantom stock plans or similar rights or plans, other than for options granted by the Compensation Committee of the Board of Directors or under the Stock Option Plan;

(iii) authorize, issue or enter into any agreement providing for the issuance (contingent or otherwise) of, (a) any indebtedness for borrowed money or other debt, or (b) any capital stock or other equity securities (or any securities convertible into or exchangeable for or any rights to acquire any shares of any capital stock or other equity securities) of the Corporation which are pari passu or senior (with respect to dividends or liquidation preference) with or to the Preferred; provided however, that notwithstanding the foregoing, the Corporation may, without the prior

written consent or vote of the holders of the Series C Preferred create, incur or assume obligations or debt (or issue or enter into any agreement providing for the issuance of any notes or debt) pursuant to or arising under:

(a) capitalized leases, installment sales contracts, deferred purchase arrangements and/or other types of indebtedness for borrowed money in an amount not to exceed \$500,000 in the aggregate outstanding at any point of determination; and

(b) trade payables and other current liabilities incurred in the ordinary course of business;

(iv) merge, consolidate or consummate any statutory share exchange with any Person;

(v) sell or otherwise dispose of all or substantially all of the assets of the Corporation in any transaction or series of related transactions (other than sales in the ordinary course of business);

(vi) enter into any transaction or agreement on terms less favorable to the Company than could be obtained from unaffiliated parties on an arm's length basis;

(vii) petition or apply to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or of any substantial part of the assets of the Corporation, or commence any proceeding regarding the Corporation under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction;

(viii) engage in any new lines of business which is materially different from the businesses carried on or proposed to be carried on by the Corporation as of the closing under the Purchase Agreement;

(ix) make any amendment to these Articles of Incorporation or the Bylaws which would increase the number of authorized shares of the Series A Preferred or adversely affect the holders of the Series A Preferred under the Purchase Agreement, these Articles of Incorporation, the Bylaws, or the other Investment Documents, including any change in the redemption provisions, any change in the quorum requirements for a Board of Directors meeting or the number of votes required to constitute the act of the Board of Directors, any reduction in the stated value, liquidation preference or dividend, any change in the place or currency of payment, impairment of any enforcement rights, or any adverse change to the conversion rights;

(x) change its fiscal year;

(xi) adopt any stock option plan or employee stock ownership plan, other than the Stock Option Plan, the Outside Director Plan or other employee compensation arrangements for the issuance of Common Stock or options to acquire Common Stock (other than grants and

issuances approved by the Compensation Committee of the Board of Directors under the Stock Option Plan) at an exercise price or other consideration determined at the grant date of not less than the fair market value of the Common Stock, in an aggregate amount not to exceed 15% of the then outstanding shares of Common Stock (on a fully diluted basis); or

(xii) establish any committee of the Board of Directors, other than the Compensation Committee.

4E. Control of Board Upon Event of Non-Performance.

(i) An Event of Non-Performance shall be deemed to have occurred if:

(a) (x) any of the statements of income of the Corporation for any of the Corporation's fiscal quarters commencing with the calendar quarter ending on March 31, 2001 to be delivered under **Section 4B(i)** of the Purchase Agreement shows, as applicable, that the Corporation's net income for such period (a "*Non-Performing Period*") was less than the net income for such period which is projected under the Initial Projections, or that the Corporation's net loss for the Non-Performing Period exceeded the net loss for such period which is projected under the Initial Projections, and (y) the Corporation's statement of income which is required to be delivered under **Section 4B(i)** of the Purchase Agreement continues to show, as applicable, that the Corporation's cumulative net income for such quarter and the succeeding two (2) full fiscal quarters following such Non-Performing Period was less than the cumulative net income for such periods which is projected under the Initial Projections, or that the Corporation's cumulative net loss for such quarter and the succeeding two (2) full fiscal quarters following such Non-Performing Period exceeded the cumulative net loss for such period which is projected under the Initial Projections; or

(b) the Corporation fails to deliver any of the statements of income referred to in the preceding paragraphs (and ancillary reports or certificates referred to in the Purchase Agreement) within ten (10) days of the date required to be delivered under the Purchase Agreement.

(ii) If an Event of Non-Performance has occurred, the number of directors constituting the Board of Directors shall, at the written request of the holders of at least 66 2/3% of the Preferred then outstanding, be increased by such number which together with the directors designated by the holders of the Preferred Stock pursuant to the Voting Agreement, if any, shall constitute a minimum majority of the Board of Directors, and the holders of the Preferred shall have the special right, voting separately as a single class (with each share being entitled to one vote) and to the exclusion of all other classes of the Corporation's stock, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships. The special right of the holders of the Preferred to elect members of the Board of Directors may be exercised at the special meeting called pursuant to this subparagraph, at any annual or other special meeting of shareholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a meeting of the Preferred holders. Such special right shall continue until such time as there is no longer any Event

of Non-Performance in existence, at which time such special right shall terminate subject to re-vesting upon the occurrence and continuation of any Event of Non-Performance which gives rise to such special right hereunder.

(iii) At any time when such special right has vested in the holders of the Preferred, a proper officer of the Corporation shall, upon the written request of the holders of at least 10% of the Preferred then outstanding, addressed to the Secretary of the Corporation, call a special meeting of the holders of the Preferred for the purpose of electing directors pursuant to this subparagraph. Such meeting shall be held at the earliest legally permissible date at the principal office of the Corporation. If such meeting has not been called by a proper officer of the Corporation within ten (10) days after personal service of such written request upon the Secretary of the Corporation or within twenty (20) days after mailing the same to the Secretary of the Corporation at its principal office, then the holders of at least 30% of the Preferred then outstanding may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such Person so designated upon the notice required for annual meetings of shareholders and shall be held at the Corporation's principal office, or at such other place designated by the holders of at least 30% of the Preferred then outstanding. Any holder of Preferred so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of shareholders to be called pursuant to this paragraph.

(iv) At any meeting or at any adjournment thereof at which the holders of the Preferred have the special right to elect directors, the presence, in person or by proxy, of the holders of 66 2/3% of the Preferred then outstanding shall be required to constitute a quorum for the election or removal of any director by the holders of the Preferred exercising such special right. The vote of 66 2/3% of such quorum shall be required to elect or remove any such director.

(v) Any director so elected by the holders of the Preferred shall continue to serve as a director until the expiration of a period of three months during which no Event of Non-Performance listed in *Sections B4E(i)(a)* or *(b)* above is in existence. After the expiration of such three-month period, the number of directors constituting the Board of Directors shall decrease to such number as constituted the whole Board of Directors immediately prior to the occurrence of the Event of Non-Performance giving rise to the special right to elect directors.

(vi) The provisions of this *Section B4E* and all rights, obligations and restrictions hereunder shall automatically terminate and shall have no force or effect upon the occurrence of a Qualified Public Offering.

4F. Effect of Public Offering Requested under Registration Rights Agreements. The Corporation shall not be required to effect a Public Offering pursuant to Section 1.2 (h) of either of the Registration Rights Agreements which is not a Qualified Public Offering unless the holders of the Preferred then outstanding, by written consent or vote of the holders of at least 66 2/3% of the shares of Preferred then outstanding, voting together as a separate class, consent and agree that such Public Offering shall be treated as a Qualified Public Offering for purposes of these Articles of Incorporation, the Purchase Agreement, the Shareholders Agreement, the Voting Agreement, the Registration Rights Agreements and all other Transaction Documents (as such term is defined in the

Purchase Agreement), as applicable. Upon the occurrence of any such Public Offering, all rights, interests, restrictions and obligations of any Person which terminate or arise, as applicable, upon the occurrence of a Qualified Public Offering under these Articles of Incorporation, the Purchase Agreement, the Shareholders Agreement, the Voting Agreement, the Registration Rights Agreements and/or any other Transaction Document, shall be deemed to automatically terminate or arise, as applicable, without the necessity of amending any such document or instrument and without the necessity of any other action to be taken by any Person. Without limiting the foregoing provision, if required under applicable law to implement or memorialize this modification, the holders of the Preferred and other shareholders of the Corporation shall take all action reasonably necessary (including by shareholder vote or consent) to amend the Articles of Incorporation, the Purchase Agreement, the Shareholders Agreement, the Voting Agreement, the Registration Rights Agreements and/or any other Transaction Document, as appropriate, to amend the definition of Qualified Public Offering to include any such Public Offering.

Section 5. Series A Preferred

5A. Conversion.

(i) Conversion Procedure.

(a) At any time and from time to time, any holder of Series A Preferred may convert all or any portion of the Series A Preferred (including any fraction of a share) held by such holder, and upon the occurrence of a Qualified Public Offering all of the Series A Preferred (including any fraction of a share) shall automatically be converted, into a number of shares of "Series A Conversion Stock" equal to (a) the number of shares to be converted multiplied by the Stated Value of such shares divided by (b) the Series A Conversion Price then in effect (as defined below).

(b) Each conversion of Series A Preferred shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series A Preferred to be converted have been surrendered at the principal office of the Corporation. At such time as such conversion has been effected, the rights of the holder of such Series A Preferred as such holder shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Series A Conversion Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Series A Conversion Stock represented thereby.

(c) The conversion rights of any share of Series A Preferred subject to redemption hereunder shall terminate on the Redemption Date for such share unless the Corporation has failed to pay to the holder thereof the Redemption Price thereof pursuant to the provisions hereof unless a Redemption Deposit has been made with respect to such share as provided herein.

(d) Notwithstanding any other provision hereof, if a conversion of Series A Preferred is to be made in connection with a Qualified Public Offering, the conversion

of any shares of Series A Preferred may, at the election of the holder of such shares, be conditioned upon the consummation of the Qualified Public Offering in which case such conversion shall not be deemed to be effective until the consummation of the Qualified Public Offering.

(e) As soon as possible after a conversion has been effected (but in any event within five business days), the Corporation shall deliver to the converting holder:

(1) a certificate or certificates representing the number of shares of Series A Conversion Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(2) a certificate representing any shares of Series A Preferred which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted; and

(3) payment of cash in an amount equal to all declared dividends with respect to each share of Series A Preferred converted which have not been paid prior thereto.

(f) The issuance of certificates for shares of Series A Conversion Stock upon conversion of Series A Preferred shall be made without charge to the holders of such Series A Preferred for any issuance tax in respect thereof (other than any transfer tax as a result of issuing such shares of Series A Conversion Stock in a name other than that of the record holder of the Series A Preferred converted) or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Series A Conversion Stock. Upon conversion of each share of Series A Preferred, the Corporation shall take all such actions as are necessary in order to ensure that the Series A Conversion Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable.

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

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

(i) 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 issuance upon the conversion of the Series A Preferred, such number of shares of Series A Conversion Stock

issuable upon the conversion of all outstanding Series A Preferred. All shares of Series A Conversion Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges, other than transfer taxes due as a result of issuing such shares in a name other than that of the record holder of the Series A Preferred converted. The Corporation shall take all reasonable actions as may be necessary to ensure that all such shares of Series A Conversion Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Series A Conversion Stock may be listed (except for official notice of issuance which shall be promptly delivered by the Corporation upon each such issuance), and the holders of shares of Series A Preferred shall reasonably cooperate with the Corporation in making such filings with governmental authorities as are required to permit the Corporation to make such issuance.

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

(ii) Series A Conversion Price: The initial Series A Conversion Price shall be \$3.9412. In order to prevent dilution of the conversion rights granted under this *Section B5A*, the "*Series A Conversion Price*" shall be subject to adjustment from time to time as follows:

(a) Subdivision or Combination of Common Stock: If the Corporation at any time

(1) Subdivides (by any stock split, stock dividend, distribution, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares;

(2) Pays a dividend or makes a distribution on its shares of Common Stock, in shares of its capital stock other than Common Stock; or

(3) Combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares

then the Series A Conversion Price in effect immediately prior to such event shall be proportionately adjusted.

(b) Reorganization, Reclassification, Consolidation, Merger or Sale. Any recapitalization, reorganization, reclassification, consolidation, merger, share exchange,

sale of all or substantially all of the Corporation's assets to another Person or other transaction which is effected in such a manner that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as an "**Organic Change**". Prior to the consummation of any Organic Change, the Corporation shall make appropriate provisions to ensure that each of the holders of Series A Preferred shall thereafter have the right to acquire and receive, in lieu of or in addition to (as the case may be) the shares of Series A Conversion Stock immediately theretofore acquirable and receivable upon the conversion of such holder's Series A Preferred, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted its Series A Preferred immediately prior to such Organic Change. In each such case, the Corporation shall also make appropriate provisions to ensure that the provisions of this **Section B5A(ii)(b)** shall thereafter be applicable to the Series A Preferred. The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from consolidation or merger or the corporation purchasing such assets assumes by written instrument, the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(c) Issuance of Additional Shares of Common Stock. If at any time or from time to time after the Effective Date, the Corporation issues or sells Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to **Section B5A(ii)(d)**) for a consideration per share of Common Stock (the "**Series A New Issue Price**") that is less than the Series A Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series A Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, or deemed issuance or sale, to a price (calculated to the nearest ten thousandth of a dollar) equal to the Series A New Issue Price and in the case of Additional Shares of Common Stock issued without consideration, the Series A New Issue Price shall be deemed to be the par value of the Series A Preferred; *provided, however*, that if the Corporation has met the Initial Projections prior to the date of such issuance or deemed issuance, and the product derived by multiplying (x) the per share consideration received by the Corporation upon such issuance or sale times (y) the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, is less than \$10,000,000, then the Series A Conversion Price upon such issue or sale shall be (i) initially reduced to an amount equal to the quotient derived by dividing \$10,000,000 by the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale (the "**Adjusted Conversion Price**"); and (ii) thereafter, the Adjusted Conversion Price shall be reduced to a Series A Conversion Price determined by dividing (1) the sum of (x) the product derived by multiplying the Adjusted Series A Conversion Price in effect immediately prior to such issue or sale times the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (y) the consideration, if any, received by the Corporation upon such issue or sale, by (2) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale.

(d) Issuance of Rights or Options. If on or after the Effective Date, the Corporation in any manner grants or issues any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any

such Options or Convertible Securities and take a record, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon exercise of such Options or, in the case of Convertible Securities and Options thereof, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such record date shall have been fixed, as of the close of business on such record date; *provided, however*, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustment (other than pursuant to *Section B5A(ii)(d)(2)*) in the Series A Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion, or exchange thereof (other than increases or decreases that would result in an adjustment to the Series A Conversion Price under *Section B5A(ii)(a)* hereof or increases or decreases resulting from an adjustment to the Series A Conversion Price), the Series A Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based therein, shall, upon any such decrease becoming effective, be recomputed to reflect such decrease, insofar as it affects such Series A Conversion Price, but no further change in the Series A Conversion Prices shall be made upon the exercise, conversion or exchange of such Options or Convertible Securities, and no such adjustment of the Series A Conversion Price shall affect Common Stock previously issued upon conversion of the Series A Preferred;

(3) if such Options or Convertible Securities shall expire or be canceled without having been exercised or converted, the Series A Conversion Price as adjusted upon the original issuance thereof (or upon the occurrence of a record date with respect thereto) shall be readjusted as if:

(aa) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock so issued were shares of Common Stock, if any, actually issued or sold on the exercise of such Options or the conversion or exchange of such Convertible Securities, and such Additional 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 Options, whether or not exercised, plus the consideration received for issuing or selling the Convertibles Securities whether or not actually converted, 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; and

(bb) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to clauses (2) or (3) of this *Section B5A(ii)(d)* shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (x) the Series A Conversion Price on the original adjustment date (immediately prior to the adjustment) or (y) the Series A Conversion Price that would have resulted from any actual issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(e) the Series A New Issue Price shall be computed as follows:

(1) *Cash and Property:*

(aa) insofar as it consists of cash, be computed as the aggregate amount of cash received by the Corporation for such shares, after any compensation or discount in the sale, underwriting or purchase thereof by underwriter or dealers or other performing similar services or for any expenses incurred in connection therewith;

(bb) insofar as it consists of securities (i) if the securities are then traded on a national securities exchange or the NASDAQ Stock Market (or a similar national quotation system), then the value shall be computed based on the average of the closing prices of the securities on such exchange or system over the thirty-day period ending three (3) days prior to receipt by the Corporation, (ii) if the securities are actively traded over-the-counter, then the value shall be computed based on the average of the closing bid prices over the thirty-day period ending three (3) days prior to receipt by the Corporation, and (iii) if there is no active public market, then the value shall be computed based on the fair market value thereof on the date of receipt by the Corporation, as determined in good faith by the Board of Directors of the Corporation; and

(cc) insofar as it consists of property other than cash and securities, or in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, the consideration, or the proportion of consideration, as applicable, shall be computed at the fair market value of the property received, at the time of such issue, as reasonably determined in good faith by the Board of Directors of the Corporation; and

(2) *Options and Convertible Securities.* The Series A New Issue Price for Additional Shares of Common Stock deemed to have been issued pursuant to *Section B5A(ii)(d)*, relating to Options and Convertible Securities, shall be determined as follows:

$$C=(X+Y) / Z$$

Where:

C= the Series A New Issue Price

X= is the total amount, if any, received or receivable by the Corporation as consideration for the issued of such Options or Convertible Securities;

Y= the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities; and

Z= the maximum number of shares of Common stock (as set forth in the instrument relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such options or the conversion or exchange of such Convertible Securities.

(f) Certain Events. If any event occurs of the type contemplated by the provisions of this *Section B5A(ii)* but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's board of directors shall make an appropriate adjustment in the Series A Conversion Price so as to protect the rights of the holders of Series A Preferred; provided that no such adjustment shall increase the Series A Conversion Price as otherwise determined pursuant to this *Section B5A(ii)* or decrease the number of shares of Series A Conversion Stock issuable upon conversion of each share of Series A Preferred.

(g) Adjustments. If any event would result in an adjustment to the Series A Conversion Price of less than 1%, the making of such adjustment shall be postponed until the sum of all adjustments not made exceeds 1% or shares of Series A Preferred are actually converted.

(iii) Notices.

(a) Promptly upon any adjustment of the Series A Conversion Price, the Corporation shall give written notice thereof to all holders of Series A Preferred setting forth in reasonable detail the calculation of such adjustment.

(b) The Corporation shall give written notice to all holders of Series A Preferred at least ten (10) days prior to the date on which the Corporation closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with

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

(c) The Corporation shall also give written notice to the holders of Series A Preferred at least 10 days prior to the date on which any Organic Change shall take place.

Section 6. Series B Preferred

6A. Conversion.

(i) Conversion Procedure.

(a) At any time and from time to time, any holder of Series B Preferred may convert all or any portion of the Series B Preferred (including any fraction of a share) held by such holder, and upon the occurrence of a Qualified Public Offering all of the Series B Preferred (including any fraction of a share) shall automatically be converted, into a number of shares of "Series B Conversion Stock" equal to (a) the number of shares to be converted multiplied by the Stated Value of such shares divided by (b) the Series B Conversion Price then in effect (as defined below).

(b) Each conversion of Series B Preferred shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series B Preferred to be converted have been surrendered at the principal office of the Corporation. At such time as such conversion has been effected, the rights of the holder of such Series B Preferred as such holder shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Series B Conversion Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Series B Conversion Stock represented thereby.

(c) The conversion rights of any share of Series B Preferred subject to redemption hereunder shall terminate on the Redemption Date for such share unless the Corporation has failed to pay to the holder thereof the Redemption Price thereof pursuant to the provisions hereof unless a Redemption Deposit has been made with respect to such share as provided herein.

(d) Notwithstanding any other provision hereof, if a conversion of Series B Preferred is to be made in connection with a Qualified Public Offering, the conversion of any shares of Series B Preferred may, at the election of the holder of such shares, be conditioned upon the consummation of the Qualified Public Offering in which case such conversion shall not be deemed to be effective until the consummation of the Qualified Public Offering.

(e) As soon as possible after a conversion has been effected (but in any event within five business days), the Corporation shall deliver to the converting holder:

(1) a certificate or certificates representing the number of shares of Series B Conversion Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(2) a certificate representing any shares of Series B Preferred which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted; and

(3) payment of cash in an amount equal to all declared dividends with respect to each share of Series B Preferred converted which have not been paid prior thereto.

(f) The issuance of certificates for shares of Series B Conversion Stock upon conversion of Series B Preferred shall be made without charge to the holders of such Series B Preferred for any issuance tax in respect thereof (other than any transfer tax as a result of issuing such shares of Series B Conversion Stock in a name other than that of the record holder of the Series B Preferred converted) or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Series B Conversion Stock. Upon conversion of each share of Series B Preferred, the Corporation shall take all such actions as are necessary in order to ensure that the Series B Conversion Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable.

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

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

(i) 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 issuance upon the conversion of the Series B Preferred, such number of shares of Series B Conversion Stock issuable upon the conversion of all outstanding Series B Preferred. All shares of Series B Conversion Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges, other than transfer taxes due as a result of issuing such shares in a name other than that of the record holder of the Series B Preferred converted. The Corporation shall take all reasonable actions as may be necessary to ensure that all such shares of Series B Conversion Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares

of Series B Conversion Stock may be listed (except for official notice of issuance which shall be promptly delivered by the Corporation upon each such issuance), and the holders of shares of Series B Preferred shall reasonably cooperate with the Corporation in making such filings with governmental authorities as are required to permit the Corporation to make such issuance.

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

(ii) Series B Conversion Price. The initial Series B Conversion Price shall be \$3.9412. In order to prevent dilution of the conversion rights granted under this *Section B6A*, the "*Series B Conversion Price*" shall be subject to adjustment from time to time as follows:

(a) Subdivision or Combination of Common Stock: If the Corporation at any time

(1) Subdivides (by any stock split, stock dividend, distribution, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares;

(2) Pays a dividend or makes a distribution on its shares of Common Stock, in shares of its capital stock other than Common Stock; or

(3) Combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares

then the Series B Conversion Price in effect immediately prior to such event shall be proportionately adjusted.

(b) Reorganization, Reclassification, Consolidation, Merger or Sale. Prior to the consummation of any Organic Change, the Corporation shall make appropriate provisions to ensure that each of the holders of Series B Preferred shall thereafter have the right to acquire and receive, in lieu of or in addition to (as the case may be) the shares of Series B Conversion Stock immediately theretofore acquirable and receivable upon the conversion of such holder's Series B Preferred, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted its Series B Preferred immediately prior to such Organic Change. In each such case, the Corporation shall also make appropriate provisions to ensure that the provisions of this *Section B6A(ii)(b)* shall thereafter be

applicable to the Series B Preferred. The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from consolidation or merger or the corporation purchasing such assets assumes by written instrument, the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(c) Issuance of Additional Shares of Common Stock. If at any time or from time to time after the Effective Date, the Corporation issues or sells Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to **Section B6A(ii)(d)**) for a consideration per share of Common Stock (the "**Series B New Issue Price**") that is less than the Series B Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series B Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, or deemed issuance or sale, to a price (calculated to the nearest ten thousandth of a dollar) equal to the Series B New Issue Price and in the case of Additional Shares of Common Stock issued without consideration, the Series B New Issue Price shall be deemed to be the par value of the Series B Preferred.

(d) Issuance of Rights or Options. If on or after the Effective Date, the Corporation in any manner grants or issues any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities and take a record, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon exercise of such Options or, in the case of Convertible Securities and Options thereof, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such record date shall have been fixed, as of the close of business on such record date; *provided, however*, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustment (other than pursuant to **Section B6A(ii)(d)(2)**) in the Series B Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion, or exchange thereof (other than increases or decreases that would result in an adjustment to the Series B Conversion Price under **Section B6A(ii)(a)** hereof or increases or decreases resulting from an adjustment to the Series B Conversion Price), the Series B Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based therein, shall, upon any such decrease becoming effective, be recomputed to reflect such decrease, insofar as it affects such Series B Conversion Price, but no further change in the Series B Conversion Prices

shall be made upon the exercise, conversion or exchange of such Options or Convertible Securities, and no such adjustment of the Series B Conversion Price shall affect Common Stock previously issued upon conversion of the Series B Preferred;

(3) if such Options or Convertible Securities shall expire or be canceled without having been exercised or converted, the Series B Conversion Price as adjusted upon the original issuance thereof (or upon the occurrence of a record date with respect thereto) shall be readjusted as if:

(aa) in the case of Convertible Securities or Options for Common stock, the only Additional Shares of Common Stock so issued were shares of Common Stock, if any, actually issued or sold on the exercise of such Options or the conversion or exchange of such Convertible Securities, and such Additional 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 Options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities whether or not actually converted, 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; and

(bb) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to clauses (2) or (3) of this **Section B6A(ii)(d)** shall have the effect of increasing the Series B Conversion Price to an amount which exceeds the lower of (x) the Series B Conversion price on the original adjustment date (immediately prior to the adjustment) or (y) the Series B Conversion Price that would have resulted from any actual issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(e) the Series B New Issue Price shall be computed as follows:

(1) *Cash and Property:*

(aa) insofar as it consists of cash, be computed as the aggregate amount of cash received by the Corporation for such shares, after any compensation or discount in the sale, underwriting or purchase thereof by underwriter or dealers or other performing similar services or for any expenses incurred in connection therewith;

(bb) insofar as it consists of securities (i) if the securities are then traded on a national securities exchange or the NASDAQ Stock Market (or a similar national quotation system), then the value shall be computed based on the average of the closing prices of the securities on such exchange or system over the thirty-day period ending three (3) days prior to receipt by the Corporation, (ii) if the securities are actively traded over-the-counter, then the value shall be computed based on the average of the closing bid prices over the thirty-day period ending three (3) days prior to receipt by the Corporation, and (iii) if there is no active public market, then the value shall be computed based on the fair market value thereof on the date of receipt by the Corporation, as determined in good faith by the Board of Directors of the Corporation; and

(cc) insofar as it consists of property other than cash and securities, or in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, the consideration, or the proportion of consideration, as applicable, shall be computed at the fair market value of the property received, at the time of such issue, as reasonably determined in good faith by the Board of Directors of the Corporation; and

(2) *Options and Convertible Securities.* The Series B New Issue Price for Additional Shares of Common Stock deemed to have been issued pursuant to *Section B2A(ii)(d)*, relating to Options and Convertible Securities, shall be determined as follows:

$$C=(X+Y) / Z$$

Where:

C= the Series B New Issue Price

X= is the total amount, if any, received or receivable by the Corporation as consideration for the issued of such Options or Convertible Securities;

Y= the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities; and

Z= the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such options or the conversion or exchange of such Convertible Securities.

(f) *Certain Events.* If any event occurs of the type contemplated by the provisions of this *Section B6A(ii)* but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or

other rights with equity features), then the Corporation's board of directors shall make an appropriate adjustment in the Series B Conversion Price so as to protect the rights of the holders of Series B Preferred; provided that no such adjustment shall increase the Series B Conversion Price as otherwise determined pursuant to this *Section B6A(ii)* or decrease the number of shares of Series B Conversion Stock issuable upon conversion of each share of Series B Preferred.

(g) Adjustments. If any event would result in an adjustment to the Series B Conversion Price of less than 1%, the making of such adjustment shall be postponed until the sum of all adjustments not made exceeds 1% or shares of Series B Preferred are actually converted.

(iii) Notices.

(a) Promptly upon any adjustment of the Series B Conversion Price, the Corporation shall give written notice thereof to all holders of Series B Preferred setting forth in reasonable detail the calculation of such adjustment.

(b) The Corporation shall give written notice to all holders of Series B Preferred at least ten (10) days prior to the date on which the Corporation closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with respect to any pro rata subscription offer to holders of Common Stock or (c) for determining rights to vote with respect to any Organic Change, dissolution or liquidation.

(c) The Corporation shall also give written notice to the holders of Series B Preferred at least ten (10) days prior to the date on which any Organic Change shall take place.

Section 7. Series C Preferred

7A. Conversion.

(i) Conversion Procedure.

(a) At any time and from time to time, any holder of Series C Preferred may convert all or any portion of the Series C Preferred (including any fraction of a share) held by such holder, and upon the occurrence of a Qualified Public Offering all of the Series C Preferred (including any fraction of a share) shall automatically be converted, into a number of shares of "Series C Conversion Stock" equal to (a) the number of shares to be converted multiplied by the Stated Value of such shares divided by (b) the Series C Conversion Price then in effect (as defined below).

(b) Each conversion of Series C Preferred shall be deemed to have been effected as of the close of business on the date on which the certificate or certificates representing the Series C Preferred to be converted have been surrendered at the principal office of the Corporation. At such time as such conversion has been effected, the rights of the holder of such

Series C Preferred as such holder shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Series C Conversion Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Series C Conversion Stock represented thereby.

(c) The conversion rights of any share of Series C Preferred subject to redemption hereunder shall terminate on the Redemption Date for such share unless the Corporation has failed to pay to the holder thereof the Redemption Price thereof pursuant to the provisions hereof unless a Redemption Deposit has been made with respect to such share as provided herein.

(d) Notwithstanding any other provision hereof, if a conversion of Series C Preferred is to be made in connection with a Qualified Public Offering, the conversion of any shares of Series C Preferred may, at the election of the holder of such shares, be conditioned upon the consummation of the Qualified Public Offering in which case such conversion shall not be deemed to be effective until the consummation of the Qualified Public Offering.

(e) As soon as possible after a conversion has been effected (but in any event within five business days), the Corporation shall deliver to the converting holder:

(1) a certificate or certificates representing the number of shares of Series C Conversion Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified;

(2) a certificate representing any shares of Series C Preferred which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted; and

(3) payment of cash in an amount equal to all declared dividends with respect to each share of Series C Preferred converted which have not been paid prior thereto.

(f) The issuance of certificates for shares of Series C Conversion Stock upon conversion of Series C Preferred shall be made without charge to the holders of such Series C Preferred for any issuance tax in respect thereof (other than any transfer tax as a result of issuing such shares of Series C Conversion Stock in a name other than that of the record holder of the Series C Preferred converted) or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Series C Conversion Stock. Upon conversion of each share of Series C Preferred, the Corporation shall take all such actions as are necessary in order to ensure that the Series C Conversion Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable.

(g) The Corporation shall not close its books against the transfer of Series C Preferred or of Series C Conversion Stock issued or issuable upon conversion of Series C Preferred in any manner which interferes with the timely conversion of Series C Preferred. The

Corporation and each holder of any such shares shall assist and cooperate with the other to make any required governmental filings or obtain any required governmental approval prior to or in connection with any conversion of shares hereunder (including, without limitation, making any filings required to be made by the Corporation).

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

(i) 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 issuance upon the conversion of the Series C Preferred, such number of shares of Series C Conversion Stock issuable upon the conversion of all outstanding Series C Preferred. All shares of Series C Conversion Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges, other than transfer taxes due as a result of issuing such shares in a name other than that of the record holder of the Series C Preferred converted. The Corporation shall take all reasonable actions as may be necessary to ensure that all such shares of Series C Conversion Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Series C Conversion Stock may be listed (except for official notice of issuance which shall be promptly delivered by the Corporation upon each such issuance), and the holders of shares of Series C Preferred shall reasonably cooperate with the Corporation in making such filings with governmental authorities as are required to permit the Corporation to make such issuance.

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

(ii) Series C Conversion Price. The initial Series C Conversion Price shall be \$1.0190. In order to prevent dilution of the conversion rights granted under this *Section B7A*, the "*Series C Conversion Price*" shall be subject to adjustment from time to time as follows:

(a) Subdivision or Combination of Common Stock: If the Corporation at any time

(1) Subdivides (by any stock split, stock dividend, distribution, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares;

(2) Pays a dividend or makes a distribution on its shares of Common Stock, in shares of its capital stock other than Common Stock; or

(3) Combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares then the Series C Conversion Price in effect immediately prior to such event shall be proportionately adjusted.

(b) Reorganization, Reclassification, Consolidation, Merger or Sale. Prior to the consummation of any Organic Change, the Corporation shall make appropriate provisions to ensure that each of the holders of Series C Preferred shall thereafter have the right to acquire and receive, in lieu of or in addition to (as the case may be) the shares of Series C Conversion Stock immediately theretofore acquirable and receivable upon the conversion of such holder's Series C Preferred, such shares of stock, securities or assets as such holder would have received in connection with such Organic Change if such holder had converted its Series C Preferred immediately prior to such Organic Change. In each such case, the Corporation shall also make appropriate provisions to ensure that the provisions of this *Section B7A(ii)(b)* shall thereafter be applicable to the Series C Preferred. The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from consolidation or merger or the corporation purchasing such assets assumes by written instrument, the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(c) Issuance of Additional Shares of Common Stock. If at any time or from time to time after the Effective Date, the Corporation issues or sells Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to *Section B7A(ii)(d)*) for a consideration per share of Common Stock (the "*Series C New Issue Price*") that is less than the Series C Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series C Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, or deemed issuance or sale, to a price (calculated to the nearest ten thousandth of a dollar) equal to the Series C New Issue Price and in the case of Additional Shares of Common Stock issued without consideration, the Series C New Issue Price shall be deemed to be the par value of the Series C Preferred.

(d) Issuance of Rights or Options. If on or after the Effective Date, the Corporation in any manner grants or issues any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities and take a record, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon exercise of such Options

or, in the case of Convertible Securities and Options thereof, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such record date shall have been fixed, as of the close of business on such record date; *provided, however*, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustment (other than pursuant to **Section B7A(ii)(d)(2)**) in the Series C Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion, or exchange thereof (other than increases or decreases that would result in an adjustment to the Series C Conversion Price under **Section B7A(ii)(a)** hereof or increases or decreases resulting from an adjustment to the Series C Conversion Price), the Series C Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based therein, shall, upon any such decrease becoming effective, be recomputed to reflect such decrease, insofar as it affects such Series C Conversion Price, but no further change in the Series C Conversion Prices shall be made upon the exercise, conversion or exchange of such Options or Convertible Securities, and no such adjustment of the Series C Conversion Price shall affect Common Stock previously issued upon conversion of the Series C Preferred;

(3) if such Options or Convertible Securities shall expire or be canceled without having been exercised or converted, the Series C Conversion Price as adjusted upon the original issuance thereof (or upon the occurrence of a record date with respect thereto) shall be readjusted as if:

(aa) in the case of Convertible Securities or Options for Common stock, the only Additional Shares of Common Stock so issued were shares of Common Stock, if any, actually issued or sold on the exercise of such Options or the conversion or exchange of such Convertible Securities, and such Additional 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 Options, whether or not exercised, plus the consideration received for issuing or selling the Convertibles Securities whether or not actually converted, 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; and

(bb) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually

received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to clauses (2) or (3) of this **Section B7A(ii)(d)** shall have the effect of increasing the Series C Conversion Price to an amount which exceeds the lower of (x) the Series C Conversion price on the original adjustment date (immediately prior to the adjustment) or (y) the Series C Conversion Price that would have resulted from any actual issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(e) the Series C New Issue Price shall be computed as follows:

(1) *Cash and Property:*

(aa) insofar as it consists of cash, be computed as the aggregate amount of cash received by the Corporation for such shares, after any compensation or discount in the sale, underwriting or purchase thereof by underwriter or dealers or other performing similar services or for any expenses incurred in connection therewith;

(bb) insofar as it consists of securities (i) if the securities are then traded on a national securities exchange or the NASDAQ Stock Market (or a similar national quotation system), then the value shall be computed based on the average of the closing prices of the securities on such exchange or system over the thirty-day period ending three (3) days prior to receipt by the Corporation, (ii) if the securities are actively traded over-the-counter, then the value shall be computed based on the average of the closing bid prices over the thirty-day period ending three (3) days prior to receipt by the Corporation, and (iii) if there is no active public market, then the value shall be computed based on the fair market value thereof on the date of receipt by the Corporation, as determined in good faith by the Board of Directors of the Corporation; and

(cc) insofar as it consists of property other than cash and securities, or in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, the consideration, or the proportion of consideration, as applicable, shall be computed at the fair market value of the property received, at the time of such issue, as reasonably determined in good faith by the Board of Directors of the Corporation; and

(2) *Options and Convertible Securities.* The Series C New Issue Price for Additional Shares of Common Stock deemed to have been issued pursuant to **Section B2A(ii)(d)**, relating to Options and Convertible Securities, shall be determined as follows:

$$C=(X+Y) / Z$$

Where:

C= the Series C New Issue Price

X= is the total amount, if any, received or receivable by the Corporation as consideration for the issued of such Options or Convertible Securities;

Y= the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities; and

Z= the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such options or the conversion or exchange of such Convertible Securities.

(f) Certain Events. If any event occurs of the type contemplated by the provisions of this *Section B7A(ii)* but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's board of directors shall make an appropriate adjustment in the Series C Conversion Price so as to protect the rights of the holders of Series C Preferred; provided that no such adjustment shall increase the Series C Conversion Price as otherwise determined pursuant to this *Section B7A(ii)* or decrease the number of shares of Series C Conversion Stock issuable upon conversion of each share of Series C Preferred.

(g) Adjustments. If any event would result in an adjustment to the Series C Conversion Price of less than 1%, the making of such adjustment shall be postponed until the sum of all adjustments not made exceeds 1% or shares of Series C Preferred are actually converted.

(iii) Notices.

(a) Promptly upon any adjustment of the Series C Conversion Price, the Corporation shall give written notice thereof to all holders of Series C Preferred setting forth in reasonable detail the calculation of such adjustment.

(b) The Corporation shall give written notice to all holders of Series C Preferred at least ten (10) days prior to the date on which the Corporation closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with respect to any pro rata subscription offer to holders of Common Stock or (c) for determining rights to vote with respect to any Organic Change, dissolution or liquidation.

The Corporation shall also give written notice to the holders of Series C Preferred at least ten (10) days prior to the date on which any Organic Change shall take place.

Section 8. Registration of Transfer.

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

Section 9. Replacement.

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

Section 10. Definitions.

"Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the Effective Date other than:

- (i) Series B Preferred issued or issuable upon the conversion of any of the Original Debentures or Warrants issued by the Company pursuant to Loan Agreement I;
- (ii) Series C Preferred issued or issuable upon the conversion of any of the Debentures or Discretionary Borrowing Debentures issued by the Company pursuant to Loan Agreement II;
- (iii) Shares of Common Stock issued or issuable upon conversion of the Preferred authorized as of the Effective Date;
- (iv) (a) Up to 300,000 shares, net of cancellations, expirations or repurchases, of Common Stock, warrants or options to purchase Common Stock or other securities issued or issuable to the Corporation's employees pursuant to the Stock Option Plan, (b) Shares of

Common Stock issued or issuable pursuant to other employee compensation arrangements which the Compensation Committee of the Board of Directors may adopt from time to time for the issuance of Common Stock or options to acquire Common Stock at an exercise price or other consideration determined at the grant date of not less than the fair market value of the Common Stock, and (c) Up to 200,000 shares of Common Stock issued or issuable pursuant to the Outside Director Plan; *provided*, that any issuances, in an aggregate amount, under (a), (b) and (c) do not exceed 15% of the then outstanding shares of Common Stock (on a fully diluted basis); and

(v) Shares of Common Stock issued or issuable upon the exercise of any currently outstanding Options, any Warrant Certificate dated December 1, 2000 issued to Worldspan L.P. and upon conversion of any currently outstanding Convertible Securities of the Company.

“Affiliate” shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations promulgated under the Securities Exchange Act of 1934, as in effect on the date hereof (including an officer or director of, or other individual related by blood, marriage or adoption to, any such Person).

“Articles of Incorporation” means these Third Amended and Restricted Articles of Incorporation, as the same may be amended or amended and restated from time to time.

“Board of Directors” means the Corporation’s board of directors.

“Change of Control”, with respect to any Person (the ***“Entity”***), shall be deemed to have occurred if any other Person or group of Affiliated Persons, other than the Entity’s existing shareholders and their respective Affiliates, becomes the owner of securities of the Entity representing fifty percent (50%) or more of the Entity’s then outstanding securities having the right to vote on the election of the Entity’s directors or similar management officials.

“Common Stock” means, collectively, the Corporation’s common stock, par value \$.001 per share.

“Common Stock Deemed Outstanding” means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to ***Section B5A(ii)(d)***, ***Section B6A(ii)(d)*** and ***Section B7A(ii)(d)*** whether or not the Options or Convertible Securities are actually exercisable at such time.

“Convertible Securities” shall mean any evidences of indebtedness, shares (other than Common Stock and the Preferred) or other securities convertible into or exchangeable for Common Stock.

“Debentures” has the meaning ascribed to such term in Loan Agreement II.

“Discretionary Borrowing Debentures” has the meaning ascribed to such term in Loan Agreement II.

“Dividend” has the meaning set forth in ***Section B1A***.

“Event of Default” has the meaning ascribed to such term in the Loan Agreement.

“Initial Projection” means the projection of net loss and net income which were provided under Section 6E(ii) of the Purchase Agreement.

“Investment Documents” has the meaning ascribed to such term in the Purchase Agreement.

“Junior Securities” means the Common Stock and any other class or series of stock if the rights of the holders of such class or series shall be subject or subordinate to the rights of the holders of the Preferred in respect to receipt of dividends (other than dividends payable solely in shares of Common Stock) or to the receipt of amounts distributable upon liquidation of the Corporation, as the case may.

“Loan Agreement I” shall mean that certain Convertible Loan Agreement, dated July 6, 2001, by and among the Corporation and certain lenders, as such agreement may from time to time be amended in accordance with its terms.

“Loan Agreement II” shall mean that certain Convertible Loan Agreement, dated November 19, 2001, by and among the Corporation and certain lenders, as such agreement may from time to time be amended in accordance with its terms.

“Market Price” of any security means the average of the closing prices of such security’s sales on all securities exchanges on which such security may at the time be listed, or, if there has been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, or, if on any day such security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar successor organization, in each such case averaged over a period of twenty-one (21) days consisting of the day as of which “Market Price” is being determined and the twenty (20) consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the “Market Price” shall be the fair value thereof determined by the Board of Directors in good faith.

“Options” shall mean rights, options or Warrants to subscribe for purchase or otherwise acquire either Common Stock or Convertible Securities.

“Organic Change” has the meaning set forth in *Section B5A(ii)(b)*.

“Original Debentures” has the meaning ascribed to the term Debenture in Loan Agreement I.

“Outside Director Plan” means the Corporation’s 2000 Outside Director Stock Option Plan, as the same may be amended from time to time.

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

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

“Purchase Agreement” means that certain Preferred Stock Purchase Agreement, dated May 1, 2000, by and among the Corporation and certain investors, as such agreement may from time to time be amended in accordance with its terms.

“Qualified Public Offering” means (i) a Public Offering of the Corporation’s Common Stock resulting in net proceeds to the Corporation of at least \$20 million in the aggregate based on a market valuation of the Corporation of at least \$50 million; or (ii) any other Public Offering conducted pursuant to a request under either Registration Rights Agreement.

“Redemption Date” as to any share means the date specified in the notice of any redemption at the holder’s option or the applicable date specified herein in the case of any other redemption; provided that no such date shall be a Redemption Date unless the Redemption Price is actually paid in full on such date, and if not so paid in full, the Redemption Date shall be the date on which such amount is fully paid; unless the Redemption Price with respect to such share has been irrevocably deposited in an escrow account at a bank with at least \$50 million in capital and surplus with irrevocable instructions to release such amount to the holder of the share to be redeemed upon surrender of the certificates representing the share to be redeemed (a ***“Redemption Deposit”***), in which case the Redemption Date shall be the later of the date such Redemption Deposit is made or the date specified in such notice or herein.

“Redemption Price” as of any particular date shall mean with respect to any share of Preferred, an amount equal to the Stated Value thereof plus all declared and unpaid dividends.

“Registration Rights Agreement” means either of those certain Registration Rights Agreements, dated as of May 1, 2000 between the Corporation and Sabre Investments, Inc. or TDG GCD Investors, LLC, as such agreements may be amended from time to time.

“Series A Conversion Price” has the meaning ascribed to it in ***Section B5A(ii)*** of ***Article V***.

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

security issuable upon conversion of the Series A Preferred if such security is issuable in shares, or shall mean the unit in which such security is issuable if such security is not issuable in shares.

“Series A New Issue Price” has the meaning ascribed to it in **Section B5A(ii)(c)**.

“Series A Preferred” means the Corporation’s Series A Convertible Redeemable Preferred Stock, par value \$.001 per share.

“Series B Conversion Price” has the meaning ascribed to it in **Section B6A(ii)** of **Article V**.

“Series B Conversion Stock” means shares of the Corporation’s Common Stock; provided that if there is a change such that the securities issuable upon conversion of the Series B Preferred are issued by an entity other than the Corporation or there is a change in the class of securities so issuable, then the term “Series B Conversion Stock” shall mean one share of the security issuable upon conversion of the Series B Preferred if such security is issuable in shares, or shall mean the unit in which such security is issuable if such security is not issuable in shares.

“Series B New Issue Price” has the meaning ascribed to it in **Section B6A(ii)(c)**.

“Series B Preferred” means the Corporation’s Series B Convertible Redeemable Preferred Stock, par value \$.001 per share.

“Series C Conversion Price” has the meaning ascribed to it in **Section B7A(ii)** of **Article V**.

“Series C Conversion Stock” means shares of the Corporation’s Common Stock; provided that if there is a change such that the securities issuable upon conversion of the Series C Preferred are issued by an entity other than the Corporation or there is a change in the class of securities so issuable, then the term “Series C Conversion Stock” shall mean one share of the security issuable upon conversion of the Series C Preferred if such security is issuable in shares, or shall mean the unit in which such security is issuable if such security is not issuable in shares.

“Series C New Issue Price” has the meaning ascribed to it in **Section B7A(ii)(c)**.

“Series C Preferred” means the Corporation’s Series C Convertible Redeemable Preferred Stock, par value \$.001 per share.

“Shareholders Agreement” means the Amended and Restated Shareholders Agreement, of even date herewith, by and among the Corporation and certain shareholders of the Corporation, as such agreement may be amended from time to time.

“Stated Value” means as of any particular date \$3.9412 with respect to any share of Series A Preferred or Series B Preferred and \$1.0190 with respect to any share of Series C Preferred.

“Stock Option Plan” has the meaning ascribed to such term in the Purchase Agreement.

“Voting Agreement” means the Amended and Restated Voting Agreement, of even date herewith, by and among the Corporation and certain shareholders of the Corporation, as such agreement may be amended from time to time.

“Warrants” has the meaning ascribed to such term in Loan Agreement I.

Section 11. Amendment and Waiver.

No amendment, modification or waiver shall be binding or effective with respect to any provision of this **Article V B** without the prior written consent of the holders of at least 66 2/3% of the Preferred Stock outstanding at the time such action is taken and no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of at least 66 2/3% of the Preferred Stock then outstanding.

Section 12. Notices.

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

ARTICLE VI
REGISTERED OFFICE AND AGENT

The street address of the registered office of the Corporation is: 2 South Biscayne Boulevard, Suite 3400, One Biscayne Tower, Miami, Florida 33131, and the name of the registered agent of the Corporation at that address is: Valdes-Fauli Corporate Services, Inc.

ARTICLE VII
BOARD OF DIRECTORS

Section 1. Number. The Corporation shall have at least one director, but the Bylaws may provide for the increase or decrease in the number of directors in a manner which is consistent with these Articles of Incorporation, provided that the number of directors shall never be less than one.

Section 2. Compensation. The Board of Directors is hereby specifically authorized to make provisions for reasonable compensation to its members for their services as directors, and to

fix the basis and conditions upon which such compensation shall be paid. Any director of the Corporation may also serve the Corporation in any other capacity and receive compensation therefor in any form.

Section 3. Abstain from Voting on Affiliated Transactions. No member of the Board of Directors shall vote on matters brought before the Board of Directors for purposes of approving or authorizing transactions between the Corporation and the director or an Affiliate of such director.

ARTICLE VIII

INDEMNIFICATION

Section 1. Indemnification.

1A. The Corporation (and any successor to the Corporation by merger or otherwise) shall, and does hereby, indemnify, to the fullest extent permitted or authorized by current or future legislation (specifically including the full extent of indemnification permitted by §607.0850(7) Fla. Stat. (1994), or current or future judicial or administrative decisions (but, in the case of any such future legislation or decisions, only to the extent that it permits the Corporation to provide broader indemnification rights than permitted prior to such legislation or decision), each person (including the heirs, personal representatives, executors, administrators and estate of the person) who was or is a party, or is threatened to be made a party, or was or is a witness, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and any appeal therefrom (collectively, a “*Proceeding*”), against all liability (which for purposes of this Article includes all judgments, settlements, penalties, fines and taxes under the Employee Retirement Income Security Act of 1974, as amended) and costs, charges, and expenses (including attorneys’ fees) asserted against him or incurred by him by reason of the fact that the person is or was (i) a director or an officer, or (ii) an employee of the Corporation who is specifically granted the indemnification rights provided hereby by the Board of Directors, or (iii) serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including serving as a fiduciary of an employee benefit plan) and as to whom the Board has granted the right to indemnification provided hereby (each an “*Indemnified Person*”).

1B. Notwithstanding the foregoing, except with respect to the indemnification specified in the third sentence of *Section 3* of this *Article VIII*, the Corporation shall indemnify an Indemnified Person in connection with a Proceeding (or part thereof) initiated by an Indemnified Person only if authorization for the Proceeding (or part thereof) was not denied by the Board of Directors of the Corporation, acting in its sole discretion, within 60 days after receipt of notice thereof from the Indemnified Person.

Section 2. Advance of Costs, Charges and Expenses. Costs, charges and expenses (including attorneys’ fees) incurred by an Indemnified Person in defending a Proceeding shall be paid by the Corporation to the fullest extent permitted or authorized by current or future legislation or current or future judicial or administrative decisions (but, in the case of any future legislation or decisions, only to the extent that it permits the Corporation to provide broader rights to advance

costs, charges and expenses than permitted prior to the legislation or decisions) in advance of the final disposition of the Proceeding, upon receipt of an undertaking reasonably satisfactory to the Board of Directors (the "*Undertaking*") by or on behalf of the Indemnified Person to repay all amounts so advanced if it is ultimately determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article; provided that, in connection with a Proceeding (or part thereof) initiated by such Indemnified Person (except a Proceeding authorized by the second sentence of *Section 3* of this *Article VIII*), the Corporation shall pay the costs, charges and expenses in advance of the final disposition of the Proceeding only if authorization for the Proceeding (or part thereof) was not denied by the Board of Directors of the Corporation, acting in its sole discretion, within sixty (60) days after receipt of a request for advancement accompanied by an Undertaking.

A person to whom costs, charges and expenses are advanced pursuant to this Article shall not be obligated to repay pursuant to the Undertaking until the final determination of (a) the pending Proceeding in a court of competent jurisdiction concerning the right of that person to be indemnified or (b) the obligation of the person to repay pursuant to the Undertaking.

The Board of Directors may, upon approval of the Indemnified Person, authorize the Corporation's counsel to represent the Indemnified Person in any action, suit or proceeding, whether or not the Corporation is a party to the action, suit or proceeding. In the event that the Corporation's counsel is representing the Indemnified Person and subject to any limitations imposed by law or any insurance policy referred to in *Section 5* of this *Article VIII*, any Indemnified Person shall have the right to retain separate counsel and to have the fees and expenses of such counsel paid as incurred as provided herein in the event such person reasonably believes that there is an actual or potential conflict in interest between the Corporation and such person or in the event the Corporation or its insurer shall have failed to assume the defense and employ counsel acceptable to such person within a reasonable period of time after commencement of any action.

Section 3. Procedure For Indemnification. Any indemnification or advance under this Article shall be made promptly, and in any event within 60 days after delivery of the written request of the Indemnified Person. The right to indemnification or advances as granted by this Article shall be enforceable by an Indemnified Person in any court of competent jurisdiction if the Corporation denies the request under this Article in whole or in part, or if no disposition of the request is made within the sixty (60)-day period after delivery of the request. The requesting person's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any action shall also be indemnified by the Corporation. It shall be a defense available to the Corporation to assert in the action that indemnification is prohibited by law or that the claimant has not met the standard of conduct, if any, required by current or future legislation or by current or future judicial or administrative decisions for indemnification (but, in the case of future legislation or decision, only to the extent that the legislation does not impose a more stringent standard of conduct than permitted prior to the legislation or decisions). The burden of proving this defense shall be on the Corporation. Neither (a) the failure of the Corporation (including its Board of Directors or any committee thereof, its independent legal counsel, and its shareholders) to have made a determination (prior to the commencement of the action) that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct, if any, nor (b) the fact that there has been an actual determination by the Corporation (including its Board of Directors or any committee thereof, its independent legal counsel, and its shareholders) that the

claimant has not met the applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 4. Survival of Indemnification. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those indemnified may now or hereafter be entitled under any by-law, statute, agreement, vote of shareholders or disinterested directors or recommendation of counsel or otherwise, both as to actions in the person's capacity as a director, officer or employee and as to actions in another capacity while still a director, officer or employee, and shall continue as to an Indemnified Person who has ceased to be a director or officer or employee and shall inure to the benefit of the estate, heirs, personal representatives, beneficiaries, executors and administrators of such a person. All rights to indemnification and advances under this Article shall be deemed to be a contract between the Corporation and each Indemnified Person who is an Indemnified Person at any time while this Article is in effect. Any repeal or modification of this Article or any repeal or modification of relevant provisions of the Florida Business Corporation Act or any other applicable laws shall not in any way diminish the rights to indemnification of such Indemnified Person or the obligations of the Corporation arising hereunder for claims relating to matters occurring prior to the repeal or modification. The Board of Directors of the Corporation shall have the authority, by resolution, to provide for indemnification of officers, employees or agents of the Corporation and for such other indemnification of Indemnified Persons as it deems appropriate.

Section 5. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including serving as a fiduciary of an employee benefit plan), against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article or the applicable provisions of the Florida Business Corporation Act.

Section 6. Savings Clause. If this *Article VIII* or any portion is invalidated or held to be unenforceable on any ground by a court of competent jurisdiction, the Corporation shall nevertheless indemnify each Indemnified Person described in *Section 1* of this *Article VIII* to the fullest extent permitted by all applicable portions of this *Article VIII* that have not been invalidated or adjudicated unenforceable, and as permitted by applicable law.

ARTICLE IX

BYLAWS

The initial Bylaws of the Corporation shall be adopted by the directors. Bylaws may be adopted, altered, amended or repealed from time to time by either the shareholders or the Board of Directors, but the Board of Directors shall not alter, amend or repeal any bylaw adopted by the shareholders if the shareholders specifically provide that such bylaw is not subject to amendment or repeal by the directors.

ARTICLE X
SHAREHOLDERS' PREEMPTIVE RIGHTS

Except as set forth in the Shareholders Agreement, the shareholders of the Corporation shall have no preemptive rights to acquire the Corporation's unissued shares.

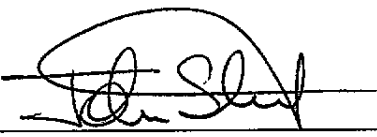
ARTICLE XI
AMENDMENT OF ARTICLES

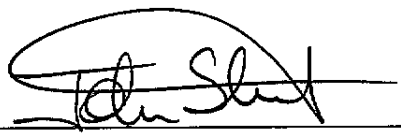
Subject to terms and conditions of *Section 11 of Article V B*, the Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on shareholders herein are granted subject to this reservation.

* * *

IN WITNESS WHEREOF, the Corporation has caused these Third Amended and Restated Articles of Incorporation to be executed by its Chief Executive Officer and Assistant Secretary on November 19, 2001.

GOCRUISEDIRECT.COM, INC.

By: 
Name: John Stewart
Title: Chief Executive Officer

By: 
Name: John Stewart
Title: Assistant Secretary

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