

Division of Corporations

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**BASIC AMENDMENT****RUNRIGHT, INC.**

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SECRETARY OF STATE  
TALLAHASSEE FLORIDAARTICLES OF AMENDMENT  
OF  
RUNRIGHT, INC.

Pursuant to the authority granted to and vested in the Board of Directors of the undersigned Corporation by the provisions of Article IV of the Articles of Incorporation of RunRight, Inc., a Florida corporation (the "Corporation"), as amended, and in accordance with the provisions of Section 607.0602 of the Florida Business Corporation Act, as amended (the "Act"), the undersigned Corporation hereby files the following Articles of Amendment:

1. The name of this Corporation is RunRight, Inc.
2. The Articles of Incorporation are hereby amended to create, out of the authorized but unissued shares of preferred stock of the Corporation, a series of preferred stock designated as Series A Convertible Non-Voting Preferred Stock (the "Series A Preferred"), to consist of 9,000,000 shares, par value one-tenth of one cent (\$0.001) per share, the preferences, limitations and rights of which shall be as set forth in the Certificate of Designations, Preferences, Limitations and Rights attached hereto as Exhibit "A" and incorporated herein by this reference.
3. The foregoing amendment to the Articles of Incorporation was duly adopted by the unanimous written consent of the Board of Directors of the Corporation on February 25, 2000. In accordance with Section 607.0602(4) of the Act, shareholder action was not required.

IN WITNESS WHEREOF, the undersigned Corporation has caused these Articles of Amendment to be executed by its duly authorized officer this 25<sup>th</sup> day of February, 2000.

RUNRIGHT, INC.

By:   
Steven A. Uiterwyk, President

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**EXHIBIT "A"****CERTIFICATE OF DESIGNATIONS, PREFERENCES, LIMITATIONS AND RIGHTS  
OF SERIES A CONVERTIBLE NON-VOTING PREFERRED STOCK**

1. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, each holder of the Series A Preferred shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities, an amount in cash equal to (a) the aggregate Liquidation Value (plus all Payable Dividends) of all shares of Series A Preferred ("Shares") held by such holder, and (b) shall also be entitled to be paid, on a pari passu basis with any Junior Securities (including, without limitation, the Common Stock), any amounts remaining undistributed following the payment of (i) the preference payment to the Shares set forth in clause (a) of this sentence and (ii) a payment to each holder of Junior Securities of an amount equal to the product of the Conversion Price and the aggregate number of Junior Securities held by such holder. If upon any such liquidation, dissolution or winding up of the Corporation, the Corporation's assets to be distributed among the holders of the Series A Preferred are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid, then the entire assets to be distributed shall be distributed ratably among such holders based upon the aggregate Liquidation Value of the Series A Preferred held by each such holder. Prior to the liquidation, dissolution or winding up of the Corporation, the Corporation shall declare for payment all Payable Dividends with respect to the Series A Preferred. The Corporation shall mail written notice of such liquidation, dissolution or winding up, not less than 60 days prior to the payment date stated therein, to each record holder of Series A Preferred. Neither the consolidation or merger of the Corporation into or with any other entity or entities, nor the sale or transfer by the Corporation of all or any part of its assets, nor the reduction of the capital stock of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 1.

2. Dividends.

(a) From and after the date of issuance of the Series A Preferred, the holders of the Series A Preferred shall be entitled to receive, out of funds legally available for that purpose, dividends at the rate of twelve percent (12%) of the Liquidation Value per annum per share of Series A Preferred held by such holders. Such dividends shall (i) accrue in the form of additional shares of Series A Preferred through June 30, 2005, compounded annually, and shall be payable in cash thereafter, and (ii) cumulate from and after the date of issuance, whether or not earned or declared, and any dividends for any period of less than a full year shall cumulate on a day-to-day basis computed on the basis of a 365-day year.

(b) Upon the consummation of a Qualified Public Offering, all Payable Dividends shall be paid in Common Stock, valued at the Conversion Price then in effect.

(c) So long as any shares of Series A Preferred shall be outstanding, the Corporation shall not declare or pay on any Junior Securities any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid) nor shall the Corporation make any distribution on any Junior Securities, nor shall any Junior Securities be purchased or redeemed by the Corporation or any Subsidiary (other than pursuant to agreements with employees, advisors, or consultants to the Corporation or its Subsidiaries as approved by the Board of Directors of the Corporation) nor shall any monies be paid or made available for sinking funds for the purchase or redemption of any Junior Securities.

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3. Voting Rights. The holders of the Series A Preferred shall not be entitled to vote on any matter submitted to the stockholders for a vote, except as otherwise provided in the Act.

4. Conversion.

(a) Conversion Procedure.

(i) At any time and from time to time, any holder of Series A Preferred may convert all or any portion of the Shares (including any fraction of a Share) held by such holder into a number of shares of Conversion Stock computed by multiplying the aggregate number of Shares to be converted by One Dollar (\$1.00), and dividing the result by the Conversion Price then in effect. Notwithstanding any other provision hereof, if a conversion of Series A Preferred is to be made in connection with a Public Offering or an Organic Change, 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 Public Offering or the Organic Change, in which case such conversion shall not be deemed to be effective until the consummation of the Public Offering or the Organic Change, as the case may be.

(ii) 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 (duly endorsed) 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 Conversion Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Conversion Stock represented thereby.

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

(A) a certificate or certificates representing the number of shares of Conversion Stock issuable by reason of such conversion in the name of the converting holder; and

(B) 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.

(iv) The issuance of certificates for shares of 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 or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Conversion Stock. Upon conversion of each Share of Series A Preferred, the Corporation shall take all such actions as are necessary in order to insure that the Conversion Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable.

(v) The Corporation shall not close its books against the transfer of Series A Preferred or of 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 shall assist and cooperate with any holder of Shares required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of Shares hereunder (including, without limitation, making any filings required to be made by the Corporation).

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(vi) If any fractional interest in a share of Conversion Stock would, except for the provisions of this Section 4(a)(vi), be deliverable upon any conversion of the Series A Preferred, the Corporation may, at its option, in lieu of delivering the fractional share therefor, pay an amount to the holder thereof equal to the Market Price of such fractional interest as of the date of conversion.

(vii) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Conversion Stock, solely for the purpose of issuance upon the conversion of the Series A Preferred, such number of shares of Conversion Stock issuable upon the conversion of all outstanding Series A Preferred. All shares of Conversion Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of conversion Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Conversion Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance).

(b) Conversion Price.

(i) The initial Conversion Price shall be \$1.333 per Share. In order to prevent dilution of the conversion rights granted hereunder, the Conversion Price shall be subject to adjustment from time to time pursuant to this Section 4.

(ii) If, on or after the original date of issuance of the Series A Preferred, the Corporation issues or sells, or in accordance with Section 4(c) is deemed to have issued or sold, any Common Stock for a consideration per share of less than \$4.00 (the "Second Round of Equity Financing"), then forthwith upon such issue or sale the Conversion Price shall be reduced (but not increased, except as specifically provided herein) to equal the quotient (calculated to the nearest one-tenth of a cent) of (x) a certain fraction, the numerator of which is the aggregate consideration received, or deemed received, by the Corporation upon such issue or sale, and the denominator of which is the aggregate number of shares of Common Stock issued or deemed issued pursuant to the Second Round of Equity Financing, divided by (y) a factor of three. For example, if the Corporation issues 10,000,000 shares of Series B Convertible Preferred Stock in the Second Round of Equity Financing for an aggregate price of \$10,000,000, and if each share of Series B Convertible Preferred Stock so issued is convertible into one-half of one share of Common Stock, then the Conversion Price shall be forthwith decreased to equal \$0.667. The adjustment effected pursuant to this Section 4(b)(ii) shall be made only once, in connection with the Second Round of Equity Financing, if any, and shall thereafter have no further force or effect.

(iii) If and whenever after the Second Round of Equity Financing, if any, the Corporation issues or sells, or in accordance with Section 4(c) is deemed to have issued or sold, any share of Common Stock without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such time, then forthwith upon such issue or sale the Conversion Price shall be reduced (but not increased, except as specifically provided herein), to the price (calculated to the nearest one-tenth of a cent) determined by dividing (x) an amount equal to the sum of (1) the aggregate number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price plus (2) the consideration received by the Corporation upon such issue or sale by (y) the aggregate number of shares of Common Stock outstanding immediately after such issue or sale.

(c) Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price under Section 4(b), the following shall be applicable:

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(i) Issuance of Rights or Options. If the Corporation in any manner grants any right, warrant or option to subscribe for or to purchase Common Stock or any stock or other securities or evidences of indebtedness convertible into or exchangeable for Common Stock (such rights, warrants or options being herein called "Options" and such convertible or exchangeable stock or securities or evidences of indebtedness being herein called "Convertible Securities") and the lowest price per share for which any one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange of any such Convertible Security is less than the Conversion Price in effect immediately prior to the time of the granting of such Option, then such share of Common Stock shall be deemed to have been issued and sold by the Corporation at the time of the granting of such Options for such price per share, and the maximum number of shares of Common Stock issuable pursuant to such Option shall be deemed to have been issued therefor. For purposes of this Section, the "lowest price per share for which any one share of Common Stock is issuable" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon the granting of the Option, upon exercise of the Option and upon conversion or exchange of the Convertible Security. No further adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Security upon the exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Security.

(ii) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Security and the lowest price per share for which any one share of Common Stock is issuable upon conversion or exchange thereof is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then such share of Common Stock shall be deemed to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share and the maximum number of shares of Common Stock issuable pursuant to such Convertible Securities shall be deemed to have been issued therefor. For the purposes of this Section, the "lowest price per share for which any one share of Common Stock is issuable" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon the issuance of the Convertible Security and upon the conversion or exchange of such Convertible Security. No further adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of any Convertible Security, and if any such issue or sale of such Convertible Security is made upon exercise of any Options for which adjustments of the Conversion Price had been or are to be made pursuant to other provisions of this Section 4, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(iii) Change in Option Price or Conversion Rate. If the purchase price provided for in any Option, the additional consideration (if any) payable upon the issue, conversion or exchange of any Convertible Security, the rate at which any Convertible Security is convertible into or exchangeable for Common Stock or the maximum number of shares of common stock issuable thereunder change at any time, including, but not limited to a change resulting from the anti-dilution provision thereof, the Conversion Price in effect at the time of such change shall be readjusted to the Conversion Price which would have been in effect at such time had such Option or Convertible Security originally provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold.

(iv) Treatment of Expired Options and Unexercised Convertible Securities. Upon the expiration of any Option or the termination of any right to convert or exchange any Convertible Security without the exercise of any such Option or right, the Conversion Price then in effect hereunder shall be adjusted to the Conversion Price which would have been in effect at the

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time of such expiration or termination had such Option or Convertible Security, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(v) Calculation of Consideration Received. If any Common Stock, Option or Convertible Security is issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the net amount received by the Corporation therefor. In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Corporation shall be the Market Price thereof as of the date of receipt. If any Common Stock, Option or Convertible Security is issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash and securities shall be determined jointly by the Corporation and the holders of a majority of the outstanding Series A Preferred. If such parties are unable to reach agreement within a reasonable period of time, the fair value of such consideration shall be determined by an independent appraiser experienced in valuing such type of consideration jointly selected by the Corporation and the holders of a majority of the outstanding Series A Preferred. The determination of such appraiser shall be final and binding upon the parties, and the fees and expenses of such appraiser shall be borne by the Corporation.

(vi) Integrated Transactions. In case any Option is issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Option by the parties thereto, the Option shall be deemed to have been issued for a consideration of one-tenth of one cent (\$0.001).

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

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

(d) Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price in the case of the issuance from and after the original date of issuance of the Series A Preferred of up to an aggregate of one million (1,000,000) shares of Common Stock or Options to issue such Common Stock, as adjusted to reflect the occurrence of any event described in Section 4(e) or (f) hereof, to directors, officers, employees or consultants of the Corporation in connection with their service as directors, their employment by the Corporation or their retention as consultants by the Corporation, plus such number of shares of Common Stock which are repurchased by the Corporation from such persons after such date pursuant to contractual rights held by the Corporation and at repurchase prices not exceeding the respective original purchase prices paid by such persons to the Corporation therefor.

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(e) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and if the Corporation at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

(f) Reorganization, Reclassification, Consolidation, Merger or Sale. Any recapitalization, reorganization, reclassification, consolidation, merger, 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 (in form and substance reasonably satisfactory to the holders of a majority of the Series A Preferred then outstanding) to insure 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 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 (in form and substance reasonably satisfactory to the holders of a majority of the Series A Preferred then outstanding) to insure that the provisions of this Certificate of Designations, Preferences, Limitations and Rights shall thereafter be applicable to the Series A Preferred (including, in the case of any such consolidation, merger or sale in which the successor entity or purchasing entity is other than the Corporation, an immediate adjustment of the Conversion Price to the value for the Common Stock reflected by the terms of such consolidation, merger or sale, and a corresponding immediate adjustment in the number of shares of Conversion Stock acquirable and receivable upon conversion of Series A Preferred, if the value so reflected is less than the Conversion Price in effect immediately prior to such consolidation, merger or sale). The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from consolidation or merger or the corporation purchasing such assets assumes by written instrument (in form and substance reasonably satisfactory to the holders of a majority of the Series A Preferred then outstanding), the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(g) Certain Events. If any event occurs of the type contemplated by the provisions of this Section 4 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 Conversion Price so as to protect the rights of the holders of Series A Preferred; provided that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this Section 4 or decrease the number of shares of Conversion Stock issuable upon conversion of each Share of Series A Preferred.

(h) Notices.

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



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(ii) The Corporation shall give written notice to all holders of Series A Preferred at least 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, or (b) with respect to any pro rata subscription offer to holders of Common Stock.

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

(i) Mandatory Conversion. Upon the occurrence of a Qualified Public Offering, all outstanding shares of Series A Preferred and, subject to Section 2(c) hereof, all Payable Dividends shall automatically convert, without any further action on the part of the Corporation or the holders of the Series A Preferred, into shares of Common Stock on and subject to the terms set forth above. Any such mandatory conversion shall only be effected at the time of, and subject to, the consummation of the Qualified Public Offering.

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

6. Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Series A Preferred. Upon the surrender of any certificate representing Series A Preferred 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 (upon satisfactory compliance with all applicable securities laws) 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 Series A Preferred represented by such new certificate from the date to which dividends have been fully paid on such Series A Preferred represented by the surrendered certificate.

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

8. Definitions.

(a) "Act" means the Florida Business Corporation Act, as amended.

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- (b) **"Common Stock"** means Common Stock of the Corporation, \$0.001 par value.
- (c) **"Conversion Price"** shall have the meaning ascribed thereto in Section 4(b) hereof, as adjusted from time to time pursuant to Section 4.
- (d) **"Conversion Stock"** means shares of the 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 **"Conversion Stock"** shall mean shares of the security issuable upon conversion of the Series A Preferred if such security is issuable in shares, or shall mean the units in which such security is issuable if such security is not issuable in shares.
- (e) **"Convertible Securities"** shall have the meaning ascribed thereto in Section 4(c)(i) hereof.
- (f) **"Junior Securities"** means any of the Corporation's equity securities other than the Series A Preferred (as adjusted for any stock split, reverse stock split, stock dividend, or similar event resulting in a change in the Series A Preferred).
- (g) **"Liquidation Value"** of any Share shall be equal to \$1.00 per share.
- (h) **"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 have 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 21 days consisting of the day as of which "Market Price" is being determined and the 20 consecutive business days prior to such day. If at any time such security is not listed on any securities exchange or quoted in the NASDAQ System or the over-the-counter market, the "Market Price" shall be the fair value thereof determined jointly by the Corporation and the holders of a majority of the Series A Preferred. If such parties are unable to reach agreement within a reasonable period of time, such fair value shall be determined by an independent appraiser experienced in valuing securities jointly selected by the Corporation and the holders of a majority of the Series A Preferred. The determination of such appraiser shall be final and binding upon the parties, and the Corporation shall pay the fees and expenses of such appraiser.
- (i) **"Options"** shall have the meaning ascribed thereto in Section 4(c)(i) hereof.
- (j) **"Organic Change"** shall have the meaning ascribed thereto in Section 4(f) hereof.
- (k) **"Payable Dividends"** means dividends declared or payable pursuant to Section 2 with respect to the Series A Preferred and only to the extent not previously paid.
- (l) **"Person"** means an individual, a partnership, a corporation, 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.
- (m) **"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

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effect, or any comparable statement under any similar federal statute then in force; provided that for purposes of Section 4(i) hereof, a Public Offering shall not include an offering made in connection with a business acquisition or combination or an employee benefit plan.

(n) **"Qualified Public Offering"** means the sale in an underwritten Public Offering registered under the Securities Act of shares of the Corporation's Common Stock having an aggregate value of at least \$9 million and in which the public offering price per share equals or exceeds \$4.00 per share of Common Stock or Common Stock equivalent (adjusted, however, for any split, stock dividend, recapitalization or other similar subdivision or combination of Common Stock occurring after the date of this Agreement).

(o) **"Second Round of Equity Financing"** shall have the meaning ascribed thereto in Section 4(b)(ii) hereof.

(p) **"Series A Preferred"** shall mean any of the 9,000,000 shares of authorized preferred stock of the Corporation which have been designated as Series A Convertible Non-Voting Preferred Stock.

(q) **"Shares"** shall have the meaning ascribed thereto in Section 1 hereof.

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

9. **Amendment and Waiver.** No amendment, modification or waiver shall be binding or effective with respect to any provision of Sections 1 to 10 hereof without the prior written consent of the holders of a majority of the Series A Preferred outstanding at the time such action is taken; and provided further that no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of a majority of the Series A Preferred then outstanding.

10. **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 stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

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