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Division of Corporations

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## BASIC AMENDMENT

AUTHORGENICS, INC.

Certificate of Status	1
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Page Count	14
Estimated Charge	\$52.50

AMEND  
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**STROOCK & STROOCK & LAVAN LLP**

200 SOUTH BISCAYNE BLVD., 33<sup>RD</sup> FLOOR  
 MIAMI, FLORIDA 33131

VOICE 305-358-9900 BROWARD 954-527-9900 FAX 305-789-9302 Date: April 30, 1999

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 H-1088 BUDAPEST, HUNGARY

PHONE 361-266-9520  
 FAX 361-266-9279

2029 CENTURY PARK EAST  
 LOS ANGELES, CA 90067

PHONE 310-556-5800  
 FAX 310-556-5959

180 MAIDEN LANE  
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FLORIDA DEPARTMENT OF STATE  
Katherine Harris  
Secretary of State

April 30, 1999

AUTHORGENICS, INC.  
8100 GOVERNORS SQUARE BLVD  
SUITE 200  
MIAMI LAKES, FL 33016US

SUBJECT: AUTHORGENICS, INC.  
REF: S20562

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**ARTICLES OF AMENDMENT  
TO  
AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
AUTHORGENICS, INC.**

AUTHORGENICS, INC. (the "Corporation"), a corporation organized and existing under and by virtue of the Florida Business Corporation Act (the "Act"), DOES HEREBY CERTIFY:

1. The name of the Corporation is Authorgenics, Inc.
2. The resolution adopted by the Board of Directors of the Corporation that contains the text of the amendment to the Corporation's Amended and Restated Articles of Incorporation is as follows:

RESOLVED, that the Amended and Restated Articles of Incorporation are hereby further amended by adding thereto the Designations of the Series B Preferred Stock attached hereto as Exhibit A.

3. A resolution containing the aforesaid amendment was adopted by the Board of Directors on April 20, 1999. Said amendment was not required to be adopted and approved by the holders of shares of capital stock of the Corporation.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to the Amended and Restated Articles of Incorporation of the Corporation to be executed and attested by the undersigned duly authorized officers, this 26 day of April, 1999.

ATTEST:

AUTHORGENICS, INC.

By:

  
Brian Stack, Chairman

By:

  
Ron Collins, President and Secretary

This Instrument Prepared By:

Seth P. Joseph  
Florida Bar No. 0286656  
Stroock & Stroock & Lavan LLP  
3300 First Union Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131-2385  
(305) 358-9900

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**EXHIBIT A****DESIGNATIONS OF THE SERIES B PREFERRED STOCK**

For the purposes of these designations, the following terms shall have the meanings specified:

*"Automatic Conversion"* shall have the meaning provided in Section 6(a)(ii) hereof.

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

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

*"Conversion Price"* shall have the meaning provided in Section 6(a)(iii) hereof.

*"Conversion Rate"* shall have the meaning provided in Section 6(a)(iii) hereof

*"Corporation"* shall mean Authorgenics, Inc., a Florida corporation.

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

*"Excluded Securities"* shall have the meaning provided in Section 7(a)(v) hereof.

*"Junior Stock"* shall mean the Common Stock and all other classes and series of equity securities of the Corporation ranking junior to the Series B Preferred Stock with respect to dividend rights, rights of redemption and rights of liquidation.

*"Liquidation"* shall have the meaning specified in Section 3 hereof.

*"1997 Corporation Option Plan"* shall mean the 1997 Performance Equity Plan of the Corporation, as amended.

*"Original Issue Date"* shall mean March 31, 1999.

*"Original Purchase Price"* per share of Series B Preferred Stock shall mean \$2.75 (appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes occurring after the Original Issue Date).

*"Qualified Consolidation"* shall mean either of the following two types of transactions: (y) any merger or consolidation of the Corporation into or with another corporation in which the shareholders of the Corporation immediately preceding such merger or consolidation (solely by virtue of their shares or other securities of the Corporation) shall own, directly or indirectly, less than fifty percent (50%) of the voting securities of the surviving corporation (a "Consolidation") if

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the surviving corporation would, following the Consolidation, have a market capitalization of no less than three hundred Million dollars (\$300,000,000) and the holders of Series B Preferred Stock would receive in such transaction freely tradable securities of the surviving corporation in exchange for their shares of the Series B Preferred Stock; or (z) any Consolidation in which the holders of the Series B Preferred Stock would receive all cash in exchange for their shares of such stock.

*"Qualified Offering"* shall mean the firm commitment, underwritten offer and sale of Common Stock to the public at a public offering price of not less than \$12.00 per share of Common Stock (appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes occurring after the Original Issue Date) and having aggregate proceeds to the Corporation of not less than \$20,000,000.

*"Redemption Date"* shall mean the date that is two years from the Original Issue Date.

*"Sale or Merger"* shall have the meaning specified in Section 3(a) hereof.

*"Securities Act"* shall mean the Federal Securities Act of 1933, as amended.

*"Series A Preferred Stock"* shall mean the 8,750 shares of Series A Preferred Stock, \$0.01 per value per share, originally issued June 25, 1997.

*"Series B Preferred Stock"* shall mean the 1,500,000 shares of Series B Preferred Stock, \$0.01 par value per share, hereby designated.

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

SECTION 1. Designation of Amount; Ranking. One Million Five Hundred Thousand (1,500,000) shares of the Preferred Stock shall be designated Series B Preferred Stock (the "Series B Preferred Stock"). The Series B Preferred Stock shall rank senior to all shares of Junior Stock, and on parity with the Series A Preferred Stock.

SECTION 2. Dividends.

(a) The holders of the Series B Preferred Stock shall be entitled to receive dividends when, as and if declared by the Board. In the event any dividend or distribution, whether cash or non-cash (other than Common Stock), is declared, paid or set aside for payment with respect to any shares of Junior Stock or Series A Preferred Stock prior to an underwritten public offering of the Corporation's equity securities registered under the Securities Act, a comparable dividend or distribution must be simultaneously declared, paid or set aside for payment with respect to the outstanding shares of the Series B Preferred Stock based on the number of shares of Common Stock into which a share of Series B Preferred Stock could be converted. In the event any such dividend or distribution is declared, paid or set aside for payment with respect to any shares of Junior Stock or Series A Preferred Stock, each holder of shares of the Series B Preferred Stock shall be paid such comparable dividend or receive such comparable distribution on the basis

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of the number of shares of Common Stock into which such holder's shares of such Series B Preferred Stock are then convertible, as hereinafter provided, as of the record date fixed for determination of holders of Junior Stock or Series A Preferred Stock entitled to receive such dividend or distribution.

(b) Notwithstanding anything herein to the contrary, no dividends or distribution shall be declared, paid or set aside for any shares of Junior Stock or Series A Preferred Stock unless, prior to such time, the holders of the Series B Preferred Stock shall have first received all declared and unpaid dividends.

(c) Dividends on the shares of capital stock of the Corporation shall be payable only out of funds legally available therefor.

### SECTION 3. Liquidation Preference.

(a) In the event of (i) any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, or, if the Corporation has subsidiaries, such of the Corporation's subsidiaries the assets of which constitute all or substantially all of the business of the Corporation and its subsidiaries taken as a whole (collectively, a "Liquidation"), or (ii) a "Sale or Merger" (hereinafter defined), unless, in the case of a Sale or Merger, either the holders of a majority of the outstanding shares of Series B Preferred Stock, voting as a class, have elected to exclude such Sale or Merger from the application of this Section 3 or the Sale or Merger constitutes a Qualified Consolidation to which an Automatic Conversion would apply (in either of which cases this Section 3 shall not apply to such transaction), the holders of shares of the Series B Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution, whether from capital, surplus or earnings, an amount equal to the Original Purchase Price, plus all declared and unpaid dividends, if any, before any payment shall be made or any asset distributed to the holders of any Junior Stock; provided, however that such distribution shall be on a pari passu basis with the holders of shares of the Series A Preferred Stock. If, upon any Liquidation or Sale or Merger, the assets available for distribution shall be insufficient to pay the holders of all outstanding shares of the Series B Preferred Stock the full preferential amounts to which they respectively shall be entitled, the holders of such shares shall share in any such distribution of any assets of the Corporation in proportion to the full amounts to which such holders of the Series B Preferred Stock would otherwise be entitled in respect of their shares if all amounts payable on or with respect to such shares were paid in full. After distribution to the holders of the Series B Preferred Stock and to the holders of the Series A Preferred Stock of the full preferential amounts to which each such holders shall be entitled, the remaining assets, if any, available for distribution shall be distributed to the holders of the Junior Stock.

For purposes of these Designations, a "Sale or Merger" shall mean any of the following: (x) the merger or consolidation of the Corporation into or with another corporation in which the shareholders of the Corporation immediately preceding such merger or consolidation (solely by virtue of their shares or other securities of the Corporation) shall own directly or indirectly less than fifty percent (50%) of the voting securities of the surviving corporation; (y) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a bona fide

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lender), whether in a single transaction or pursuant to a series of related transactions, of all or substantially all of the assets of the Corporation, whether pursuant to a single transaction or a series of related transactions or plan (which assets shall mean for these purposes fifty percent (50%) or more of the outstanding voting capital stock or interests of any subsidiaries of the Corporation, the assets of which constitute all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole); or (z) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a bona fide lender), whether in a single transaction or pursuant to a series of related transactions, of all or substantially all the assets of any subsidiaries the Corporation may have, which assets constitute all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole.

(b) To the extent necessary, the Corporation shall cause such actions to be taken by any of its subsidiaries so as to enable the proceeds of a Liquidation or a Sale or Merger to be distributed to the holders of shares of Series B Preferred Stock in accordance with this Section 3.

(c) The Corporation shall mail a written notice of the Liquidation or Sale or Merger to each holder of record of shares of Series B Preferred Stock, at his, her or its post office address last shown on the records of the Corporation, not less than 30 days prior to the date on which the Liquidation or Sale or Merger is to be consummated.

(d) Nothing herein shall affect in any way the right of each holder of shares of the Series B Preferred Stock to convert such shares at any time up to the close of business on the day preceding the consummation of the Liquidation or Sale or Merger.

(e) The value of securities and property paid or distributed in accordance with this Section 3 shall be computed at fair market value as determined by the Board in good faith.

#### SECTION 4. Redemption.

Each outstanding share of Series B Preferred Stock shall be redeemed, at a price of \$2.75, upon the earlier to occur of (x) the Redemption Date and (y) the date that is 30 days after an initial public offering of the Corporation's securities.

#### SECTION 5. Voting Rights.

(a) In addition to the rights hereinafter provided in this Section 5 and any other rights provided by applicable law or the By-laws of the Corporation, the holder of each share of Common Stock shall have one vote, the holder of each share of the Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of the Series A Preferred Stock could be converted, and the holder of each share of the Series B Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of the Series B Preferred Stock could be converted, pursuant to Section 6 hereof, at the record date for determination of the shareholders entitled to vote on such matters, or, if no such record date shall be established, at the date such vote is taken or any written consent of shareholders is solicited, such votes to be counted together with all other



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shares of stock of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of the Series B Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of the Series B Preferred Stock held by each holder could be converted), be rounded up to the nearest whole number. Holders of the Series B Preferred Stock shall be entitled to the same prior notice of any shareholders' meeting as provided to the holders of Common Stock and holders of the Series A Preferred Stock in accordance with the By-laws of the Corporation.

(b) The Corporation shall not, and shall not permit any subsidiary, any employee stock ownership plan (including any Employee Stock Ownership Plan as defined in §4975(e)(7) of the Internal Revenue Code of 1986, as amended) or other employee plan with respect to the Corporation to, without obtaining the affirmative prior consent or approval of the holders of not less than 67% of the then outstanding shares of the Series B Preferred Stock, voting separately as a class:

(i) issue or sell any class or series of capital stock or rights, options or warrants convertible into or exercisable or exchangeable for capital stock, which in each case, as to the payment of dividends, distribution of assets or redemption, including, without limitation, distribution to be made upon a Liquidation or Sale or Merger, is senior to the Series B Preferred Stock;

(ii) reclassify the shares of any class or series of Junior Stock into shares of any class or series of capital stock ranking, either as to payment of dividends, distributions of assets or redemptions, including, without limitation, distributions to be made upon a Liquidation or Sale or Merger, senior to the Series B Preferred Stock;

(iii) alter or change the terms, designations, powers, preferences or relative, participating, optional or other special rights, or the qualifications, limitations or restrictions, of the Series B Preferred Stock (including the provisions of this Section 5(b)); or

(iv) repurchase, retire or redeem any shares of capital stock of the Corporation (other than the Series B Preferred Stock pursuant to Section 4 hereof, unless all holders of the Series B Preferred Stock shall have the right to participate simultaneously in such repurchase, retirement or redemption, upon the same terms and conditions, on a proportionate basis computed for this purpose as if the shares of the Series B Preferred Stock shall have been converted into Common Stock pursuant to Section 6 hereof on the date of such repurchase, retirement or redemption or, if any, the record date fixed for any such action; provided, however, that such approval Act shall not be required in order for the Corporation to consummate a Qualified Consolidation, notwithstanding that it may result in any of the actions described in clauses (i), (ii) and (iii) above.

(c) No holder of shares of the Junior Stock, the Series A Preferred Stock, or the Series B Preferred Stock of the Corporation shall have any cumulative voting rights.

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SECTION 6. Conversion Right.

(a) (i) At the option of each holder of the Series B Preferred Stock, all or any portion of the shares of the Series B Preferred Stock shall be convertible at any time, and from time to time, into shares of Common Stock. Upon any such conversion, each share of the Series B Preferred Stock shall be converted into such number of fully paid and nonassessable shares of Common Stock equal to the quotient of (A) the Original Purchase Price of such share of the Series B Preferred Stock divided by (B) the Conversion Price.

(ii) Each share of the Series B Preferred Stock shall automatically be converted, without any action on the part of the holder thereof, into shares of Common Stock upon the closing of the first to occur of a Qualified Consolidation and a Qualified Offering, provided that, in the case of a Qualified Consolidation, the value of the consideration to be received in such transaction by each holder of a share of the Series B Preferred Stock for the shares of Common Stock into which such share may be converted as provided in the last sentence of this subparagraph (ii) shall equal or exceed the value of the consideration to which such holder would be entitled with respect to such share of Series B Preferred Stock in accordance with Section 3 hereof upon a Sale or Merger; otherwise, such holder shall retain such share of the Series B Preferred Stock and no conversion shall result automatically from consummation of the Qualified Consolidation. (The conversion described in the immediately preceding sentence is referred to hereinafter as the "Automatic Conversion.") In the event of the Automatic Conversion, the holders entitled to receive Common Stock issuable upon such conversion shall not be deemed to have converted such Series B Preferred Stock until immediately prior to the closing of the Qualified Offering. Upon the Automatic Conversion, each share of the Series B Preferred Stock shall be converted into such number of fully paid and nonassessable shares of Common Stock equal to the quotient of (A) the Original Purchase Price divided by (B) the Conversion Price.

(iii) For the purpose of determining the interest of the holders of the Series B Preferred Stock in the shares of Common Stock underlying such shares of the Series B Preferred Stock (whether for the purpose of determining the holders' ratable interest in dividends, distributions on a Liquidation or a Sale or Merger, voting rights or for repurchases, redemptions or retirement of shares), the "Conversion Price" shall be deemed initially to be \$2.00 and shall be subject to adjustment pursuant to the provisions of Section 7 hereof. The number of shares of Common Stock into which the Series B Preferred Stock shall be convertible from time to time is hereinafter referred to as the "Conversion Rate."

(b) In order to convert shares of the Series B Preferred Stock into shares of Common Stock, the holder thereof shall surrender at the principal offices of the Corporation or any transfer agent of the Corporation for the Series B Preferred Stock, the certificate or certificates therefor, duly endorsed to the Corporation or in blank, and give written notice to the Corporation at such office that such holder elects to convert such shares. Shares of the Series B Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the day of the surrender of such shares for conversion as herein provided or, in the case of the Automatic Conversion, on the date of closing of the Qualified Consolidation or Qualified Offering, as applicable, and the person entitled to receive the shares of Common Stock issuable upon such

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conversion shall be treated for all purposes as the record holder of such shares of Common Stock at such time; provided, that in the event of the Automatic Conversion pursuant to Section 6(a)(ii) hereof, the outstanding shares of the Series B Preferred Stock shall be converted automatically and simultaneously immediately prior to the consummation of a Qualified Consolidation or Qualified Offering without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock, other securities or cash, as the case may be, issuable upon the Automatic Conversion, unless the certificates evidencing such shares of the Series B Preferred Stock are either delivered to the Corporation or its transfer agent as provided above or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. No fractional shares of Common Stock shall be issued upon conversion of shares of the Series B Preferred Stock. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of the Series B Preferred Stock surrendered for conversion, the Corporation shall issue and deliver to or upon the written order of the holder of the certificates so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of the Series B Preferred Stock representing the unconverted portion of the certificate so surrendered.

(c) In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board in good faith. As promptly as practicable on or after the date of conversion of the shares of the Series B Preferred Stock, the Corporation shall issue and deliver or cause to be delivered at such office a certificate or certificates for the number of shares of Common Stock issuable upon such conversion and, if applicable, a check payable to the holder for any declared and unpaid dividends with respect to the shares of converted Series B Preferred Stock and any amounts payable in respect of fractional shares of Common Stock.

(d) In case any shares of the Series B Preferred Stock shall be converted pursuant to Section 6, the shares of the Series B Preferred Stock so converted shall resume the status of authorized but unissued shares of Preferred Stock.

SECTION 7. Adjustments to Conversion Price. The Conversion Price shall be subject to adjustment from time to time as follows:

(a) If the Corporation shall at any time, or from time to time, after the Original Issuance Date, issue any shares of Common Stock (or be deemed to have issued any shares of Common Stock, as provided herein) other than Excluded Securities (as hereinafter defined) in a transaction exempt from registration under the Securities Act without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Common Stock, the Conversion Price in effect immediately prior to each such issuance shall forthwith be lowered to a price equal to the amount of such lower consideration per share. In no

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event shall the Conversion Price be increased pursuant to this Section 7(a) except as provided in subsection 7(a)(D) hereof.

For the purposes of any adjustment of the Conversion Price pursuant to this Section 7(a), the following provisions shall be applicable:

(i) in the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting therefrom any discounts, commissions or other similar expenses allowed paid to the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof;

(ii) in the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board;

(iii) in the case of the issuance of Common Stock without consideration, the consideration shall be deemed to be \$.01 per share;

(iv) in the case of the issuance of (x) options to purchase or rights to subscribe for Common Stock or securities and related options or rights, (y) securities by their terms convertible into or exchangeable for Common Stock or (z) options to purchase or rights to subscribe for such convertible or exchangeable securities:

(A) the shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock (without regard to any provisions contained in the instrument relating thereto for subsequent adjustment of such number) shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 7(a)(i), (ii) and (iii) above), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(B) the shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof (without regard to any provisions contained in this instrument relating thereto for subsequent adjustment of such number) shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections (i), (ii) and (iii) above); "securities and related options or rights" to include for purposes of this subsection (B)

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equity securities of the Corporation issued pursuant to any agreement with the Corporation the terms of which provide for adjustment of the original purchase price or the number of shares to be received for the original consideration upon the occurrence or failure to occur of some condition related to the Corporation's business or financial condition;

(C) upon any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of any such options or rights or conversions of or exchanges for such securities (without regard to any provisions contained in the instrument relating thereto for subsequent adjustment of such number, e.g., a change resulting from the anti-dilution provisions thereof), then (to the extent such options, rights or securities remain at the time of such change, unexercised, unconverted and unexchanged) the Conversion Price to the extent in any way affected by or computed taking into account such options, rights or securities, shall be readjusted to the Conversion Price as would have been obtained had the adjustment that was originally made upon the issuance of such options, rights or securities been made upon the basis of such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of consideration upon the exercise of any such options or rights or the conversion or exchange of such securities; and

(D) upon the expiration of all such options or rights, the termination of all such rights to convert or exchange, or the expiration of all options or rights related to such convertible or exchangeable securities, the Conversion Price shall be readjusted to the Conversion Price as would have obtained had the adjustment made upon the issuance of such options, rights, securities or options or rights related to such securities not been made; and

(v) "Excluded Securities" shall mean: (A) shares of Common Stock issued upon conversion of the Series B Preferred Stock; (B) securities of the Corporation issued in connection with an adjustment to the Conversion Price pursuant to this Section 7; (C) up to 1,500,000 shares of Common Stock (which number shall be appropriately adjusted for stock splits, stock dividends, recapitalizations or similar events) issued pursuant to options, restricted stock, deferred stock or stock appreciation rights granted pursuant to the 1997 Corporation Option Plan at no less than the fair market value of such shares as of the date of grant, as such value is determined by the Board; (D) any equity securities or any option, warrant or other right to acquire equity securities of the Corporation (including any shares issuable upon exercise or conversion of exercisable or convertible securities) issued to a bank or other similar lending institution (as determined and approved by the Board) in connection with any financing of the Corporation; and (E) any equity securities issued pursuant to exercise of the preemptive rights granted in Section 8 hereof.

(b) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, as of the record date fixed for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up (or the date of such dividend distribution, subdivision or split if no record date is fixed),

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the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of the Series B Preferred Stock shall be increased in proportion to such increase in outstanding shares.

(c) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is decreased by a combination of the outstanding shares of Common Stock, then, as of the record date for such combination (or the date of such combination if no record date is fixed), the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series B Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(d) In case, at any time after the original Issuance Date, of any capital reorganization, or any reclassification of the stock of the Corporation (other than a change in par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into any other person or entity (other than a consolidation or merger in which the Corporation is the continuing corporation and which does not result in any change in the Common Stock or a Sale or Merger to which Section 3 hereof applies) or of the sale or other disposition of all or substantially all the properties and assets of the Corporation to any other person or entity (other than pursuant to a Sale or Merger to which Section 3 hereof applies), each share of the Series B Preferred Stock shall after such reorganization, reclassification, consolidation, merger, sale or other disposition be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the corporation resulting from such consolidation or surviving such merger or to which such properties and assets shall have been sold or otherwise disposed to which the holder of the number of shares of Common Stock deliverable (immediately prior to the time of such reorganization, reclassification, consolidation, merger, sale or other disposition) upon conversion of such shares would have been entitled upon such reorganization, reclassification, consolidation, merger, sale or other disposition. The provisions of Section 6 and this Section 7 shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(e) Notwithstanding anything to the contrary herein, the transfer, at any time or from time to time, by Brian and/or Cynthia Stack, with or without consideration, of shares of Common Stock to Ron Collins and Arthur Levey in an aggregate amount of up to 940,000 shares and 125,000 shares, respectively, shall not be deemed to cause any adjustment of or otherwise affect the Conversion Price.

(f) All calculations pursuant to this Section 7 shall be made to the nearest one-hundredth (1/100) of a cent or to the nearest one-tenth (1/10) of a share of Common Stock, as the case may be.

(g) In the event the provisions of this Section 7 shall require that an adjustment shall become effective immediately after a record date for an event, the Corporation may defer until the occurrence of such event (i) issuing to the holder of any share of the Series B Preferred Stock converted after such record date and before the occurrence of such event the additional shares of capital stock issuable upon such conversion by reason of the adjustment required by such event over

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and above the shares of capital stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder any amount in cash in lieu of a fractional share of capital stock pursuant to Section 6(c) hereof.

(h) Upon the occurrence of each adjustment of the Conversion Rate pursuant to this Section 7, the Corporation shall compute such adjustment in accordance with the terms hereof and mail to each holder of the Series B Preferred Stock a certificate setting forth such adjustment, the Conversion Price after such adjustment and showing in detail the facts upon which such adjustment is based.

(i) In the event the Corporation shall propose to take any action of the types described in Sections 7(a), (b), (c), and (d) hereof, then the Corporation shall give notice to each holder of the Series B Preferred Stock in the manner set forth in this Section 7(i), which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect to thereto as shall be reasonably necessary to indicate the effect of such action on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of shares of the Series B Preferred Stock. In the event any action requires the fixing of a record date, such notice shall be given at least 10 days prior the date so fixed, and in case of all other actions, such notice shall be given at least 20 days prior to the taking of any such proposed action. Failure to give such notice, or any defect therein, shall not effect the legality or validity of any such action.

(j) The Corporation shall pay any and all issue and other transactional taxes (other than income taxes) that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of the Series B Preferred Stock pursuant hereto.

(k) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series B Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

SECTION 8. Preemptive Rights. The holders of the Series B Preferred Stock shall have the right of first refusal to purchase any New Securities (as defined in this Section 8) that the Corporation may, from time to time, propose to sell and issue. This right shall be subject to the following provisions:

(a) New Securities Defined. "New Securities" shall mean any common stock or preferred stock of the Corporation, whether now authorized or not, and rights, options or warrants to purchase said common stock or preferred

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stock, and securities of any type whatsoever that are, or may become, convertible into said common stock or preferred stock; provided that "New Securities" does not include (i) up to 1,500,000 shares of Series B Preferred Stock in the aggregate issued on or following the Original Issue Date; (ii) any shares of Common Stock issuable upon the conversion of shares of Series B Preferred Stock and any securities issuable upon the conversion or exercise of other convertible or exercisable securities that are either offered to the holders of the Series B Preferred Stock pursuant to the terms of this Section 8 or specifically excluded from the terms of this Section 8; (iii) any securities of the Corporation issued pursuant to an adjustment to the Conversion Price made in accordance with Section 7 hereof or pursuant to anti-dilution adjustments provided for in the terms of other equity securities of the Corporation; (iv) up to 2,000,000 shares of Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events) issued pursuant to options, restricted stock, deferred stock or stock appreciation rights granted pursuant to the 1997 Corporation Option Plan at no less than the fair market value of such stock as of the date of grant, as such value is determined by the Board, as well as such options themselves; (v) securities issued in connection with any stock split, stock dividend or recapitalization of the Corporation; (vi) securities offered to the public pursuant to a registration statement under the Securities Act; or (viii) any equity securities or any option, warrant or other rights to acquire equity securities of the Corporation (including any shares issuable upon exercise or conversion of exercisable or convertible securities) issued to a bank or other similar lending institution (as determined and approved by the Board) in connection with any financing of the Corporation.

(b) In the event the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of the Series B Preferred Stock written notice of its intention, describing the type of New Securities, the price, the closing date of the offering thereof, and the general terms upon which the Corporation proposes to issue the same. Such holder shall be entitled at any time during the offering of the New Securities to purchase some or all of his or its pro rata portion of such New Securities for the price and upon the general terms specified in the notice (and in any case at a price and upon general terms no more favorable to any of the other purchasers in such offering), by giving, within 20 days after receiving such notice from the Corporation, written notice to the Corporation of such election stating therein the time and place of the closing of such purchase, which must be a date no later than 10 days following the closing date of the offering specified in the notice given by the Corporation or any extended closing date thereof. For purposes of this Section 8, each holder's pro rata portion of New Securities shall be equal to a fraction, the numerator of which is the number of shares of Common Stock into which such holder's shares of Series B Preferred Stock could be converted if fully converted immediately prior to such issuance and the denominator of which is the sum of



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- (i) the number of shares of Common Stock actually outstanding immediately prior to such issuance, and
- (ii) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options and convertible securities immediately prior to such issuance that are then currently exercisable or convertible.

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

(c) Any offer by the Corporation of securities in addition to those specified in the notice described in Section 8(b) above, whether on the same or different terms as are specified therein, shall again require compliance by the Corporation with the terms of this Section 8.

(d) The rights granted in this Section 8 shall terminate immediately prior to a Qualified Public Offering.

SECTION 9. Notices. Any notice required by the provisions hereof to be given to the holders of shares of Series B Preferred Stock shall be in writing may be delivered by United States Mail, first-class postage prepaid, addressed to each holder of record at his or its address appearing on the books of the Corporation.