

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported):

DECEMBER 22, 1998

CMGI, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	0-22846	04-2921333
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

100 BRICKSTONE SQUARE, ANDOVER, MASSACHUSETTS 01810  
(Address of principal executive offices and zip code)

(978) 684-3600  
Registrant's telephone number, including area code:

CMG INFORMATION SERVICES, INC.  
(Former Name or Former Address, if Changed Since Last Report)

ITEM 5. OTHER EVENTS.

On December 22, 1998, CMGI, Inc. (the "Company") issued 50,000 shares of its newly designated Series B Convertible Preferred Stock to RGC International Investors, LDC and RGC Investments II, L.P. (together the "Investors"). The shares were sold in a private placement pursuant to Regulation D under the Securities Act of 1933, as amended.

The rights and preferences of the Series B Convertible Preferred Stock are as set forth in a Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock which was filed with the Secretary of State of the State of Delaware on December 22, 1998 and is attached as part of the Company's Restated Certificate of Incorporation, as amended, which is filed as an exhibit hereto. The Series B Convertible Preferred Stock may be converted into shares of the Company's common stock at a fixed price (116% of the average closing price for the Company's common stock for the three trading days preceding December 21, 1998) for one year or until the earlier occurrence of certain specified events. Under certain circumstances, the Company has the option to redeem the Series B Convertible Preferred Stock. After one year or the earlier occurrence of certain specified events, if the Series B Convertible Preferred Stock has not been redeemed, the conversion price is based upon a formula which is tied to the undiscounted market price of the Company's common stock. Subject to waiver by the Company, there is a maximum number of shares of the Company's common stock into which the Series B Convertible Preferred Stock may convert. The Series B Convertible Preferred Stock automatically converts into Common Stock on December 22, 2000.

Pursuant to the Registration Rights Agreement entered between the Company and the Investors the Company is obligated to file with the Securities and Exchange Commission, no later than February 5, 1999, a Registration Statement on Form S-3 to register for resale the shares of the Company's common stock which may be acquired upon conversion of shares of the Series B Preferred Stock purchased by the Investors in this private placement.

The Company's press release announcing the sale of the Series B Convertible Preferred Stock as well as the Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock, the Securities Purchase Agreement between the Company and the Investors, dated December 21, 1998, and the Registration Rights Agreement are filed as exhibits to this Current Report on Form 8-K. This summary description of the transaction is qualified in its entirety by reference to the documents filed as exhibits hereto.

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

(c) Exhibits

- 99.1 Securities Purchase Agreement, dated December 21, 1998, by and among CMGI, Inc. and RGC International Investors, LDC and RGC Investments II, L.P.
- 99.2 Registration Rights Agreement, dated December 21, 1998, by and among CMGI, Inc. and RGC International Investors, LDC and RGC Investments II, L.P.
- 99.3 Restated Certificate of Incorporation of the Registrant, as amended through and including the filing of the Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock.
- 99.4 Press Release issued by CMGI, Inc. on December 22, 1998.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

January 7, 1999

CMGI, INC.

By: /s/ Andrew J. Hajducky

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Andrew J. Hajducky III, CPA  
Chief Financial Officer and Treasurer

EXHIBIT INDEX

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- 99.3 Restated Certificate of Incorporation of the Registrant, as amended through and including the filing of the Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock.
- 99.4 Press Release issued by CMGI, Inc. on December 22, 1998.

SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (this "AGREEMENT"), dated as of December 21, 1998, by and among CMGI, Inc., a Delaware corporation, with headquarters located at 100 Brickstone Square, Andover, MA 01810 ("COMPANY"), and each of the purchasers set forth on the signature pages hereto (the "BUYERS").

WHEREAS:

A. The Company and the Buyers are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Rule 506 under Regulation D ("REGULATION D") as promulgated by the United States Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "1933 ACT");

B. The Company has authorized a new series of preferred stock, designated as Series B Convertible Preferred Stock (together with any Series B Preferred Stock issued in replacement thereof or as a dividend thereon or otherwise with respect thereto in accordance with the terms thereof, the "PREFERRED SHARES"), having the rights, preferences and privileges set forth in the Certificate of Designations, Rights and Preferences attached hereto as EXHIBIT "A" (the "CERTIFICATE OF DESIGNATION");

C. The Preferred Shares are convertible into shares of common stock, \$.01 par value per share, of the Company (the "COMMON STOCK"), upon the terms and subject to the limitations and conditions set forth in the Certificate of Designation;

D. The Buyers desire to purchase and the Company desires to issue and sell, upon the terms and conditions set forth in this Agreement, an aggregate of Fifty Thousand (50,000) Preferred Shares, for an aggregate purchase price of Fifty Million Dollars (\$50,000,000).

E. Each Buyer wishes to purchase, upon the terms and conditions stated in this Agreement, the number of Preferred Shares as is set forth immediately below its name on the signature pages hereto;

F. Contemporaneous with the execution and delivery of this Agreement, the parties hereto are executing and delivering a Registration Rights Agreement, in the form attached hereto as EXHIBIT "B" (the "REGISTRATION RIGHTS AGREEMENT"), pursuant to which the Company has agreed to provide certain registration rights under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws; and

NOW THEREFORE, the Company and each of the Buyers severally (and not jointly) hereby agree as follows:

1. PURCHASE AND SALE OF PREFERRED SHARES.

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A. PURCHASE OF PREFERRED SHARES. On the Closing Date (as defined below), the

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Company shall issue and sell to each Buyer and each Buyer severally agrees to purchase from the Company such number of Preferred Shares as is set forth immediately below such Buyer's name on the signature pages hereto.

B. FORM OF PAYMENT. On the Closing Date (as defined below), (i) each Buyer

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shall pay the purchase price for the Preferred Shares to be issued and sold to it at the Closing (as defined below) (the "PURCHASE PRICE") by wire transfer of immediately available funds to the Company, in accordance with the Company's written wiring instructions, against delivery of duly executed certificates representing such number of Preferred Shares which such Buyer is purchasing and (ii) the Company shall deliver such certificates duly executed on behalf of the Company, to such Buyer, against delivery of such Purchase Price.

C. CLOSING DATE. Subject to the satisfaction (or waiver) of the conditions

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thereto set forth in Section 6 and Section 7 below, the date and time of the issuance and sale of the Preferred Shares pursuant to this Agreement (the "CLOSING DATE") shall be 12:00 noon Eastern Standard Time on December 22, 1998 or such other mutually agreed upon time. The closing of the transactions contemplated by this Agreement (the "CLOSING") shall occur on the Closing Date at the offices of Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, PA 19103, or at such other location as may be agreed to by the parties.

2. BUYERS' REPRESENTATIONS AND WARRANTIES. Each Buyer severally (and not

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jointly) represents and warrants to the Company solely as to such Buyer that:

A. INVESTMENT PURPOSE. As of the date hereof, the Buyer is purchasing the

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Preferred Shares and the shares of Common Stock issuable upon conversion of or otherwise pursuant to the Preferred Shares (including, without limitation, such additional shares of Common Stock as are issuable as a result of the events described in Articles V, VI.D(b) or VI.E of the Certificate of Designation and Section 2(c) of the Registration Rights Agreement) (such shares of Common Stock being referred to herein as the "CONVERSION SHARES", and, collectively with the Preferred Shares, the "SECURITIES") for its own account and not with a present view towards the public sale or distribution thereof, except pursuant to sales registered or exempted from registration under the 1933 Act; provided, however,

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that by making the representation herein, the Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act.

B. ACCREDITED INVESTOR STATUS. The Buyer is an "accredited investor" as that

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term is defined in Rule 501(a) of Regulation D (an "ACCREDITED INVESTOR").

C. RELIANCE ON EXEMPTIONS. The Buyer understands that the Securities are

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being offered and sold to it in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire

the Securities. The Buyer acknowledges that it has reviewed the provisions of Rule 144 (as defined below) and in connection with the sale of the Securities other than pursuant to an effective registration statement under the 1933 Act will comply with terms of such rule or another available exemption from registration.

D. INFORMATION. The Buyer and its advisors, if any, have been furnished with

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all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities which have been requested by the Buyer or its advisors. The Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigation conducted by Buyer or any of its advisors or representatives shall modify, amend or affect Buyer's right to rely on the Company's representations and warranties contained in Section 3 below. The Buyer understands that its investment in the Securities involves a significant degree of risk.

E. GOVERNMENTAL REVIEW. The Buyer understands that no United States federal

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or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities.

F. TRANSFER OR RE-SALE. The Buyer understands that (i) except as provided in

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the Registration Rights Agreement, the sale or re-sale of the Securities has not been and is not being registered under the 1933 Act or any applicable state securities laws, and the Securities may not be transferred unless (a) the Securities are sold pursuant to an effective registration statement under the 1933 Act, (b) the Buyer shall have delivered to the Company an opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that the Securities to be sold or transferred may be sold or transferred pursuant to an exemption from such registration, (c) the Securities are sold or transferred to an "affiliate" (as defined in Rule 144 promulgated under the 1933 Act (or a successor rule) ("RULE 144")) of the Buyer who agrees to sell or otherwise transfer the Securities only in accordance with this Section 2(f) and who is an Accredited Investor or (d) the Securities are sold pursuant to Rule 144; (ii) any sale of such Securities made in reliance on Rule 144 may be made only in accordance with the terms of said Rule and further, if said Rule is not applicable, any re-sale of such Securities under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other person is under any obligation to register such Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder (in each case, other than pursuant to the Registration Rights Agreement). Notwithstanding the foregoing or anything else contained herein to the contrary, the Securities may be pledged as collateral in connection with a bona fide margin account or other lending arrangement.

G. LEGENDS. The Buyer understands that the Preferred Shares and, until such

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time as the Conversion Shares have been registered under the 1933 Act as contemplated by the Registration Rights Agreement or otherwise may be sold pursuant to Rule 144 without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Conversion Shares, may bear a restrictive legend in substantially the

following form (and a stop-transfer order may be placed against transfer of the certificates for such Securities):

"The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The securities may not be sold, transferred or assigned in the absence of an effective registration statement for the securities under said Act, or an opinion of counsel, in form, substance and scope customary for opinions of counsel in comparable transactions, that registration is not required under said Act."

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of any Security upon which it is stamped, if, unless otherwise required by applicable state securities laws, (a) such Security is registered for sale under an effective registration statement filed under the 1933 Act or otherwise may be sold pursuant to Rule 144 without any restriction as to the number of securities as of a particular date that can then be immediately sold, or (b) such holder provides the Company with an opinion of counsel, in form, substance and scope customary for opinions of counsel in comparable transactions, to the effect that a public sale or transfer of such Security may be made without registration under the 1933 Act and such sale or transfer is effected or (c) such holder provides the Company with reasonable assurances and counsel to the Company provides an opinion (which opinion must be provided if such reasonable assurances are provided by such holder and the Company is in compliance with the conditions set forth in Rule 144(c)) that such Security can be sold pursuant to Rule 144. The Buyer agrees to sell all Securities, including those represented by a certificate(s) from which the legend has been removed, in compliance with applicable prospectus delivery requirements, if any.

H. AUTHORIZATION; ENFORCEMENT. This Agreement and the Registration Rights

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Agreement have been duly and validly authorized. This Agreement has been duly executed and delivered on behalf of the Buyer, and this Agreement constitutes, and upon execution and delivery by the Buyer of the Registration Rights Agreement, such agreement will constitute, valid and binding agreements of the Buyer enforceable in accordance with their terms; subject to applicable bankruptcy, insolvency, reorganization or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of specific performance or other equitable remedies.

I. RESIDENCY. The Buyer is a resident of the jurisdiction set forth

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immediately below such Buyer's name on the signature pages hereto.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company represents and

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warrants to each Buyer that:

A. ORGANIZATION AND QUALIFICATION. The Company and each of its Subsidiaries

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(as defined below), if any, is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated, with full power and authority (corporate and other) to own, lease, use and operate its properties and to carry on its



business as and where now owned, leased, used, operated and conducted. SCHEDULE 3(a) sets forth a list of all of the Subsidiaries of the Company and the jurisdiction in which each is incorporated. The Company and each of its Subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership or use of property or the nature of the business conducted by it makes such qualification necessary except where the failure to be so qualified or in good standing would not have a Material Adverse Effect. "MATERIAL ADVERSE EFFECT" means any material adverse effect on (i) the Securities, (ii) the business, operations, assets, financial condition or prospects of the Company and its Subsidiaries, if any, taken as a whole, or (iii) on the transactions contemplated hereby or by the agreements or instruments to be entered into in connection herewith. "SUBSIDIARIES" means any corporation or other organization, whether incorporated or unincorporated, in which the Company owns, directly or indirectly, any equity or other ownership interest and in which such ownership interest entitles the Company to elect a majority of the board of directors or similar governing body.

B. AUTHORIZATION; ENFORCEMENT. (i) The Company has all requisite corporate  
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power and authority to file and perform its obligations under the Certificate of Designation and to enter into and perform this Agreement and the Registration Rights Agreement and to consummate the transactions contemplated hereby and thereby and to issue the Securities, in accordance with the terms hereof and thereof, (ii) the execution and delivery of this Agreement and the Registration Rights Agreement by the Company and the consummation by it of the transactions contemplated hereby and thereby (including without limitation, the issuance of the Preferred Shares and the issuance and reservation for issuance of the Conversion Shares issuable upon conversion thereof) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board of Directors, or its stockholders is required, (iii) this Agreement has been duly executed and delivered by the Company, and (iv) this Agreement constitutes, and upon execution and delivery by the Company of the Registration Rights Agreement and the execution and filing of the Certificate of Designation, each of such agreements and instruments will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms; subject to applicable bankruptcy, insolvency, reorganization or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of specific performance or other equitable remedies.

C. CAPITALIZATION. As of the date hereof, the authorized capital stock of  
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the Company consists of (i) 100,000,000 shares of Common Stock of which 23,083,767 shares are issued and outstanding, 3,127,680 shares are reserved for issuance pursuant to the Company's stock option plans, no shares are reserved for issuance pursuant to securities (other than the Preferred Shares) exercisable for, or convertible into or exchangeable for shares of Common Stock and 2,083,332 (2x currently required) shares are reserved for issuance upon conversion of the Preferred Shares (subject to adjustment pursuant to the Company's covenant set forth in Section 4(h) below); and (ii) 5,000,000 shares of preferred stock, 250 of which are designated as Series A Preferred Stock, none of which are issued and outstanding and 50,000 are designated as the Preferred Shares. All of such outstanding shares of capital stock are, or upon issuance will be, duly authorized, validly issued, fully paid and nonassessable. No shares of capital stock of the Company are subject to preemptive rights or any other similar rights of the stockholders of the Company or any liens or encumbrances imposed through the actions or

failure to act of the Company. Except as disclosed in SCHEDULE 3(c), as of the effective date of this Agreement, (i) there are no outstanding options, warrants, scrip, rights to subscribe for, puts, calls, rights of first refusal, agreements, understandings, claims or other commitments or rights of any character whatsoever relating to, or securities or rights convertible into or exchangeable for any shares of capital stock of the Company or any of its Subsidiaries, or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its Subsidiaries, (ii) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of its or their securities under the 1933 Act (except the Registration Rights Agreement) and (iii) there are no anti-dilution or price adjustment provisions contained in any security issued by the Company (or in any agreement providing rights to security holders) that will be triggered by the issuance of the Preferred Shares or the Conversion Shares. The Company has furnished to the Buyer true and correct copies of the Company's Certificate of Incorporation as in effect on the date hereof ("CERTIFICATE OF INCORPORATION"), the Company's By-laws, as in effect on the date hereof (the "BY-LAWS"), and the terms of all securities convertible into or exercisable for Common Stock of the Company and the material rights of the holders thereof in respect thereto. The Company shall provide the Buyer with a written update of this representation signed by the Company's Chief Executive or Chief Financial Officer on behalf of the Company as of the Closing Date.

D. ISSUANCE OF SHARES. The Preferred Shares are duly authorized and, upon

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issuance in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, and free from all taxes, liens, claims and encumbrances with respect to the issue thereof and shall not be subject to preemptive rights or other similar rights of stockholders of the Company and will not impose personal liability upon the holder thereof. The Conversion Shares are duly authorized and reserved for issuance, and, upon conversion of the Preferred Shares in accordance with the terms thereof, will be validly issued, fully paid and non-assessable, and free from all taxes, liens, claims and encumbrances and will not be subject to preemptive rights or other similar rights of stockholders of the Company and will not impose personal liability upon the holder thereof.

E. ACKNOWLEDGMENT OF DILUTION. The Company understands and acknowledges the

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potentially dilutive effect to the Common Stock upon the issuance of the Conversion Shares upon conversion of the Preferred Shares. The Company further acknowledges that its obligation to issue Conversion Shares upon conversion of the Preferred Shares in accordance with this Agreement and the Certificate of Designation is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

F. SERIES OF PREFERRED STOCK. The terms, designations, powers, preferences

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and relative, participating and optional or special rights, and the qualifications, limitations and restrictions of each series of preferred stock of the Company (other than the Preferred Shares) are as stated in the Certificate of Incorporation, filed on or prior to the date hereof, and the Bylaws. The terms, designations, powers, preferences and relative, participating and optional or special rights, and the qualifications, limitations and restrictions of the Preferred Shares are as stated in the Certificate of Designation.

G. NO CONFLICTS. The execution, delivery and performance of this Agreement

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and the Registration Rights Agreement by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the filing of the Certificate of Designation and the issuance and reservation for issuance of the Conversion Shares) will not (i) conflict with or result in a violation of any provision of the Certificate of Incorporation or By-laws or (ii) violate or conflict with, or result in a breach of any provision of, or constitute a default (or an event which with notice or lapse of time or both could become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture, patent, patent license or instrument to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected (except for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect). Neither the Company nor any of its Subsidiaries is in violation of its Certificate of Incorporation, By-laws or other organizational documents and neither the Company nor any of its Subsidiaries is in default (and no event has occurred which with notice or lapse of time or both could put the Company or any of its Subsidiaries in default) under, and neither the Company nor any of its Subsidiaries has taken any action or failed to take any action that would give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party or by which any property or assets of the Company or any of its Subsidiaries is bound or affected, except for possible defaults as would not, individually or in the aggregate, have a Material Adverse Effect. The businesses of the Company and its Subsidiaries, if any, are not being conducted, and shall not be conducted so long as a Buyer owns any of the Securities, in violation of any law, ordinance or regulation of any governmental entity. Except as specifically contemplated by this Agreement and as required under the 1933 Act, any applicable state securities laws and the rules of the Nasdaq National Market ("NASDAQ"), the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency, regulatory agency, self regulatory organization or stock market or any third party in order for it to execute, deliver or perform any of its obligations under this Agreement or the Registration Rights Agreement in accordance with the terms hereof or thereof or to issue and sell the Preferred Shares in accordance with the terms hereof and to issue the Conversion Shares upon conversion of the Preferred Shares. Except as disclosed in SCHEDULE 3(g), all consents, authorizations, orders, filings and registrations which the Company is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the date hereof. The Company is not in violation of the listing requirements of Nasdaq and does not reasonably anticipate that the Common Stock will be delisted by the Nasdaq in the foreseeable future. The Company and its Subsidiaries are unaware of any facts or circumstances which might give rise to any of the foregoing.

H. SEC DOCUMENTS; FINANCIAL STATEMENTS. Since July 31, 1996, the Company has

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timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act of 1934, as amended (the "1934 ACT") (all of the foregoing filed prior to the date hereof and all

exhibits included therein and financial statements and schedules thereto and documents (other than exhibits to such documents) incorporated by reference therein, being hereinafter referred to herein as the "SEC DOCUMENTS"). The Company has made available to each Buyer true and complete copies of the SEC Documents, except for such exhibits and incorporated documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the statements made in any such SEC Documents is, or has been, required to be amended or updated under applicable law (except for such statements as have been amended or updated in subsequent filings prior to the date hereof). As of their respective dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with United States generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). Except as set forth in the financial statements of the Company included in the SEC Documents, the Company has no liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to July 31, 1998 and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in such financial statements, which, individually or in the aggregate, are not material to the financial condition or operating results of the Company.

I. ABSENCE OF CERTAIN CHANGES. Since July 31, 1998, there has been no

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material adverse change and no material adverse development in the assets, liabilities, business, properties, operations, financial condition, results of operations or prospects of the Company or any of its Subsidiaries.

J. ABSENCE OF LITIGATION. There is no action, suit, claim, proceeding,

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inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company or any of its Subsidiaries, threatened against or affecting the Company or any of its Subsidiaries, or their officers or directors in their capacity as such, that could have a Material Adverse Effect. SCHEDULE 3(j) contains a complete list and summary description of any pending or threatened proceeding against or affecting the Company or any of its Subsidiaries, without regard to whether it would have a Material Adverse Effect. The Company and its Subsidiaries are unaware of any facts or circumstances which might give rise to any of the foregoing.

K. PATENTS, COPYRIGHTS, ETC. The Company and each of its Subsidiaries owns

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or possesses the requisite licenses or rights to use all patents, patent

applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names and copyrights ("INTELLECTUAL PROPERTY") necessary to enable it to conduct its business as now operated (and, except as set forth in SCHEDULE 3(k) hereof, to the best of the Company's knowledge, as presently contemplated to be operated in the future); there is no claim or action by any person pertaining to, or proceeding pending, or to the Company's knowledge threatened, which challenges the right of the Company or of a Subsidiary with respect to any Intellectual Property necessary to enable it to conduct its business as now operated (and, except as set forth in SCHEDULE 3(K) hereof, to the best of the Company's knowledge, as presently contemplated to be operated in the future); to the best of the Company's knowledge, the Company's or its Subsidiaries' current and intended products, services and processes do not infringe on any Intellectual Property or other rights held by any person; and the Company is unaware of any facts or circumstances which might give rise to any of the foregoing. The Company and each of its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of their Intellectual Property.

L. NO MATERIALLY ADVERSE CONTRACTS, ETC. Neither the Company nor any of its

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Subsidiaries is subject to any charter, corporate or other legal restriction, or any judgment, decree, order, rule or regulation which in the judgment of the Company's executive officers has or is expected in the future to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is a party to any contract or agreement which in the judgment of the Company's executive officers has or is expected to have a Material Adverse Effect.

M. TAX STATUS. Except as set forth on SCHEDULE 3(m), the Company and each of

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its Subsidiaries has made or filed all federal, state and foreign income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject (unless and only to the extent that the Company and each of its Subsidiaries has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. The Company has not executed a waiver with respect to the statute of limitations relating to the assessment or collection of any foreign, federal, state or local tax. Except as set forth on SCHEDULE 3(m), none of the Company's tax returns is presently being audited by any taxing authority.

N. CERTAIN TRANSACTIONS. Except as set forth on SCHEDULE 3(n) and except for

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arm's length transactions pursuant to which the Company or any of its Subsidiaries makes payments in the ordinary course of business upon terms no less favorable than the Company or any of its Subsidiaries could obtain from third parties and other than the grant of stock options disclosed on SCHEDULE 3(C), none of the officers, directors, or employees of the Company is presently a party to any transaction with the Company or any of its Subsidiaries (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real

or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any corporation, partnership, trust or other entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

O. DISCLOSURE. All information relating to or concerning the Company or any

of its Subsidiaries set forth in this Agreement and provided to the Buyers pursuant to Section 2(d) hereof and otherwise in connection with the transactions contemplated hereby is true and correct in all material respects and the Company has not omitted to state any material fact necessary in order to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or exists with respect to the Company or any of its Subsidiaries or its or their business, properties, prospects, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed (assuming for this purpose that the Company's reports filed under the 1934 Act are being incorporated into an effective registration statement filed by the Company under the 1933 Act).

P. ACKNOWLEDGMENT REGARDING BUYERS' PURCHASE OF SECURITIES. The Company

acknowledges and agrees that the Buyers are acting solely in the capacity of arm's length purchasers with respect to this Agreement and the transactions contemplated hereby. The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and any statement made by any Buyer or any of their respective representatives or agents in connection with this Agreement and the transactions contemplated hereby is not advice or a recommendation and is merely incidental to the Buyers' purchase of the Securities. The Company further represents to each Buyer that the Company's decision to enter into this Agreement has been based solely on the independent evaluation of the Company and its representatives.

Q. NO INTEGRATED OFFERING. Neither the Company, nor any of its affiliates,

nor any person acting on its or their behalf, has directly or indirectly made any offers or sales of any security or solicited any offers to buy any security under circumstances that would require registration under the 1933 Act of the issuance of the Securities to the Buyers. The issuance of the Securities to the Buyers will not be integrated with any other issuance of the Company's securities (past, current or future) for purposes of any stockholder approval provisions applicable to the Company or its securities.

R. NO BROKERS. Except as set forth in SCHEDULE 3(r), the Company has taken

no action which would give rise to any claim by any person for brokerage commissions, finder's fees or similar payments relating to this Agreement or the transactions contemplated hereby.

S. PERMITS; COMPLIANCE. The Company and each of its Subsidiaries is in

possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exemptions, consents, certificates, approvals and orders necessary to own, lease and operate its properties and to carry on its business as it is now being conducted except those, the absence of

which, would not have a Material Adverse Effect (collectively, the "COMPANY PERMITS"), and there is no action pending or, to the knowledge of the Company, threatened regarding suspension or cancellation of any of the Company Permits. Neither the Company nor any of its Subsidiaries is in conflict with, or in default or violation of, any of the Company Permits, except for any such conflicts, defaults or violations which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Since July 31, 1998, neither the Company nor any of its Subsidiaries has received any notification with respect to possible conflicts, defaults or violations of applicable laws, except for notices relating to possible conflicts, defaults or violations, which conflicts, defaults or violations would not have a Material Adverse Effect.

T. ENVIRONMENTAL MATTERS.

(i) Except as set forth in SCHEDULE 3(t), there are, to the Company's knowledge, with respect to the Company or any of its Subsidiaries or any predecessor of the Company, no past or present violations of Environmental Laws (as defined below), releases of any material into the environment, actions, activities, circumstances, conditions, events, incidents, or contractual obligations which may give rise to any common law environmental liability or any liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or similar federal, state, local or foreign laws and neither the Company nor any of its Subsidiaries has received any notice with respect to any of the foregoing, nor is any action pending or, to the Company's knowledge, threatened in connection with any of the foregoing. The term "ENVIRONMENTAL LAWS" means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants contaminants, or toxic or hazardous substances or wastes (collectively, "HAZARDOUS MATERIALS") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(ii) Other than those that are or were stored, used or disposed of in compliance with applicable law, no Hazardous Materials are contained on or about any real property currently owned, leased or used by the Company or any of its Subsidiaries, and no Hazardous Materials were released on or about any real property previously owned, leased or used by the Company or any of its Subsidiaries during the period the property was owned, leased or used by the Company or any of its Subsidiaries, except in the normal course of the Company's or any of its Subsidiaries' business.

(iii) Except as set forth in SCHEDULE 3(T), there are no underground storage tanks on or under any real property owned, leased or used by the Company or any of its Subsidiaries that are not in compliance with applicable law.

U. INTERNAL ACCOUNTING CONTROLS. The Company and each of its Subsidiaries

maintain a system of internal accounting controls sufficient, in the judgment of the Company's board of directors, to provide reasonable assurance that (i) transactions are executed

in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

V. FOREIGN CORRUPT PRACTICES. Neither the Company, nor any of its

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Subsidiaries, nor any director, officer, agent, employee or other person acting on behalf of the Company or any Subsidiary has, in the course of his actions for, or on behalf of, the Company, used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977; or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

4. COVENANTS.

A. BEST EFFORTS. The parties shall use their best efforts to satisfy timely

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each of the conditions described in Section 6 and 7 of this Agreement.

B. FORM D; BLUE SKY LAWS. The Company agrees to file a Form D with respect

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to the Securities as required under Regulation D and to provide a copy thereof to each Buyer promptly after such filing. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary to qualify the Securities for sale to the Buyers at the applicable closing pursuant to this Agreement under applicable securities or "blue sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to each Buyer on or prior to the Closing Date.

C. REPORTING STATUS; ELIGIBILITY TO USE FORM S-3. The Company's Common Stock

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is registered under Section 12(g) of the 1934 Act. So long as any Buyer beneficially owns any of the Securities, the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not, so long as any Buyer beneficially owns any of the Securities, terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would permit such termination. The Company currently meets, and, so long as any Buyer beneficially owns any of the Securities, will take all necessary action to continue to meet, the "registrant eligibility" requirements set forth in the general instructions to Form S-3.

D. USE OF PROCEEDS. The Company shall use the proceeds from the sale of the

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Preferred Shares in the manner set forth in SCHEDULE 4(d) attached hereto and made a part hereof and shall not, directly or indirectly, use such proceeds for any loan to or investment in any other corporation, partnership, enterprise or other person (except in connection with its currently existing direct or indirect Subsidiaries).



E. ADDITIONAL EQUITY CAPITAL. Subject to the exceptions described below, the

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Company will not, without the prior written consent of a majority-in-interest of the Buyers, negotiate or contract with any party to obtain additional equity financing (including debt financing with an equity component) that involves (A) the issuance of Common Stock (whether upon conversion or exercise of a security convertible into or exercisable for Common Stock or otherwise) at a discount to the market price of the Common Stock on the date of issuance thereof or, in the case of a security convertible into or exercisable for Common Stock, the date of issuance of such convertible security (taking into account the value of any warrants or options to acquire Common Stock issued in connection therewith) or (B) the issuance of convertible securities that are convertible into an indeterminate number of shares of Common Stock ("FUTURE OFFERINGS") during the period (the "LOCK-UP PERIOD") beginning on the Closing Date and ending ninety (90) days from the date the Registration Statement (as defined in the Registration Rights Agreement) is declared effective (plus any days in which sales cannot be made thereunder) (the limitations referred to in this sentence are collectively referred to as the "CAPITAL RAISING LIMITATIONS"). The Capital Raising Limitations shall not apply to any transaction involving (i) issuances of securities in a firm commitment underwritten public offering (excluding a continuous offering pursuant to Rule 415 under the 1933 Act), (ii) issuances of securities as consideration for a merger, consolidation or purchase of assets, or in connection with any strategic partnership or joint venture (the primary purpose of which is not to raise equity capital), or in connection with the disposition or acquisition of a business, product or license by the Company or (iii) up to an aggregate of Seventy-Five Million Dollars (\$75,000,000) in Future Offerings; provided that the Company shall have first delivered to each Buyer,

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at least seven (7) business days prior to the closing of such Future Offering or Future Offerings, written notice describing the proposed Future Offering, including the definitive terms and conditions thereof, and providing each Buyer an option during the seven (7) business day period following delivery of such notice to purchase its pro rata share (based on the ratio that the number of Preferred Shares purchased by it hereunder bears to the aggregate number of Preferred Shares purchased hereunder) of the securities being offered in the Future Offering on the same terms as contemplated by such Future Offering (in the event the terms and conditions of a proposed Future Offering are amended in any respect after delivery of the notice to the Buyers concerning the proposed Future Offering, the Company shall deliver a new notice to each Buyer describing the amended terms and conditions of the proposed Future Offering and each Buyer thereafter shall have an option during the ten (10) day period following delivery of such new notice to purchase its pro rata share of the securities being offered on the same terms as contemplated by such proposed Future Offering, as amended). The Capital Raising Limitations also shall not apply to the issuance of securities upon exercise or conversion of the Company's options, warrants or other convertible securities outstanding as of the date hereof or to the grant of additional options or warrants, or the issuance of additional securities, under any Company stock option or restricted stock plan approved by the stockholders of the Company.

F. EXPENSES. The Company shall reimburse Rose Glen Capital Management, L.P.

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("ROSE GLEN") for all reasonable and documented expenses incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other agreements to be executed in connection herewith, including, without limitation, attorneys' and consultants' fees and expenses and travel expenses.

G. FINANCIAL INFORMATION. The Company agrees to send the following reports

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to each Buyer until such Buyer transfers, assigns, or sells all of the Securities: (i) within ten (10) days after the filing with the SEC, a copy of its Annual Report on Form 10-K, its Quarterly Reports on Form 10-Q and any Current Reports on Form 8-K; (ii) within one (1) day after release, copies of all press releases issued by the Company or any of its Subsidiaries; and (iii) contemporaneously with the making available or giving to the stockholders of the Company, copies of any notices or other information the Company makes available or gives to such stockholders.

H. RESERVATION OF SHARES. The Company shall at all times have authorized,

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and reserved for the purpose of issuance, a sufficient number of shares of Common Stock to provide for the full conversion of the outstanding Preferred Shares and issuance of the Conversion Shares in connection therewith (based on the lesser of the Market Price in effect from time to time and the Fixed Conversion Price (each as defined in the Certificate of Designation)). The Company shall not reduce the number of shares of Common Stock reserved for issuance upon conversion of Preferred Shares without the consent of a majority-in-interest of the Buyers, which consent shall not be unreasonably withheld. The Company shall use its best efforts at all times to maintain the number of shares of Common Stock so reserved for issuance at no less than two (2) times the number that is then actually issuable upon full conversion of the Preferred Shares (based on the lesser of the Market Price in effect from time to time and the Fixed Conversion Price (each as defined in the Certificate of Designation)). If at any time the number of shares of Common Stock authorized and reserved for issuance is below the number of Conversion Shares issued and issuable upon conversion of the Preferred Shares (based on the lesser of the Market Price in effect from time to time and the Fixed Conversion Price (each as defined in the Certificate of Designation)), the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations under this Section 4(h), in the case of an insufficient number of authorized shares, and using its best efforts to obtain shareholder approval of an increase in such authorized number of shares.

I. LISTING. The Company shall promptly secure the listing of the Conversion

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Shares upon each national securities exchange or automated quotation system, if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and, so long as any Buyer owns any of the Securities, shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of all Conversion Shares from time to time issuable upon conversion of the Preferred Shares. The Company will obtain and, so long as any Buyer owns any of the Securities, maintain the listing and trading of its Common Stock on Nasdaq, the Nasdaq SmallCap Market ("NASDAQ SMALLCAP"), the New York Stock Exchange ("NYSE"), or the American Stock Exchange ("AMEX") and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the National Association of Securities Dealers ("NASD") and such exchanges, as applicable. The Company shall promptly provide to each Buyer copies of any notices it receives from Nasdaq and any other exchanges or quotation systems on which the Common Stock is then listed regarding the continued eligibility of the Common Stock for listing on such exchanges and quotation systems; provided, however, that to the extent the Company discloses

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to a Buyer that the Company has material non-public information and a Buyer requests that such information not be disclosed to

such Buyer, if such information is of the type required to be delivered pursuant to this Section 4(i), the Company shall not be obligated to disclose such information pursuant to this Section 4(i).

J. CORPORATE EXISTENCE. So long as a Buyer beneficially owns any Preferred

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Shares, the Company shall maintain its corporate existence and shall not, without the prior approval of the holders of a majority-in-interest of the Preferred Shares sell all or substantially all of the Company's assets, except in the event of a merger or consolidation or sale of all or substantially all of the Company's assets, where the surviving or successor entity in such transaction (i) assumes the Company's obligations hereunder and under the agreements and instruments entered into in connection herewith and (ii) is a publicly traded corporation whose Common Stock is listed for trading on Nasdaq, Nasdaq SmallCap, NYSE or AMEX.

K. NO INTEGRATION. The Company shall not make any offers or sales of any

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security (other than the Securities) under circumstances that would require registration of the Securities being offered or sold hereunder under the 1933 Act or cause the offering of Securities to be integrated with any other offering of securities by the Company for the purpose of any stockholder approval provision applicable to the Company or its securities.

L. TRADING GUIDELINES. So long as a Buyer holds Preferred Shares, such Buyer

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covenants and agrees that it will conduct all transactions in the Common Stock in compliance with applicable securities laws. So long as a Buyer holds Preferred Shares, such Buyer will not on any given date have a net short position in the Common Stock which exceeds the number of shares of Common Stock issuable upon conversion of the Preferred Shares then held by such Buyer (based upon the lesser of the Market Price in effect from time to time and the Fixed Conversion Price (each as defined in the Certificate of Designation)).

5A TRANSFER AGENT INSTRUCTIONS. The Company shall issue irrevocable

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instructions to its transfer agent to issue certificates, registered in the name of each Buyer or its nominee, for the Conversion Shares in such amounts as specified from time to time by each Buyer to the Company upon conversion of the Preferred Shares in accordance with the terms thereof (the "IRREVOCABLE TRANSFER AGENT INSTRUCTIONS"). Prior to registration of the Conversion Shares under the 1933 Act or the date on which the Conversion Shares may be sold pursuant to Rule 144 without any restriction as to the number of securities as of a particular date that can then be immediately sold, all such certificates shall bear the restrictive legend specified in Section 2(g) of this Agreement. The Company warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5, and stop transfer instructions to give effect to Section 2(f) hereof (in the case of the Conversion Shares, prior to registration of the Conversion Shares under the 1933 Act or the date on which the Conversion Shares may be sold pursuant to Rule 144 without any restriction as to the number of securities as of a particular date that can then be immediately sold), will be given by the Company to its transfer agent and that the Securities shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement and the Registration Rights Agreement. Nothing in this Section shall affect in any way the Buyer's obligations and agreement set forth in Section 2(g) hereof to comply with all applicable prospectus delivery requirements, if any, upon re-sale of the Securities. If a Buyer provides the Company with (i) an

opinion of counsel, in form, substance and scope customary for opinions in comparable transactions, to the effect that a public sale or transfer of such Securities may be made without registration under the 1933 Act and such sale or transfer is effected or (ii) the Buyer provides reasonable assurances and counsel to the Company provides an opinion (which opinion must be provided if such reasonable assurances are provided by such holder and the Company is in compliance with the conditions set forth in Rule 144(c)) that the Securities can be sold pursuant to Rule 144, the Company shall permit the transfer, and, in the case of the Conversion Shares, promptly instruct its transfer agent to issue one or more certificates, free from any restrictive legend, in such name and in such denominations as specified by such Buyer.

6A CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL. The obligation of the  
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Company hereunder to issue and sell the Preferred Shares to a Buyer at the Closing is subject to the satisfaction, at or before the Closing Date of each of the following conditions thereto, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion:

A. The applicable Buyer shall have executed this Agreement and the Registration Rights Agreement, and delivered the same to the Company.

B. The applicable Buyer shall have delivered the Purchase Price in accordance with Section 1(b) above.

C. The Certificate of Designation shall have been accepted for filing with the Secretary of State of the State of Delaware.

D. The representations and warranties of the applicable Buyer shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date), and the applicable Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the applicable Buyer at or prior to the Closing Date.

E. No litigation, statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which prohibits the consummation of any of the transactions contemplated by this Agreement.

7A CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE. The obligation of each  
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Buyer hereunder to purchase the Preferred Shares at the Closing is subject to the satisfaction, at or before the Closing Date of each of the following conditions, provided that these conditions are for such Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion:

A. The Company shall have executed this Agreement and the Registration Rights Agreement, and delivered the same to the Buyer.

B. The Company shall have delivered to such Buyer duly executed certificates (in such denominations as the Buyer shall request) representing the Preferred Shares in accordance with Section 1(b) above.

C. The Certificate of Designation shall have been accepted for filing with the Secretary of State of the State of Delaware, and a copy thereof certified by such Secretary of State shall have been delivered to such Buyer.

D. The Irrevocable Transfer Agent Instructions, in form and substance satisfactory to a majority-in-interest of the Buyers, shall have been delivered to and acknowledged in writing by the Company's Transfer Agent.

E. The representations and warranties of the Company shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made at such time (except for representations and warranties that speak as of a specific date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Closing Date. The Buyer shall have received a certificate or certificates, executed by the chief executive officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer including, but not limited to certificates with respect to the Company's Certificate of Incorporation, By-laws and Board of Directors' resolutions relating to the transactions contemplated hereby.

F. No litigation, statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which prohibits the consummation of any of the transactions contemplated by this Agreement.

G. The Conversion Shares shall have been authorized for quotation on Nasdaq and trading in the Common Stock on Nasdaq shall not have been suspended by the SEC or Nasdaq.

H. The Buyer shall have received an opinion of the Company's counsel, dated as of the Closing Date, in form, scope and substance reasonably satisfactory to the Buyer and in substantially the same form as EXHIBIT "D" attached hereto.

I. The Buyer shall have received an officer's certificate described in Section 3(c) above, dated as of the Closing Date.

Each Buyer agrees that, for a period beginning on the date hereof and ending twelve (12) months following the date on which it no longer owns any Preferred Shares or Conversion Shares, it will not, directly or indirectly (unless in any such cases specifically invited in writing to do so by the Board of Directors of the Company), do any of the following except as acquired pursuant to or otherwise contemplated by this Agreement and the Certificate of Designation or as a result of any stock split, stock dividend or similar recapitalization by the Company or otherwise to enforce such Buyer's rights under this Agreement, the Certificate of Designation or the Registration Rights Agreement:

(i) acquire, offer to acquire, or agree to acquire by purchase or otherwise, individually or by joining a partnership, limited partnership, syndicate or other "group" (as such term is used in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (any such act, to "acquire"), any securities of the Company entitled to vote, or securities convertible into or exercisable or exchangeable for such securities (collectively, "Voting Securities") if, after such acquisition, the buyer would beneficially own 10% or more of the total combined voting power of the Company's Voting Securities then outstanding:

(ii) form, join, participate in or encourage the formation of a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of voting Securities;

(iii) make, or in any way participate in, directly or indirectly, any "solicitation" of "proxies" (as such terms are defined or used in Regulation 14A under the Exchange Act) or become a "participant" in any "election contest" (as such terms are defined or used in Rule 14a-11 under the Exchange Act) with respect to the Company, or initiate, propose or otherwise solicit stockholders of the Company for the approval of one or more stockholder proposals with respect to the Company or induce or attempt to induce any other person to initiate any stockholder proposal;

(iv) deposit any Voting Securities into a voting trust or subject them to any voting agreement or other agreement or arrangement with respect to the voting of such Voting Securities;

(v) otherwise act, directly or indirectly, alone or in concert with others, to seek to control the management, Board or Directors, policies or affairs of the Company, or solicit, propose, seek to effect or negotiate with any other person with respect to any form of business combination transaction with the Company or any affiliate thereof, or any restructuring, recapitalization or similar transaction with respect to the Company or any affiliate thereof, or announce or disclose an intent, purpose, plan or proposal with respect to the Company or any voting securities inconsistent with the provisions of this Agreement, including an intent, purpose, plan or proposal that is conditioned on or would require the Company to waive the benefit of or amend any provision of this Agreement, or assist, participate in, facilitate or encourage or solicit any effort or attempt by any person to do or seek to do any of the foregoing; and

(vi) encourage or render advice to or make any recommendation or proposal to any person, or directly or indirectly participate, aid and abet or otherwise induce any person or engage in any of the actions prohibited by this Section 8 or to engage in any actions inconsistent with such prohibitions.

9A GOVERNING LAW; MISCELLANEOUS.  
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A. GOVERNING LAW. This Agreement shall be governed by and interpreted in  
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accordance with the laws of the State of Delaware without regard to the principles of conflict of laws. The parties hereto hereby submit to the exclusive jurisdiction of the United States Federal Courts located in Delaware with respect to any dispute arising under this Agreement, the agreements entered into in connection herewith or the transactions contemplated hereby or thereby.

B. COUNTERPARTS; SIGNATURES BY FACSIMILE. This Agreement may be executed in  
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one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

C. HEADINGS. The headings of this Agreement are for convenience of reference  
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and shall not form part of, or affect the interpretation of, this Agreement.

D. SEVERABILITY. If any provision of this Agreement shall be invalid or  
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unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement or the validity or enforceability of this Agreement in any other jurisdiction.

E. ENTIRE AGREEMENT; AMENDMENTS. This Agreement and the instruments  
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referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor the Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be waived or amended other than by an instrument in writing signed by the party to be charged with enforcement.

F. NOTICES. Any notices required or permitted to be given under the terms of  
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this Agreement shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile and shall be effective five days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by facsimile, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

CMGI, Inc.  
100 Brickstone Square  
Andover, MA 01810  
Attention: Chief Executive Officer  
Facsimile: 978-684-3618

With copy to:

Palmer & Dodge LLP  
One Beacon Street  
Boston, MA 02108-3190  
Attention: William Williams II, Esquire  
Facsimile: 617-227-4420

If to a Buyer: To the address set forth immediately below such Buyer's name on the signature pages hereto.

Each party shall provide notice to the other party of any change in address.

G. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to

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the benefit of the parties and their successors and assigns. Neither the Company nor any Buyer shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other. Notwithstanding the foregoing, subject to Section 2(f), any Buyer may assign its rights and obligations hereunder to any person that purchases Securities in a private transaction from a Buyer or to any of its "affiliates," as that term is defined under the 1934 Act, without the consent of the Company; provided, however, that

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the transferee has agreed in writing to be bound by the provisions of this Agreement with such transferee becoming a "Buyer" under this Agreement with all of the rights and obligations a Buyer has hereunder and the Company shall have been notified of the name and address of the transferee.

H. THIRD PARTY BENEFICIARIES. This Agreement is intended for the benefit of

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the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

I. SURVIVAL. The representations and warranties of the Company and the

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agreements and covenants set forth in Sections 3, 4, 5 and 9 shall survive the closing hereunder notwithstanding any due diligence investigation conducted by or on behalf of the Buyers. The Company agrees to indemnify and hold harmless each of the Buyers and all their officers, directors, employees and agents for loss or damage arising as a result of or related to any breach or alleged breach by the Company of any of its representations, warranties and covenants set forth in Sections 3 and 4 hereof or any of its covenants and obligations under this Agreement or the Registration Rights Agreement, including advancement of expenses as they are incurred; provided that no such indemnification shall be

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available for any loss or damage resulting solely from any breach by the Company of a representation of which a Buyer had actual knowledge on or prior to the Closing Date.

J. PUBLICITY. The Company and each of the Buyers shall have the right to

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review a reasonable period of time before issuance of any press releases, SEC, Nasdaq or NASD filings, or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be

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entitled, without the prior approval of each of the Buyers, to make any press release or SEC, Nasdaq or NASD filings with respect to



such transactions as is required by applicable law and regulations (although each of the Buyers shall be consulted by the Company in connection with any such press release prior to its release and shall be provided with a copy thereof and be given an opportunity to comment thereon).

K. FURTHER ASSURANCES. Each party shall do and perform, or cause to be done

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and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

L. NO STRICT CONSTRUCTION. The language used in this Agreement will be

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deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

M. REMEDIES. The Company acknowledges that a breach by it of its

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obligations hereunder will cause irreparable harm to each Buyers by vitiating the intent and purpose of the transactions contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Agreement will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Agreement, that each Buyer shall be entitled, in addition to all other available remedies in law or in equity, to an injunction or injunctions to prevent or cure any breaches of the provisions of this Agreement and to enforce specifically the terms and provisions of this Agreement, without the necessity of showing economic loss and without any bond or other security being required.

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IN WITNESS WHEREOF, the undersigned Buyers and the Company have caused this Agreement to be duly executed as of the date first above written.

CMGI, INC.

By: /s/ Andrew J. Hajducky  
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Andrew J. Hajducky III  
Executive Vice President

RGC INTERNATIONAL INVESTORS, LDC  
By: Rose Glen Capital Management, L.P.,  
Investment Manager  
By: RGC General Partner Corp.,  
as General Partner

By: /s/ Wayne D. Bloch  
-----  
Wayne D. Bloch  
Managing Director

RESIDENCE: Cayman Islands

ADDRESS:

c/o Rose Glen Capital Management, L.P.  
3 Bala Plaza East, Suite 200  
251 St. Asaphs Road  
Bala Cynwyd, PA 19004  
Facsimile: 610-617-0570  
Telephone: 610-617-5900

AGGREGATE SUBSCRIPTION AMOUNT:  
Number of Preferred Shares: 35,000  
Aggregate Purchase Price: \$ 35,000,000

RGC INVESTMENTS II, L.P.  
Rose Glen Capital Management, L.P.,  
Investment Manager  
By: RGC General Partner Corp.,  
as General Partner

By: /s/ Wayne D. Bloch  
-----  
Wayne D. Bloch  
Managing Director

RESIDENCE: Delaware

ADDRESS:

c/o Rose Glen Capital Management, L.P.  
3 Bala Plaza East, Suite 200  
251 St. Asaphs Road  
Bala Cynwyd, PA 19004  
Facsimile: 610-617-0570  
Telephone: 610-617-5900

AGGREGATE SUBSCRIPTION AMOUNT:

Number of Preferred Shares:	15,000
Aggregate Purchase Price:	\$15,000,000

## REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "AGREEMENT"), dated as of December 21, 1998, by and among CMGI, Inc., a Delaware corporation, with its headquarters located at 100 Brickstone Square, Andover, MA 01810 (the "COMPANY"), and each of the undersigned (together with their respective affiliates and any assignee or transferee of all of their respective rights hereunder, the "INITIAL INVESTORS").

## WHEREAS:

A. In connection with the Securities Purchase Agreement by and among the parties hereto of even date herewith (the "SECURITIES PURCHASE AGREEMENT"), the Company has agreed, upon the terms and subject to the conditions contained therein, to issue and sell to the Initial Investors (i) shares of its Series B Convertible Preferred Stock (the "PREFERRED STOCK") that are convertible into shares of the Company's common stock, par value \$.01 per share (the "COMMON STOCK"), upon the terms and subject to the limitations and conditions set forth in the Certificate of Designations, Rights, Preferences, Privileges and Restrictions with respect to the Preferred Stock (the "CERTIFICATE OF DESIGNATION");

B. To induce the Initial Investors to execute and deliver the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "1933 ACT"), and applicable state securities laws;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each of the Initial Investors hereby agree as follows:

1. DEFINITIONS.

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A. As used in this Agreement, the following terms shall have the following meanings:

(i) "INVESTORS" means the Initial Investors and any transferee or assignee who agrees to become bound by the provisions of this Agreement in accordance with Section 9 hereof.

(ii) "REGISTER," "REGISTERED," and "REGISTRATION" refer to a registration effected by preparing and filing a Registration Statement or Statements in compliance with the 1933 Act and pursuant to Rule 415 under the 1933 Act or any successor rule providing for offering securities on a continuous basis ("RULE 415"), and the declaration or ordering of effectiveness of such Registration Statement by the United States Securities and Exchange Commission (the "SEC").

(iii) "REGISTRABLE SECURITIES" means the Conversion Shares issued or issuable upon conversion of or otherwise pursuant to the Preferred Shares (including, without limitation, any shares issued or issuable pursuant to Articles V, VI.D(b) and VI.E of the Certificate of Designation and Section 2(c) herein) and any shares of capital stock issued or issuable as a dividend on or in exchange for or otherwise with respect to any of the foregoing.

(iv) "REGISTRATION STATEMENT(S)" means a registration statement(s) of the Company under the 1933 Act.

B. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement.

2. REGISTRATION.

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A. MANDATORY REGISTRATION. The Company shall prepare, and, on or prior to

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the date which is forty-five (45) days after the date of the Closing under the Securities Purchase Agreement (the "CLOSING DATE"), file with the SEC a Registration Statement on Form S-3 (or, if Form S-3 is not then available, on such form of Registration Statement as is then available to effect a registration of the Registrable Securities, subject to the consent of the Initial Investors, which consent will not be unreasonably withheld) covering the resale of the Registrable Securities, which Registration Statement, to the extent allowable under the 1933 Act and the rules and regulations promulgated thereunder (including Rule 416), shall state that such Registration Statement also covers such indeterminate number of additional shares of Common Stock as may become issuable upon conversion of the Preferred Stock (i) to prevent dilution resulting from stock splits, stock dividends or similar transactions or (ii) by reason of changes in the Conversion Price of the Preferred Stock in accordance with the terms thereof. The number of shares of Common Stock initially included in such Registration Statement shall be no less than two (2) times the sum of the number of Conversion Shares that are then issuable upon conversion of the Preferred Stock (based on the lesser of the Market Price as would then be in effect and the Fixed Conversion Price (each as defined in the Certificate of Designation)), without regard to

any limitation on the Investor's ability to convert the Preferred Stock. The Company acknowledges that the number of shares initially included in the Registration Statement represents a good faith estimate of the maximum number of shares issuable upon conversion of the Preferred Stock.

B. UNDERWRITTEN OFFERING. If any offering pursuant to a Registration

Statement pursuant to Section 2(a) hereof involves an underwritten offering, the Investors who hold a majority in interest of the Registrable Securities subject to such underwritten offering, with the consent of a majority-in-interest of the Initial Investors, shall have the right to select one legal counsel and an investment banker or bankers and manager or managers to administer the offering, which investment banker or bankers or manager or managers shall be reasonably satisfactory to the Company.

C. PAYMENTS BY THE COMPANY. The Company shall use its best efforts to obtain

effectiveness of the Registration Statement as soon as practicable. If (i) the Registration Statement covering the Registrable Securities required to be filed by the Company pursuant to Section 2(a) hereof is not declared effective by the SEC within one hundred twenty (120) days after the Closing Date, or (ii) after the Registration Statement has been declared effective by the SEC, sales of all of the Registrable Securities cannot be made pursuant to the Registration Statement, or (iii) the Common Stock is not listed or included for quotation on the Nasdaq National Market ("NASDAQ"), the Nasdaq SmallCap Market ("NASDAQ SMALLCAP"), the New York Stock Exchange (the "NYSE") or the American Stock Exchange (the "AMEX") after being so listed or included for quotation, then the Company will make payments to the Investors in such amounts and at such times as shall be determined pursuant to this Section 2(c) as partial relief for the damages to the Investors by reason of any such delay in or reduction of their ability to sell the Registrable Securities (which remedy shall not be exclusive of any other remedies available at law or in equity). The Company shall pay to each holder of the Preferred Stock or Registrable Securities an amount equal to the stated value of the Preferred Stock then outstanding (and, in the case of holders of Registrable Securities, the stated value of Preferred Stock from which such Registrable Securities were converted) ("AGGREGATE SHARE PRICE") multiplied by one and one-half hundredths (.015) times the sum of: (i) the number of months (prorated for partial months) after the end of such 120-day period and prior to the date the Registration Statement is declared effective by the SEC; provided, however, that there shall be excluded from such period any

delays which are solely attributable to changes required by the Investors in the Registration Statement with respect to information relating to the Investors, including, without limitation, changes to the plan of distribution, or to the failure of the Investors to conduct their review of the Registration Statement pursuant to Section 3(h) below in a reasonably prompt manner; (ii) the number of months (prorated for partial months) that sales of all of the Registrable Securities cannot be made pursuant to the Registration Statement after the Registration Statement has been declared effective (including, without limitation, when sales cannot be made by reason of the Company's failure to properly supplement or amend the prospectus included therein in accordance with the terms of this Agreement, but excluding any days during an Allowed Delay (as defined in Section 3(f)); and (iii) the number of months (prorated for partial months) that the Common Stock is not listed or included for quotation on any one of the Nasdaq, Nasdaq SmallCap, NYSE or AMEX or that trading thereon is halted after the Registration Statement has been declared effective. (For example, if the Registration Statement becomes effective one (1) month after the end of such 120-day period, the Company

would pay \$15,000 for each \$1,000,000 of Aggregate Share Price. If thereafter, sales could not be made pursuant to the Registration Statement for an additional period of one (1) month, the Company would pay an additional \$15,000 for each \$1,000,000 of Aggregate Share Price.) Such amounts shall be paid in cash or, at each Investor's option, may be added to the principal amount of the Preferred Stock and thereafter be convertible into Common Stock at the "CONVERSION PRICE" (as defined in the Certificate of Designation) in accordance with the terms of the Preferred Stock. Any shares of Common Stock issued upon conversion of such amounts shall be Registrable Securities. If the Investor desires to convert the amounts due hereunder into Registrable Securities, it shall so notify the Company in writing within two (2) business days of the date on which such amounts are first payable in cash and such amounts shall be so convertible (pursuant to the mechanics set forth in the Certificate of Designation), beginning on the last day upon which the cash amount would otherwise be due in accordance with the following sentence. Payments of cash pursuant hereto shall be made within five (5) business days after the end of each period that gives rise to such obligation, provided that, if any such period extends for more than thirty (30) days, interim payments shall be made for each such thirty (30) day period.

D. PIGGY-BACK REGISTRATIONS. Subject to the last sentence of this Section

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2(d), if at any time prior to the expiration of the Registration Period (as hereinafter defined) the Company shall determine to file with the SEC a Registration Statement relating to an offering for its own account or the account of others under the 1933 Act of any of its equity securities (other than on Form S-4 or Form S-8 or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans), the Company shall send to each Investor who is entitled to registration rights under this Section 2(d) written notice of such determination and, if within fifteen (15) days after the effective date of such notice, such Investor shall so request in writing, the Company shall include in such Registration Statement all or any part of the Registrable Securities such Investor requests to be registered, except that if, in connection with any underwritten public offering for the account of the Company the managing underwriter(s) thereof shall impose a limitation on the number of shares of Common Stock which may be included in the Registration Statement because, in such underwriter(s)' judgment, marketing or other factors dictate such limitation is necessary to facilitate public distribution, then the Company shall be obligated to include in such Registration Statement only such limited portion of the Registrable Securities with respect to which such Investor has requested inclusion hereunder as the underwriter shall permit. Any exclusion of Registrable Securities shall be made pro rata among the Investors seeking to include Registrable Securities in proportion to the number of Registrable Securities sought to be included by such Investors; provided, however, that the

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Company shall not exclude any Registrable Securities unless the Company has first excluded all outstanding securities, the holders of which are not entitled to inclusion of such securities in such Registration Statement or are not entitled to pro rata inclusion with the Registrable Securities; and provided,

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further, however, that, after giving effect to the immediately preceding

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proviso, any exclusion of Registrable Securities shall be made pro rata with holders of other securities having the right to include such securities in the Registration Statement other than (x) holders of securities entitled to inclusion of their securities in such Registration Statement by reason of demand registration rights or (y) Microsoft Corp. pursuant that certain CMG Stock Purchase Agreement dated December 10, 1996. No right to registration of Registrable Securities under this Section 2(d) shall be construed to limit any registration

required under Section 2(a) hereof. If an offering in connection with which an Investor is entitled to registration under this Section 2(d) is an underwritten offering, then each Investor whose Registrable Securities are included in such Registration Statement shall, unless otherwise agreed by the Company, offer and sell such Registrable Securities in an underwritten offering using the same underwriter or underwriters and, subject to the provisions of this Agreement, on the same terms and conditions as other shares of Common Stock included in such underwritten offering. Notwithstanding anything to the contrary set forth herein, the registration rights of the Investors pursuant to this Section 2(d) shall only be available in the event and at such times as the Company fails to timely file, obtain effectiveness or maintain effectiveness of any Registration Statement to be filed pursuant to Section 2(a) in accordance with the terms of this Agreement; provided, however, that if the Company files a Registration

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Statement pursuant to this Section 2(d), the Company shall take the steps necessary to obtain the effectiveness of or shall take no steps to cause the lapse in effectiveness of, as the case may be, any Registration Statement even if a Registration Statement filed pursuant to Section 2(a) or this Section 2(d) becomes effective; provided, further, however, that nothing contained in the

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preceding two provisos shall (i) be construed as requiring the Company to register or maintain the registration of any of the Registrable Securities pursuant to more than one Registration Statement; and (ii) diminish the Company's obligation to register all of the Registrable Securities.

E. ELIGIBILITY FOR FORM S-3. The Company represents and warrants that it

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meets the registrant eligibility and transaction requirements for the use of Form S-3 for registration of the sale by the Initial Investors and any other Investors of the Registrable Securities and the Company shall file all reports required to be filed by the Company with the SEC in a timely manner so as to maintain such eligibility for the use of Form S-3 so long as any Investor holds Registrable Securities.

### 3. OBLIGATIONS OF THE COMPANY.

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In connection with the registration of the Registrable Securities, the Company shall have the following obligations:

A. The Company shall prepare promptly, and file with the SEC not later than forty-five (45) days after the Closing Date, a Registration Statement with respect to the number of Registrable Securities provided in Section 2(a), and thereafter use its best efforts to cause such Registration Statement relating to Registrable Securities to become effective as soon as possible after such filing (but in no event later than one hundred twenty (120) days after the Closing Date), and keep the Registration Statement effective pursuant to Rule 415 at all times until such date as is the earlier of (i) the date on which all of the Registrable Securities have been sold by the Investors and (ii) the date on which the Registrable Securities (in the opinion of counsel to the Initial Investors) may be immediately sold to the public without registration or restriction (including without limitation as to volume by each holder thereof) under the 1933 Act (the "REGISTRATION PERIOD"), which Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading.



B. The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statements and the prospectus used in connection with the Registration Statements as may be necessary to keep the Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by the Registration Statements until such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in the Registration Statements. In the event the number of shares available under a Registration Statement filed pursuant to this Agreement is insufficient to cover all of the Registrable Securities issued or issuable upon conversion of the Preferred Stock, the Company shall amend the Registration Statement, or file a new Registration Statement (on the short form available therefore, if applicable), or both, so as to cover all of the Registrable Securities, in each case, as soon as practicable, but in any event within twenty (20) business days after the necessity therefor arises (based on the market price of the Common Stock and other relevant factors on which the Company reasonably elects to rely). The Company shall use its best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. The provisions of Section 2(c) above shall be applicable with respect to such obligation, with the one hundred twenty (120) days running from the day after the date on which the Company reasonably first determines (or reasonably should have determined) the need therefor.

C. The Company shall furnish to each Investor whose Registrable Securities are included in a Registration Statement and its legal counsel (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company, one copy of each Registration Statement and any amendment thereto, each preliminary prospectus and prospectus and each amendment or supplement thereto, and, in the case of the Registration Statement referred to in Section 2(a), each letter written by or on behalf of the Company to the SEC or the staff of the SEC, and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought confidential treatment), and (ii) such number of copies of a prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents as such Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor. The Company will immediately notify each Investor by facsimile of the effectiveness of each Registration Statement or any post-effective amendment. The Company will promptly respond to any and all comments received from the SEC, with a view towards causing each Registration Statement or any amendment thereto to be declared effective by the SEC as soon as practicable and shall file an acceleration request as soon as practicable following the resolution or clearance of all SEC comments or, if applicable, following notification by the SEC that any such Registration Statement or any amendment thereto will not be subject to review.

D. The Company shall use reasonable efforts to (i) register and qualify the Registrable Securities covered by the Registration Statements under such other securities or "blue sky" laws of such jurisdictions in the United States as the Investors who hold a majority in interest of the Registrable Securities being offered reasonably request, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof

during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in

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connection therewith or as a condition thereto to (a) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (b) subject itself to general taxation in any such jurisdiction, (c) file a general consent to service of process in any such jurisdiction, (d) provide any undertakings that cause the Company undue expense or burden, or (e) make any change in its charter or bylaws, which in each case the Board of Directors of the Company determines to be contrary to the best interests of the Company and its stockholders.

E. In the event Investors who hold a majority-in-interest of the Registrable Securities being offered in the offering (with the approval of a majority-in-interest of the Initial Investors) select underwriters for the offering, the Company shall enter into and perform its obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the underwriters of such offering.

F. As promptly as practicable after becoming aware of such event, the Company shall notify each Investor of the happening of any event, of which the Company has knowledge, as a result of which the prospectus included in any Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and use its best efforts promptly to prepare a supplement or amendment to any Registration Statement to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to each Investor as such Investor may reasonably request; provided that, for not more than ten (10) consecutive trading days (or a total of not more than thirty (30) trading days in any twelve (12) month period), the Company may delay the disclosure of material non-public information concerning the Company (as well as prospectus or Registration Statement updating) the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company (an "ALLOWED DELAY"); provided, further, that the Company shall promptly (i) notify the Investors in writing of the existence of (but in no event, without the prior written consent of an Investor, shall the Company disclose to such investor any of the facts or circumstances regarding) material non-public information giving rise to an Allowed Delay and (ii) advise the Investors in writing to cease all sales under such Registration Statement until the end of the Allowed Delay. Upon expiration of the Allowed Delay, the Company shall again be bound by the first sentence of this Section 3(f) with respect to the information giving rise thereto.

G. The Company shall use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of any Registration Statement, and, if such an order is issued, to obtain the withdrawal of such order at the earliest possible moment and to notify each Investor who holds Registrable Securities being sold (or, in the event of an underwritten offering, the managing underwriters) of the issuance of such order and the resolution thereof.

H. The Company shall permit a single firm of counsel designated by the Initial Investors to review such Registration Statement and all amendments and supplements thereto (as well as all requests for acceleration or effectiveness thereof) a reasonable period of

time prior to their filing with the SEC, and not file any document in a form to which such counsel reasonably objects and will not request acceleration of such Registration Statement without prior notice to such counsel. The sections of such Registration Statement covering information with respect to the Investors, the Investor's beneficial ownership of securities of the Company or the Investors intended method of disposition of Registrable Securities shall conform to the information provided to the Company by each of the Investors.

I. The Company shall make generally available to its security holders as soon as practicable, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of the Registration Statement.

J. At the request of any Investor, the Company shall furnish, on the date that Registrable Securities are delivered to an underwriter, if any, for sale in connection with any Registration Statement or, if such securities are not being sold by an underwriter, on the date of effectiveness thereof (i) an opinion, dated as of such date, from counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the underwriters, if any, and the Investors and (ii) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and the Investors.

K. The Company shall make available for inspection by (i) any Investor, (ii) any underwriter participating in any disposition pursuant to a Registration Statement, (iii) one firm of attorneys and one firm of accountants or other agents retained by the Initial Investors, (iv) one firm of attorneys and one firm of accountants or other agents retained by all other Investors, and (v) one firm of attorneys retained by all such underwriters (collectively, the "INSPECTORS") all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "RECORDS"), as shall be reasonably deemed necessary by each Inspector to enable each Inspector to exercise its due diligence responsibility, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request for purposes of such due diligence; provided, however, that

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each Inspector shall hold in confidence and shall not make any disclosure (except to an Investor) of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement, (b) the release of such Records is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company shall not be required to disclose any confidential information in such Records to any Inspector until and unless such Inspector shall have entered into confidentiality agreements (in form and substance satisfactory to the Company) with the Company with respect thereto, substantially in the form of this Section 3(k). Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the

Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and any Investor) shall be deemed to limit the Investor's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

L. The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to such Investor prior to making such disclosure, and allow the Investor, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

M. The Company shall (i) cause all the Registrable Securities covered by the Registration Statement to be listed on each national securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) to the extent the securities of the same class or series are not then listed on a national securities exchange, secure the designation and quotation of all the Registrable Securities covered by the Registration Statement on Nasdaq or, if not eligible for Nasdaq on the Nasdaq SmallCap and, without limiting the generality of the foregoing, to arrange for at least two market makers to register with the National Association of Securities Dealers, Inc. ("NASD") as such with respect to such Registrable Securities.

N. The Company shall provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the Registration Statement.

O. The Company shall cooperate with the Investors who hold Registrable Securities being offered and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the managing underwriter or underwriters, if any, or the Investors may reasonably request and registered in such names as the managing underwriter or underwriters, if any, or the Investors may request, and, within three (3) business days after a Registration Statement which includes Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel selected by the Company to deliver, to the transfer agent for the Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) an instruction in the form attached hereto as EXHIBIT 1 and an opinion of such counsel in the form attached hereto as EXHIBIT 2.

P. At the request of the holders of a majority-in-interest of the Registrable Securities, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and any prospectus used in connection with the Registration Statement as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

Q. From and after the date of this Agreement, the Company shall not, and shall not agree to, allow the holders of any securities of the Company to include any of their securities in any Registration Statement under Section 2(a) hereof or any amendment or supplement thereto under Section 3(b) hereof without the consent of the holders of a majority-in-interest of the Registrable Securities.

R. The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by the Investors of Registrable Securities pursuant to a Registration Statement.

#### 4. OBLIGATIONS OF THE INVESTORS.

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In connection with the registration of the Registrable Securities, the Investors shall have the following obligations:

A. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least three (3) business days prior to the first anticipated filing date of the Registration Statement, the Company shall notify each Investor of the information the Company requires from each such Investor.

B. Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of the Registration Statements hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from the Registration Statements.

C. In the event Investors holding a majority-in-interest of the Registrable Securities being registered (with the approval of the Initial Investors) determine to engage the services of an underwriter, each Investor agrees to enter into and perform such Investor's obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering and take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

D. Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(f) or 3(g), such Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(f) or 3(g) and, if so directed by the Company, such Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in such Investor's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

E. No Investor may participate in any underwritten registration hereunder unless such Investor (i) agrees to sell such Investor's Registrable Securities on the basis provided in any underwriting arrangements in usual and customary form entered into by the Company, (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements, and (iii) agrees to pay its pro rata share of all underwriting discounts and commissions and any expenses in excess of those payable by the Company pursuant to Section 5 below.

F. The underwriters in connection with any firm commitment underwritten public offering of the Common Stock resulting in gross proceeds to the Company of at least \$150,000,000 led by at least one underwriter of nationally recognized standing (a "QUALIFIED PUBLIC OFFERING") shall have the right to require that the Investors enter into an agreement (a "LOCK-UP AGREEMENT") restricting the Investors from selling Registrable Securities pursuant to the Registration Statement in any public sale for a period not to exceed ninety (90) days following the consummation of such Qualified Public Offering (the "UNDERWRITERS' LOCK-UP PERIOD"); provided that such underwriters deem this to be

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reasonably necessary to effect such Qualified Public Offering; and further,  
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provided that all of the Company's directors, executive officers, affiliates and  
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significant stockholders shall have also agreed to identical (or more  
restrictive) restrictions. The Investors shall be subject to no more than one  
such restriction in each twelve (12) month period during the Registration  
Period; provided, however, that the Automatic Conversion Date (as defined in the  
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Certificate of Designation) shall be extended, at the option of each Investor,  
by the number of days in which such Investor is subject to a Lock-Up Agreement  
in accordance with Article VIII of the Certificate of Designation.

#### 5. EXPENSES OF REGISTRATION.

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All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualification fees, printers and accounting fees, the fees and disbursements of counsel for the Company, and the reasonable fees and disbursements of one counsel selected by the Initial Investors pursuant to Sections 2(b) and 3(h) hereof shall be borne by the Company.

6. INDEMNIFICATION.

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In the event any Registrable Securities are included in a Registration Statement under this Agreement:

A. To the extent permitted by law, the Company will indemnify, hold harmless and defend (i) each Investor who holds such Registrable Securities, (ii) the directors, officers, partners, employees, agents and each person who controls any Investor within the meaning of the 1933 Act or the Securities Exchange Act of 1934, as amended (the "1934 ACT"), if any, (iii) any underwriter (as defined in the 1933 Act) for the Investors (subject to the Company receiving customary indemnification from any such underwriter), and (iv) the directors, officers, partners, employees and each person who controls any such underwriter within the meaning of the 1933 Act or the 1934 Act, if any (each, an "INDEMNIFIED PERSON"), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "CLAIMS") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or the omission or alleged omission to state therein a material fact required to be stated or necessary to make the statements therein not misleading; (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading; or (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law (except to the extent that the Company acts or fails to act solely in reliance on the proviso in Section 3(d)), or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities (the matters in the foregoing clauses (i) through (iii) being, collectively, "VIOLATIONS"). Subject to the restrictions set forth in Section 6(c) with respect to the number of legal counsel, the Company shall reimburse the Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by any Indemnified Person or underwriter for such Indemnified Person expressly for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto; (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld; and (iii) with respect to any preliminary prospectus, shall not inure to the benefit of any Indemnified Person if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented, such corrected prospectus was timely made available by the Company pursuant to Section 3(c) hereof, and the Indemnified Person was promptly advised in writing not to use the incorrect prospectus prior to the use giving rise to a Violation and such Indemnified Person, notwithstanding such advice, used it. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

B. In connection with any Registration Statement in which an Investor is participating, each such Investor agrees severally and not jointly to indemnify, hold harmless and defend, to the same extent and in the same manner set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement, each person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act, any underwriter and any other stockholder selling securities pursuant to the Registration Statement or any of its directors or officers or any person who controls such stockholder or underwriter within the meaning of the 1933 Act or the 1934 Act (collectively and together with an Indemnified Person, an "INDEMNIFIED PARTY"), against any Claim to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim arises out of or is based upon any Violation by such Investor, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and subject to Section 6(c) such Investor will reimburse any legal or other expenses (promptly as such expenses are incurred and are due and payable) reasonably incurred by them in connection with investigating or defending any such Claim; provided, however, that the indemnity

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agreement contained in this Section 6(b) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld; provided, further, however, that the Investor shall be liable under this

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Agreement (including this Section 6(b) and Section 7) for only that amount as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(b) with respect to any preliminary prospectus shall not inure to the benefit of any Indemnified Party if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented.

C. Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action (including any governmental action), such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided,

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however, that an Indemnified Person or Indemnified Party shall have the right to

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retain its own counsel with the fees and expenses to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. The indemnifying party shall pay for only one separate legal counsel for the



Indemnified Persons or the Indemnified Parties, as applicable, and such legal counsel shall be selected by Investors holding a majority-in-interest of the Registrable Securities included in the Registration Statement to which the Claim relates (with the approval of a majority-in-interest of the Initial Investors), if the Investors are entitled to indemnification hereunder, or the Company, if the Company is entitled to indemnification hereunder, as applicable. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is actually prejudiced in its ability to defend such action. The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

7. CONTRIBUTION.

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To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that (i) no

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contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6, (ii) no seller of Registrable Securities guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of such fraudulent misrepresentation, and (iii) contribution (together with any indemnification or other obligations under this Agreement) by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities.

8. REPORTS UNDER THE 1934 ACT.

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With a view to making available to the Investors the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the investors to sell securities of the Company to the public without registration ("RULE 144"), the Company agrees to:

A. make and keep public information available, as those terms are understood and defined in Rule 144;

B. file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements (it being understood that nothing herein shall limit the Company's obligations under Section 4(c) of the Securities Purchase Agreement) and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

C. furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the

most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. ASSIGNMENT OF REGISTRATION RIGHTS.  
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The rights under this Agreement shall be automatically assignable by the Investors to any transferee of all or any portion of Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, prior to such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned, (iii) following such transfer or assignment, the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act and applicable state securities laws, (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein, (v) such transfer shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement, and (vi) such transferee shall be an "ACCREDITED INVESTOR" as that term defined in Rule 501 of Regulation D promulgated under the 1933 Act.

10. AMENDMENT OF REGISTRATION RIGHTS.  
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Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with written consent of the Company, each of the Initial Investors (to the extent such Initial Investor still owns Registrable Securities) and Investors who hold a majority interest of the Registrable Securities. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company.

11. MISCELLANEOUS.  
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A. A person or entity is deemed to be a holder of Registrable Securities whenever such person or entity owns of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more persons or entities with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

B. Any notices required or permitted to be given under the terms hereof shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile and shall be effective five days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by facsimile, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

CMGI, Inc.  
100 Brickstone Square  
Andover, MA 01810  
Attention: Chief Executive Officer  
Facsimile: (978) 684-3618

With copy to:

Palmer & Dodge LLP  
One Beacon Street  
Boston, MA 02108  
Attention: William Williams, II, Esq.  
Facsimile: (617) 227-4420

If to an Investor: to the address set forth immediately below such Investor's name on the signature pages to the Securities Purchase Agreement.

C. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

D. This Agreement shall be enforced, governed by and construed in accordance with the laws of the State of Delaware applicable to agreements made and to be performed entirely within such State. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof. The parties hereto hereby submit to the exclusive jurisdiction of the United States Federal Courts located in Delaware with respect to any dispute arising under this Agreement or the transactions contemplated hereby.

E. This Agreement and the Securities Purchase Agreement (including all schedules and exhibits thereto) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement and the Securities Purchase Agreement supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

F. Subject to the requirements of Section 9 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

G. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

H. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

I. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

J. Except as otherwise provided herein, all consents and other determinations to be made by the Investors pursuant to this Agreement shall be made by Investors holding a majority of the Registrable Securities, determined as if the all of the shares of Preferred Stock then outstanding have been converted into Registrable Securities.

K. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to each Investor by vitiating the intent and purpose of the transactions contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for breach of its obligations hereunder will be inadequate and agrees, in the event of a breach or threatened breach by the Company of any of the provisions hereunder, that each Investor shall be entitled, in addition to all other available remedies in law or in equity, to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity of showing economic loss and without any bond or other security being required.

L. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

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IN WITNESS WHEREOF, the Company and the undersigned Initial Investors have caused this Agreement to be duly executed as of the date first above written.

CMGI, INC.

By: /s/ Andrew J. Hajducky  
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Andrew J. Hajducky III  
Executive Vice President

RGC INTERNATIONAL INVESTORS, LDC  
By: Rose Glen Capital Management, L.P.,  
Investment Manager  
By: RGC General Partner Corp.,  
as General Partner

By: /s / Wayne D. Bloch  
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Wayne D. Bloch  
Managing Director

RGC INVESTMENTS II, L.P.  
By: Rose Glen Capital Management, L.P.,  
Investment Manager  
By: RGC General Partner Corp.,  
as General Partner

By: /s/ Wayne D. Bloch  
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Wayne D. Bloch  
Managing Director

RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
CMG INFORMATION SERVICES, INC.

CMG INFORMATION SERVICES, INC. (the "Corporation"), a corporation organized and existing under and by virtue of the Delaware General Corporation Law, does hereby certify that the Board of Directors of the Corporation, by a resolution adopted at a meeting of the Board of Directors on November 8, 1993, and by a written consent of the stockholders of the Corporation dated November 8, 1993, approved and adopted, pursuant to Section 242 of the Delaware General Corporation Law, this Restated Certificate of Incorporation, which restates, integrates and amends the Certificate of Incorporation of the Corporation in its entirety pursuant to Section 245 of the Delaware General Corporation Law. Written notice of the adoption of this Restated Certificate of Incorporation has been given as provided by Section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice. The Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of Delaware on May 5, 1986, under the name CMG Holdings, Inc. The full text of the Restated Certificate of Incorporation is set forth below:

FIRST: The name of the Corporation is CMG Information Services, Inc.

SECOND: The registered office of the Corporation in the State of Delaware is located at 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

FOURTH: The aggregate number of shares of all classes of stock which the Corporation is authorized to issue is fifteen million (15,000,000) shares of which five million (5,000,000) shall be shares of Preferred Stock, par value \$.01 per share, (the "Preferred Stock") and ten million (10,000,000) shall be shares of Common Stock, par value \$.01 per share (the "Common Stock").

On the effective date of this Restated Certificate of Incorporation, each issued share of the Corporation's Series A Convertible Preferred Stock, par value \$1.00 per share, outstanding as of said effective date, shall without any action on the part of the holders thereof, be reclassified and changed into one fully paid and nonassessable share of the Corporation's Preferred Stock, par value \$.01 per share, subject to all powers, designations, preferences and relative, participating, optional or other special rights of such Preferred Stock as set forth in Section 3 hereof.

Any and all such shares issued for which the full consideration has been paid or delivered, shall be deemed fully paid stock and the holder of such shares shall not be liable for any further call or assessment or any other payment thereon.

No holder of any of the shares of any class of stock of the Corporation, whether now or hereafter authorized or issued, shall be entitled as of right to purchase or subscribe for (i) any unissued stock of any class whatsoever of stock of the Corporation, or (ii) any new or additional share of any class whatsoever of stock of the Corporation to be issued by reason of any increase of the authorized stock of the Corporation, or of any class of such stock, or (iii) bonds, certificates of indebtedness, debentures or other securities convertible into stock of any class of the Corporation or carrying any right to purchase stock of any class of the Corporation, but any such unissued stock, or additionally authorized issue of any stock, or other securities convertible into stock of the Corporation may be issued and disposed of pursuant to a resolution or resolutions of the Board of Directors to such persons, firms, corporations, associations or other entities and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

SECTION 1. COMMON STOCK.  
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The powers, preferences, rights, qualifications, limitations and restrictions relating to the Common Stock are as follows:

(a) The Common Stock is junior to the Preferred Stock and is subject to all the powers, rights, privileges, preferences and priorities of the Preferred Stock designated herein or in any resolution or resolutions adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of Section 2 of this Article FOURTH.

(b) The Common Stock shall have voting rights for the election of directors and for all other purposes (subject to the powers, rights, privileges, preferences and priorities of the Preferred Stock as provided above), each holder of Common Stock being entitled to one vote for each share thereof held by such holder, except as otherwise required by law.

SECTION 2. PREFERRED STOCK.  
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The Board of Directors is expressly authorized to provide for the issuance of all or any part of the shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited or fractional or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights, and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors in its sole discretion providing for the issuance of such class or series and as may be permitted by the Delaware General Corporation Law including, without limitation, the authority to determine with respect to the shares of any such class or series (i) whether such shares shall be redeemable, and, if so, the terms and conditions of such redemption, whether for cash, property or rights, including securities of any other corporation, and whether at the option of either the Corporation or the holder or both, including the date or dates or the event or events upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; (ii) whether such shares shall be entitled to receive dividends (which may be cumulative or noncumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or an other series; (iii) the rights of such shares in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of such shares, (iv) whether such shares shall be convertible into, or

exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock whether at the option of either the Corporation or the holder or both, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine; (v) whether the class or series shall have a sinking fund for the redemption or purchase of such shares, and, if so, the terms and amount of such sinking fund, or (vi) provisions as to any other voting, optional, and/or special or relative rights, preferences, limitations, or restrictions; and (vii) the number of shares and designation of such class or series.

SECTION 3. SERIES A CONVERTIBLE PREFERRED STOCK.  
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CMG INFORMATION SERVICES, INC., a Delaware corporation (the "Corporation" or the "Company"), pursuant to authority conferred on the Board of Directors of the Corporation by the Certificate of Incorporation and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, certifies that the Board of Directors of the Corporation, by unanimous consent dated May 5, 1986, has duly adopted the following resolution providing for the establishment and issuance of a series of Preferred Stock to be designated "Series A Convertible Preferred Stock" and to consist of 250 shares as follows:

RESOLVED: that, pursuant to the authority expressly granted and vested in the Board of Directors of this Corporation in accordance with the provisions of its Certificate of Incorporation, a series of Preferred Stock of the Corporation hereby is established, consisting of 250 shares, to be designated "Series A Convertible Preferred Stock" (hereinafter "Series A Preferred Stock"); the Board of Directors be and hereby is authorized to issue such shares of Series A Preferred Stock from time to time and for such consideration and on such terms as the Board of Directors shall determine, and subject to the limitations provided by law and by the Certificate of Incorporation, the powers, designations, preferences and relative, participating, optional or other special rights of, and the qualifications, limitations or restrictions upon, the Series A Preferred Stock shall be as follows:

1. DESIGNATION. This series of Preferred Stock, \$.01 par value per share, shall be designated the "Series A Convertible Preferred Stock" (hereinafter "Series A Preferred Stock").

2. DIVIDENDS. When, as and if declared by the Board of Directors, the holders of the outstanding shares of Series A Preferred Stock shall be entitled to receive out of funds legally available therefor dividends payable at the discretion of the Board of Directors. Notwithstanding the foregoing, dividends shall be declared and set aside for any shares of the Series A Preferred Stock in the event that the Board of Directors of the Company shall declare a dividend payable upon the then outstanding shares of the Common Stock, \$.01 par value (the "Common Stock"), of the Company in which event the holders of the Series A Preferred Stock shall be entitled to the amount of dividends per share of Series A Preferred Stock as would be declared payable on the largest number of whole shares of Common Stock into which each share of Series A Preferred Stock held by each holder thereof could be converted pursuant to the provisions of Section 5 hereof, such number determined as of the record date for the determination of holders of Common Stock entitled to received such dividend.



3. LIQUIDATION, DISSOLUTION OR WINDING UP.  
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(a) In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, holders of each share of Series A Preferred Stock shall be entitled to be paid first out of the assets of the Company available for distribution to holders of the Company's capital stock of all classes, whether such assets are capital, surplus, or earnings, before any sums shall be paid or any assets distributed among the holders of shares of Common Stock, an amount equal to the greater of (i) \$1,000 per share of Series A Preferred Stock plus all accrued and unpaid dividends thereon, whether or not earned or declared, up to and including the date full payment, shall be tendered to the holders of the Series A Preferred Stock with respect to such liquidation, dissolution or winding up, or (ii) such amount per share of Series A Preferred Stock as would have been payable had each such share plus all accrued and unpaid dividends thereon, whether or not earned or declared, up to and including the date of full payment, been converted to Common Stock immediately prior to such event of liquidation, dissolution or winding up pursuant to the provisions of Section 5 hereof; before any sums shall be paid or any assets distributed among the holders of the shares of Common Stock. If the assets of the Company shall be insufficient to permit the payment in full to the holders of the Series A Preferred Stock of the amount thus distributable, then the entire assets of the Company available for such distribution shall be distributed ratably among the holders of the Series A Preferred Stock. After such payment shall have been made in full to the holders of the Series A Preferred Stock or funds necessary for such payment shall have been set aside by the Company in trust for the account of holders of the Series A Preferred Stock so as to be available for such payment, holders of the Series A Preferred Stock shall be entitled to no further participation in the distribution of the assets of the Company and shall have no further rights of conversion, and the remaining assets available for distribution shall be distributed ratably among the holders of the Common Stock.

(b) A consolidation or merger of the Company or a sale of all or substantially all of the assets of the Company shall be regarded as a liquidation, dissolution or winding up of the affairs of the Company within the meaning of this Section 3; provided however, that each holder of Series A

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Preferred Stock shall have the right to elect the benefits of the provisions of Section 5(h) hereof in lieu of receiving payment in liquidation, dissolution or winding up of the Company pursuant to this Section 3. Each holder of Series A Preferred Stock shall notify the Company in advance of its election to obtain the benefits of this Section 3(b) or of Section 5(h), which notification shall be given not later than a date specified in writing to each holder by the Company to be three (3) days or fewer prior to the effective date of such consolidation, merger or sale. If a holder fails to make any election, he shall be deemed to have elected the benefits of this Section 3(b).

(c) Whenever the distribution provided for herein shall be paid in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors of the Company.

4. VOTING POWER. Except as otherwise expressly provided in Section 8  
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hereof, or as required by law, each holder of Series A Preferred Stock shall be entitled to vote on all matters and shall be entitled to that number of votes equal to the largest number of whole shares of Common Stock into which such holder's shares of Series A Preferred Stock could be converted, pursuant to the provisions of Section 5 hereof (taking into account all accrued and unpaid dividends, if any, and interest with respect to such Series A Preferred Stock), at the record date

for the determination of shareholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited. Except as otherwise expressly provided herein or as required by law, the holders of shares of Series A Preferred Stock and Common Stock shall be entitled to vote together as a class on all matters.

5. CONVERSION RIGHTS. The holders of the Series A Preferred Stock shall  
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have the following conversion rights:

(a) GENERAL.  
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(i) Subject to and in compliance with the provisions of this Section 5, any shares of the Series A Preferred Stock and, at the option of the holder, all accrued and unpaid dividends thereon, whether or not earned or declared, up to and including the date of conversion, may, at the option of the holder, be converted at any time or from time to time into fully-paid and nonassessable shares (calculated as to each conversion to the largest whole share) of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the Applicable Conversion Rate (determined as provided in Section 5(c)) by the number of shares of Series A Preferred Stock being converted.

(ii) Notwithstanding the foregoing, the holders of Series A Preferred Stock shall have the right to convert all or any portion of any accrued but unpaid dividends hereunder into shares of Common Stock at any time upon written notice to the Company. The number of shares of Common Stock issuable upon any such conversion shall be the number of shares equal to the amount of the accrued but unpaid dividends and interest being so converted divided by the Applicable Conversion Value then in effect, determined in accordance with Section 5 hereof. Upon receipt of any such notice, the Company shall promptly issue a certificate in the name of the holder of Series A Preferred Stock for the number of shares of Common Stock so issuable, together with a check representing cash in lieu of any fractional share.

(b) CONVERSION FOLLOWING UNDERWRITTEN PUBLIC OFFERING.  
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(i) All outstanding shares of Series A Preferred Stock and, at the option of the holder, all accrued and unpaid dividends thereon, whether or not earned or declared, up to and including the date of conversion, shall, at the option of the Company and upon the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offering and sale of Common Stock for the account of the Company in which the Common Stock is sold at a price to the public of not less than \$3.85 per share as of the date of this Restated Certificate of Incorporation (such amount to be equitably adjusted whenever there shall occur a stock split, combination, reclassification or other similar event affecting the Common Stock) and in which the aggregate gross proceeds to the Company exceed \$7,000,000, be converted automatically into the number of shares of Common Stock to which a holder of Series A Preferred Stock shall be entitled upon conversion pursuant to Section 5(a) hereof without any further action by such holders and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent for the Common Stock.

(ii) Upon the occurrence of the conversion specified in Section 5(b)(i), the holders of such Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Company or of its transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder a certificate or certificates for the number of shares of Common Stock into which the shares of the Series A Preferred Stock surrendered were convertible on the date on which such conversion occurred. The Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of the Series A Preferred Stock being converted are either delivered to the Company or any such transfer agent or the holder notifies the Company or any such transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. In addition, the Company may, if the Board of Directors deems it reasonably necessary, require the holder to post a bond in connection with such indemnity agreement.

(c) APPLICABLE CONVERSION RATE. The conversion rate in effect at any

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time (the "Applicable Conversion Rate") shall be the quotient obtained by dividing the sum of (i) \$1,000 and (ii) at the election of the holder, an amount equal to the amount of accrued and unpaid dividends per share of Series A Preferred Stock, whether or not earned or declared, as well as all accrued and unpaid interest thereon, by the Applicable Conversion Value, calculated as provided in Section 5(d).

(d) APPLICABLE CONVERSION VALUE. The Applicable Conversion Value in

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effect from time to time, except as adjusted in accordance with Section 5(e) hereof, shall be \$0.389423 as of the date of this Restated Certificate of Incorporation.

(e) ADJUSTMENTS TO APPLICABLE CONVERSION VALUE.

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(i) UPON SALES OF COMMON STOCK. If the Company shall while

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there are any shares of Series A Preferred Stock outstanding, issue or sell shares of its Common Stock without consideration or at a price per share less than the Applicable Conversion Value in effect immediately prior to such issuance or sale, then in each such case such Applicable Conversion Value upon each such issuance or sale, except as hereinafter provided, shall be adjusted to an amount determined by multiplying the Applicable Conversion Value by a fraction:

(A) the numerator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock, plus (b) the number of shares of Common Stock which the net aggregate consideration received by the Corporation for the total number of such additional shares of Common Stock so issued would purchase at the Applicable Conversion Value, and

(B) the denominator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock, plus (b) the number of such additional shares of Common Stock so issued.

The Corporation's issuance of up to an aggregate of 569,933 shares of Common Stock (as adjusted as of the date of this Restated Certificate of Incorporation), or options exercisable therefor, pursuant to any stock purchase or stock option plan or other employee incentive

program approved by the Board of Directors to the corporation's employees, directors, officers or consultants shall not be deemed an issuance of additional shares of Common Stock and shall have no effect on the calculations contemplated by this Section 5(e).

For the purposes of this Section 5(e), the issuance of any warrants, options, subscriptions or purchase rights with respect to shares of Common Stock and the issuance of any securities convertible into or exchangeable for shares of Common Stock (or the issuance of any warrants, options or any rights with respect to such convertible or exchangeable securities) shall be deemed an issuance at such time of such Common Stock if the Net Consideration Per Share (as hereinafter determined) which may be received by the Company for such Common Stock shall be less than the Applicable Conversion Value at the time of such issuance. Any obligation, agreement or understanding to issue warrants, options, subscriptions or purchase rights at any time in the future shall be deemed to be an issuance at any time such obligation, agreement or undertaking is made or arises. No adjustment of the Applicable Conversion Value shall be made under this Section 5(e) upon the issuance of any shares of Common Stock which are issued pursuant to the exercise of any warrants, options, subscriptions or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities if any adjustment shall previously have been made upon the issuance of any such warrants, options or subscriptions or purchase rights or upon the issuance of any convertible securities (or upon the issuance of any warrants, options or any rights therefor) as above provided. Any adjustment of the Applicable Conversion Value with respect to this paragraph which relates to warrants, options, subscriptions or purchase rights with respect to shares of Common Stock shall be disregarded if, as, and when all of such warrants, options, subscriptions or purchase rights expire or are canceled without being exercised, so that the Applicable Conversion Value effective immediately upon such cancellation or expiration shall be equal to the Applicable Conversion Value in effect at the time of the issuance of the expired or canceled warrants, options, subscriptions or purchase rights, with such additional adjustments as would have been made to that Applicable Conversion Value had the expired or canceled warrants, options, subscriptions or purchase rights not been issued. For purposes of this paragraph, the "Net Consideration Per Share" which may be received by the Company shall be determined as follows:

(A) The "Net Consideration Per Share" shall mean the amount equal to the total amount of consideration, if any, received by the Company for the issuance of such warrants, options, subscriptions or other purchase rights or convertible or exchangeable securities, plus the minimum amount of consideration, if any, payable to the Company upon exercise or conversion thereof, divided by the aggregate number of shares of Common Stock that would be issued if all such warrants, options, subscriptions or other purchase rights or convertible or exchangeable securities were exercised, exchanged or converted.

(B) The "Net Consideration Per Share" which may be received by the Company shall be determined in each instance as of the date of issuance of warrants, options, subscriptions or other purchase rights or convertible or exchangeable securities without giving effect to any possible future price adjustments or rate adjustments which may be applicable with respect to such warrants, options, subscriptions or other purchase rights or convertible or exchangeable securities.

For purposes of this Section 5(e), if a part or all of the consideration received by the Company in connection with the issuance of shares of the Common Stock or the issuance of any of the securities described in this Section 5(e) consists of property other than cash, the Company at its expense will promptly cause independent public accountants of recognized standing selected by the Company to value such property, whereupon such value shall be given to such consideration and shall be recorded on the books of the Company with respect to receipt of such property.

This Section 5(e) shall not apply under any of the circumstances which would constitute an Extraordinary Common Stock Event (as hereinafter defined in Section 5(e)(ii)).

(ii) Upon the happening of an Extraordinary Common Stock Event (as hereinafter defined), the Applicable Conversion Value (and all other conversion values set forth in paragraph (e)(i) above) shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the then effective Applicable Conversion Value by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock event, and the product so obtained shall thereafter be the Applicable Conversion Value. The Applicable Conversion Value, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Extraordinary Common Stock Event or Events.

"Extraordinary Common Stock Event" shall mean (i) the issue of additional shares of the Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) subdivision of outstanding shares of Common Stock into a greater number of shares of the Common Stock, or (iii) combination of outstanding shares of the Common Stock into a smaller number of shares of the Common Stock.

(f) DIVIDENDS. In the event the Company shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than shares of Common Stock or in assets (excluding cash dividends or distributions), then and in each such event provisions shall be made so that the holders of Series A Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities or such other assets of the Company which they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the Conversion Date (as that term is hereafter defined in Section 5(j)), retained such securities or such other assets receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Series A Preferred Stock.

(g) RECAPITALIZATION OR RECLASSIFICATION. If the Common Stock issuable upon the conversion of the Series A Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock of the Corporation, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 5, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), then and in each such event the holder of each

share of Series A Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change by holders of the number of shares of Common Stock into which such share of Series A Preferred Stock might have been converted (taking into account all accrued and unpaid dividends and interest with respect to such Series A Preferred Stock) immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(h) CAPITAL REORGANIZATION, MERGER OR SALE OF ASSETS. If at any time

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or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 5) or a merger or consolidation of the Company with or into another corporation, or the sale of all or substantially all of the Company's properties and assets to any other person, then, as a part of such reorganization, merger, consolidation or sale, provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock, the number of shares of stock or other securities or property of the Company, or of the successor corporation resulting from such merger, consolidation or sale, to which a holder of Common Stock issuable upon conversion would have been entitled on such capital reorganization, merger, consolidation, or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Series A Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section 5 (including adjustment of the Applicable Conversion Value then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event in as nearly equivalent a manner as may be practicable.

Each holder of Series A Preferred Stock upon the occurrence of a capital reorganization, merger or consolidation of the Company, or the sale of all or substantially all its assets and properties as such events are more fully set forth in the first paragraph of this Section 5(h), shall have the option of electing treatment of his shares of Series A Preferred Stock under either this Section 5(h) or Section 3(b) hereof, notice of which election shall be submitted in writing to the Company at its principal offices no later than five (5) days before the effective date of such event.

(i) ACCOUNTANT'S CERTIFICATE AS TO ADJUSTMENTS. In each case of an

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adjustment or readjustment of the Applicable Conversion Rate, the Company will furnish each holder of Series A Preferred Stock with a certificate, prepared by its chief financial officer showing such adjustment or readjustment, and stating in detail the acts upon which such adjustment or readjustment is based. Upon the request of any holder, the Company will cause its independent public accountants to confirm the accuracy of such adjustment or readjustment.

(j) EXERCISE OF CONVERSION PRIVILEGE. To exercise his conversion

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privilege, a holder of Series A Preferred Stock shall surrender the certificate or certificates representing the shares being converted to the Company at its principal office, and shall give written notice to the Company at that office that such holder elects to convert such shares. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series A Preferred Stock surrendered for conversion shall be accompanied by proper assignment thereof to the Company or in blank. The date when such written notice is

received by the Company, together with the certificate or certificates representing the shares of Series A Preferred Stock being converted, shall be the "Conversion Date". As promptly as practicable after the Conversion Date, the Company shall issue and shall deliver to the holder of the shares of Series A Preferred Stock being converted, or on its written order, such certificate or certificates as it may request for the number of whole shares of Common Stock issuable upon the conversion of such shares of Series A Preferred Stock in accordance with the provisions of this Section 5, cash in the amount of all accrued and unpaid dividends on such shares of Series A Preferred Stock, whether or not earned or declared, up to and including the Conversion Date, and cash, as provided in Section 5(k), in respect of any fraction of a share of Common Stock issuable upon such conversion. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date, and at such time the rights of the holder as holder of the converted shares of Series A Preferred Stock shall cease and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(k) CASH IN LIEU OF FRACTIONAL SHARES. No fractional shares of Common

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Stock or scrip representing fractional shares shall be issued upon the conversion of shares of Series A Preferred Stock. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of Series A Preferred Stock, the Company shall pay to the holder of the shares of Series A Preferred Stock which were converted a cash adjustment in respect of such fractional shares in an amount equal to the same fraction of the market price per share of the Common Stock (as determined in a reasonable manner prescribed by the Board of Directors) at the close of business on the Conversion Date. The determination as to whether or not any fractional shares are issuable shall be based upon the total number of shares of Series A Preferred Stock being converted at any one time by any holder thereof; not upon each share of Series A Preferred Stock being converted.

(l) PARTIAL CONVERSION. In the event some but not all of the shares

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of Series A Preferred Stock represented by a certificate or certificates surrendered by a holder are converted, the Company shall execute and deliver to or on the order of the holder, at the expense of the Company, a new certificate representing the number of shares of Series A Preferred Stock which were not converted.

(m) RESERVATION OF COMMON STOCK. The Company shall at all times

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reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Company shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

6. MANDATORY REDEMPTION.

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(a) Beginning on April 30, 1992 and on the 30th day of April in each year thereafter (the "Redemption Date"), the Company shall redeem twenty-five percent (25%) of all of the shares of Series A Preferred Stock outstanding on May 7, 1986 (or such later date as shall

be the date of original issuance of the Series A Preferred Stock); provided, however, that the Company's redemption obligation shall be reduced by the number of shares of Series A Preferred Stock that have been converted prior to any such Redemption Date, and such reduction shall apply first to the Redemption Date immediately following such conversion and thereafter any balance shall apply to any Subsequent Redemption Dates. The redemption price for each share of Series A Preferred Stock redeemed pursuant to this Section 6 shall be \$1,000 per share of Series A Preferred Stock plus all accrued and unpaid dividends on such share, whether or not earned or declared as well as all accrued and unpaid interest thereon, up to and including the date fixed for redemption (the "Redemption Price"). Each redemption of Series A Preferred Stock shall be made so that the number of shares of Series A Preferred Stock held by each registered owner shall be reduced in an amount which shall bear the same ratio to the total number of shares of Series A Preferred Stock then held by such registered owner bears to the aggregate number of shares of Series A Preferred Stock then outstanding.

(b) The Redemption Price set forth in this Section 6 shall be subject to equitable adjustment whenever there shall occur a stock split, combination, reclassification or other similar event involving the Series A Preferred Stock.

(c) At least 45 days before any Redemption Date pursuant to Section 6(a), written notice (hereinafter referred to as the "Redemption Notice") shall be mailed, postage prepaid, to each holder of record of the Series A Preferred Stock which is to be redeemed, at its address shown on the records of the Company, provided, however, that the giving of such Redemption Notice shall not affect the conversion rights of such holder pursuant to Section 5 hereof; provided, further, that the Company's failure to give such Redemption Notice shall in no way affect its obligation to redeem the shares of Series A Preferred Stock as provided in Sections 6(a) or 6(b) hereof. The Redemption Notice shall contain the following information:

(i) The number of shares of Series A Preferred Stock held by the holder which shall be redeemed by the Company and the total number of shares of Series A Preferred Stock held by all holders to be so redeemed,

(ii) The Redemption Date and the applicable Redemption Price, and

(iii) That the holder is to surrender to the Company, at the place designated therein, its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed.

(d) Each holder of shares of Series A Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Company at the place designated in the Redemption Notice, and thereupon the applicable Redemption Price for such shares as set forth in this Section 6 shall be paid to the order of the person whose name appears on such certificate or certificates and each surrendered certificate shall be canceled and retired.

(e) If any shares of Series A Preferred Stock are not redeemed solely because a holder fails to surrender the certificate or certificates representing such shares pursuant to Section 6(e) hereof then, from and after the Redemption Date, such shares of Series A Preferred Stock thereupon subject to redemption shall not be entitled to any further accrual of any dividends pursuant to Section 2 hereof or to the conversion provisions set forth in Section 5 hereof.



7. NO REISSUANCE OF SERIES A PREFERRED STOCK. No share or shares of

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Series A Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Company shall be authorized to issue. The Company may from time to time take such appropriate corporate action as may be necessary to reduce the authorized number of shares of the Series A Preferred Stock accordingly.

8. RESTRICTIONS AND LIMITATIONS.

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(a) Except as expressly provided herein or as required by law, so long as any shares of the Series A Preferred Stock remain outstanding, the Company shall not, and shall not permit any subsidiary (which shall mean any corporation or trust of which the Company directly or indirectly owns at the time all of the outstanding shares of every class of such corporation or trust other than directors' qualifying shares) to, without the vote or written consent by the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock, each share of Series A Preferred Stock to be entitled to one vote in each instance:

(i) Redeem, purchase or otherwise acquire for value (or pay in) to or set aside for a sinking fund for such purpose), any share or shares of Series A Preferred Stock;

(ii) Authorize or issue, or obligate itself to authorize or issue, any other equity security senior to or on a parity with the Series A Preferred Stock as to liquidation preferences, conversion rights, voting rights or otherwise; or

(iii) Effect any sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Company or any subsidiary thereof, or any consolidation or merger involving the Company or any subsidiary thereof or any reclassification or other change of stock, or any recapitalization or any dissolution, liquidation or winding up of the Company.

(b) The Company shall not amend its Certificate of Incorporation without the approval by vote or written consent by the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, each share of Series A Preferred Stock to be entitled to one vote in each instance, if such amendment would change any of the rights, preferences, privileges or limitations provided for herein for the benefit of any shares of Series A Preferred Stock. Without limiting the generality of the next preceding sentence, the Company will not amend its Certificate of Incorporation without the approval by the holders of at least a majority of the then outstanding shares of Series A Preferred Stock if such amendment would:

(i) Change the relative seniority rights of the holders of Series A Preferred Stock as to the payment of dividends in relation to the holders of any other capital stock of the Company; or

(ii) Reduce the amount payable to the holders of Series A Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding up of the Company, or change the relative seniority of the liquidation preferences of the holders of Series A Preferred Stock to the rights upon liquidation of the holders of any other capital stock of the Company or change the dividend rights of the holders of Series A Preferred Stock; or

(iii) Cancel or modify the conversion rights of the holders of Series A Preferred Stock provided for in Section 5 herein

9. NO DILUTION OR IMPAIRMENT. The Company will not, by amendment of its

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Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Series A Preferred Stock set forth herein, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series A Preferred Stock against dilution or other impairment. Without limiting the generality of the foregoing, the Company (a) will not increase the par value of any shares of stock receivable on the conversion of the Series A Preferred Stock above the amount payable therefor on such conversion, (b) will take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of stock on the conversion of all Series A Preferred Stock from time to time outstanding, (c) will not issue any capital stock of any class which is preferred as to dividends or as to the distribution of assets upon voluntary or involuntary dissolution, liquidation or winding up of the Company, unless the rights of the holders thereof shall be limited to a fixed sum or percentage of par value in respect of participation in dividends and in any such distribution of assets, and (d) will not transfer all or substantially all of its properties and assets to any other person (corporate or otherwise), or consolidate with or merge into any other person or permit any such person to consolidate with or merge into the Company (if the Company is not the surviving person), unless such other person shall expressly assume in writing and will be bound by all the terms of the Series A Preferred Stock set forth herein.

10. NOTICES OF RECORD DATE. In the event of

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(a) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company; or any transfer of all or substantially all of the assets of the Company to any other corporation, or any other entity or person, or

(c) any voluntary or involuntary dissolution, liquidation or winding up of the Company,

then and in each such event the Company shall mail or cause to be mailed to each holder of Series A Preferred Stock a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, (iii) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification., recapitalization, transfer, consolidation, merger, dissolution,

liquidation or winding up. Such notice shall be mailed at least 30 days prior to the date specified in such notice on which such action is to be taken.

SECTION 4. SHARES ENTITLES TO MORE OR LESS THAN ONE VOTE.  
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If any class or series of the Corporation's capital stock shall be entitled to more or less than one vote per share, on any matter, every reference in this Restated Certificate of Incorporation or in any resolution or resolutions adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of Section 2 of this Article FOURTH with respect to the Preferred Stock or in any relevant provision of law or in any rule or regulation, to a majority or other proportion of stock shall be deemed to refer to such majority or other proportion of the votes of such stock.

SECTION 5. AMENDMENT.  
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Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, Section 2 of this Article FOURTH. For the purposes of this Restated Certificate of Incorporation, "Voting Stock" shall mean the outstanding shares or capital stock of the Corporation entitled to vote generally in the election of directors.

FIFTH: In furtherance of, and not in limitation of, the powers conferred by statute, the Board of Directors is expressly authorized and empowered:

(a) to manage, or direct the management of, the business and affairs of the Corporation and to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the Delaware General Corporation Law, this Restated Certificate of Incorporation and the By-Laws of the Corporation; and

(b) from time to time to determine to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Corporation, or any of them, shall be open to inspection by stockholders; and no stockholder shall have any right to inspect any account, book or document of the Corporation except as conferred by applicable law.

The Corporation may in its By-Laws confer powers upon the Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board of Directors by applicable law.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this Article FIFTH.

SIXTH: Subject to the rights of the holders of any class or series of stock having a preference expressly vested in it by the provisions of Section 2 of Article FOURTH with respect to the Preferred Stock:

(a) any action required or permitted to be taken by the stockholders of the Corporation must be effected only at a duly called annual or special meeting of stockholders of the Corporation and may not, after the effective date of this Restated Certificate of Incorporation, be effected by any consent in writing of such stockholders;

(b) special meetings of the stockholders of the Corporation may be called only (i) by the Chairman of the Board of Directors, (ii) pursuant to a resolution approved by a majority of the Whole Board (as hereinafter defined), or (iii) pursuant to a written request of the holders of 20% of the Voting Stock; and

(c) the business permitted to be conducted at any special meeting of the stockholders is limited to the business brought before the meeting (i) by the Chairman of the Board of Directors, or (ii) at the request of a majority of the Whole Board, or (iii) as specified in the written request of the holders of 20% of the Voting Stock.

Advance notice of the business to be brought by stockholders before an annual meeting shall be given by such stockholders in the manner provided in the By-Laws of the Corporation.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal, or adopt any provision inconsistent with, this Article SIXTH. For the purposes of this Restated Certificate of Incorporation, "Whole Board" shall mean the total number of Directors which the Corporation would have if there were no vacancies.

SEVENTH: SECTION 1. NUMBER, ELECTION AND TERMS OF DIRECTORS.  
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Subject to the rights of the holders of any class or series of stock having a preference expressly vested in it by the provisions of Section 2 of Article FOURTH with respect to the Preferred Stock, the number of Directors of the Corporation shall be fixed by the By-Laws of the Corporation and may be increased or decreased from time to time in such a manner as may be prescribed by the By-Laws, but in no case shall the number be less than three nor more than fifteen.

The Directors shall be divided into three classes, as nearly equal in number as possible. One class of Directors ("Class I") has been initially elected for a term expiring at the annual meeting of stockholders to be held in 1994, another class ("Class II") has been initially elected for a term expiring at the annual meeting of stockholders to be held in 1995, and another class ("Class III") has been initially elected for a term expiring at the annual meeting of stockholders to be held in 1996 with members of each class to hold office until their successors are elected and qualified. At each succeeding annual meeting of the stockholders of the Corporation, the successors of the class of Directors whose term expires at that meeting shall be elected by plurality vote of all votes cast at such meeting to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

SECTION 2. STOCKHOLDER NOMINATION OF DIRECTOR CANDIDATES.  
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Advance notice of stockholder nominations for the election of Directors shall be given by such stockholders in the manner provided in the By-Laws of the Corporation.

SECTION 3. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.  
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Subject to the rights of the holders of any class or series of stock having a preference expressly vested in it by the provisions of Section 2 of Article FOURTH with respect to the Preferred Stock, newly created directorships resulting from any increase in the number of directors and any vacancy on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining Director. Any Director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been elected and qualified. No decrease in the number of Directors constituting the Board of Directors shall shorten the term of an incumbent Director.

SECTION 4. REMOVAL OF DIRECTORS.  
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Subject to the rights of the holders of any class or series of stock having a preference expressly vested in it by the provisions of Section 2 of Article FOURTH with respect to the Preferred Stock, any Director may be removed from office only by the stockholders in the manner provided in this Section 4 of Article SEVENTH. At any annual meeting of the stockholders of the Corporation or at any special meeting of the stockholders of the Corporation, the notice of which shall state that the removal of a Director or Directors is among the purpose of the meeting, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, may remove such Director or Directors. In any vote required by or provided for in this Article SEVENTH, each share of Voting Stock shall have the number of votes granted to it generally in the election of Directors.

SECTION 5. AMENDMENT.  
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Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this Article SEVENTH.

EIGHTH: No Director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director; provided, however, that a Director of the Corporation shall be liable (i) for breach of the Director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law, (iii) to the extent provided under Section 174 of the Delaware General Corporation Law, relating to prohibited dividends or distributions or the repurchase or redemption of stock, or (iv) for any transaction from which the Director derives an improper personal benefit. If the Delaware General Corporation Law is hereafter amended to permit further limitation on or elimination of the personal liability of the Corporation's Directors for breach of fiduciary duty, then a Director of the Corporation shall be exempt from such liability for any such breach to the fullest extent permitted by the Delaware General Corporation Law as so amended from time to time. Any repeal or modification of the foregoing provisions of this Article EIGHTH, or the adoption of any provision inconsistent herewith, shall not adversely affect any right or protection of a Director of the Corporation

hereunder in respect of any act or omission of such Director occurring prior to such repeal, modification or adoption of an inconsistent provision.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this Article EIGHTH.

NINTH: The Corporation shall indemnify, defend and hold harmless any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or other, including appeals, by reason of the fact that he or she is or was a Director or officer of the Corporation, or is or was serving at the express written request of the Corporation as a Director, trustee, partner, officer, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, to the fullest extent authorized by Section 145 of the Delaware General Corporation Law, as amended from time to time, against all expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith; provided, however, that, except with respect to proceedings seeking to enforce the rights to indemnification granted herein, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if the proceeding (or part thereof) was specifically authorized by the Board of Directors of the Corporation. Without limiting the generality or the effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification on greater or different than that provided in this Article NINTH. Any repeal or modification of the provisions of this Article NINTH, or the adoption of any provision inconsistent herewith, shall not adversely affect any right or protection existing hereunder immediately prior to such repeal, modification or adoption of an inconsistent provision. Notwithstanding the foregoing, all indemnification provided for in this Article NINTH shall not be deemed exclusive of any other rights to which those entitled to receive indemnification or reimbursement hereunder may be entitled under any By-Law of the Corporation agreement, vote of stockholders or Directors or otherwise.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this Article NINTH.

TENTH: The Board of Directors of the Corporation, in determining whether the interests of the Corporation, its subsidiaries and its stockholders will be served by any offer of another person to (i) make a tender or exchange offer for any equity security of the Corporation or any subsidiary of the Corporation, (ii) merge or consolidate the Corporation or any of its subsidiaries with or into another corporation, or (iii) purchase or otherwise acquire all or substantially all of the properties and assets of the Corporation or any of its subsidiaries, may take into account factors in addition to potential economic benefits to stockholders. Such factors may include, without limitation, (a) comparison of the proposed consideration to be received by stockholders, in relation to the then current market price of the capital stock, to the estimated current value of the Corporation or any of its subsidiaries in a freely negotiated transaction, and to the estimated future value of the Corporation or any of its subsidiaries as an independent entity; (b) the impact of such a transaction on the customers and employees of the Corporation or

any of its subsidiaries, and its effect on the communities in which the Corporation or any of its subsidiaries operates; and (c) the ability of the Corporation or any of its subsidiaries to fulfill its objectives and obligations under applicable statutes and regulations.

The terms "offer" as used in this Article TENTH includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tender of, a security or interest in a security for value.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this Article TENTH.

ELEVENTH: The Corporation may not purchase any shares of its stock from any person, entity or group that beneficially owns 5% or more of the Voting Stock at a price exceeding the average closing price for the twenty trading business days prior to the purchase date, unless a majority of the Corporation's Disinterested Stockholders (as hereinafter defined) approve the transaction. The restrictions on purchases by the Corporation set forth in this Article ELEVENTH do not apply (i) to any offer to purchase shares of a class of the Corporation's stock which is made on the same terms and conditions to all holders of that class of stock, or (ii) to any purchase of stock owned by such a 5% stockholder occurring more than two years after such stockholder's last acquisition of the Corporation's stock, or (iii) to any purchase of the Corporation's stock in accordance with the terms of any stock option or employee benefit plan, or (iv) to any purchase at prevailing market prices pursuant to a stock purchase program.

For purposes of this Article ELEVENTH, the term "Disinterested Stockholders" means those holders each of whom owns less than 5% of the Voting Stock.

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this Article ELEVENTH.

TWELFTH: Any vote or votes authorizing liquidation of the Corporation or proceedings for its dissolution may provide, subject to the rights of creditors and the rights expressly provided for particular classes or series of stock for the distribution pro rata among the stockholders of the Corporation of the assets of the Corporation, wholly or in part in kind, whether such assets be in cash or other property,, and may authorize the Board of Directors of the Corporation to determine the valuation of the different assets of the Corporation for the purpose of such liquidation and may divide or authorize the Board of Directors to divide such assets or any part thereof among the stockholders of the Corporation, in such manner that every stockholder will receive a proportionate amount in value (determined as aforesaid) of cash or property of the Corporation upon such liquidation or dissolution even though each stockholder may not receive a strictly proportionate part of each such asset.

THIRTEENTH: No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors, officers or partners, or have a financial interest, shall be void or voidable solely for this reason,

or solely because the Director or officer is present at or participates in the meeting of the Board of Directors, or Committee thereof, which authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if:

(a) the material facts as to his, her or their interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the Committee thereof, and the Board of Directors or Committee thereof, in good faith authorizes the contract or transaction by a vote sufficient for such purpose without counting the vote of the interested Director or Directors, even though the disinterested Directors be less than a quorum, or

(b) the material facts as to his, her or their interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a Committee thereof, or the stockholders.

Interested Directors shall be counted in determining the presence of a quorum at a meeting of the Board of Directors, or of a Committee thereof which authorizes such contract or transaction. No Director or officer shall be liable to account to the Corporation for any profit realized by him or her from or through such contract or transaction solely by reason of the fact that he or she or any other corporation, partnership, association, or other organization in which he or she is a director or officer, or has a financial interest, was interested in such contract or transaction.

FOURTEENTH: BUSINESS COMBINATIONS.  
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Section 1. HIGHER VOTE FOR BUSINESS COMBINATIONS.  
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In addition to any affirmative vote required by law or by this Restated Certificate of Incorporation, unless a Business Combination (as defined below) shall have been approved by the affirmative vote of not less than a majority of the Whole Board, any Business Combination shall require the affirmative vote of the holders of record of outstanding shares representing at least seventy-five percent (75%) of the Voting Stock, voting together as a single class. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

SECTION 2. NO EFFECT ON FIDUCIARY OBLIGATIONS.  
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Nothing contained in this provision shall be construed to relieve the members of the Board of Directors from any fiduciary obligations imposed by law.

SECTION 3. DEFINITION.  
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For purposes of this Article FOURTEENTH "Business Combination" means:

(a) any merger or consolidation of the Corporation or any subsidiary;

or



(b) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) of all or more than ten percent (10%) of the total assets of the Corporation or any subsidiary, as of the end of such corporation's recent fiscal year ending prior to the time the determination is made; or

(c) the issuance or transfer by the Corporation or any subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any subsidiary; or

(d) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or any spin-off or split-up of any kind of the Corporation or any subsidiary; or

(e) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any subsidiary or any other transaction which has the effect, directly or indirectly, of increasing the percentage of the outstanding shares of (i) any class of equity securities of the Corporation or any subsidiary, or (ii) any class of securities of the Corporation or any subsidiary convertible into equity securities of the Corporation or any subsidiary; or

(f) any agreement, contract or other arrangement providing for any one or more of the actions specified in clauses (a) through (e) of Section 3 of this Article FOURTEENTH.

SECTION 4. SECTION 203 OF THE DELAWARE GENERAL CORPORATION LAW.  
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Nothing in this Article FOURTEENTH or elsewhere in this Restated Certificate of Incorporation shall be construed as a waiver of any rights of the Corporation to the provisions of Section 203 of the Delaware General Corporation Law dealing with business combinations with interested stockholders; and the Corporation hereby claims the full benefit of all such provisions or any other similar provisions heretofore or hereafter enacted as part of the Delaware General Corporation Law to the fullest extent in addition to the provisions of this Article FOURTEENTH.

Section 5. AMENDMENT.  
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Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this Article FOURTEENTH.

FIFTEENTH: The By-Laws of the Corporation may be amended, altered, changed or repealed, and a provision or provisions inconsistent with the provisions of the By-Laws as they exist from time to time may be adopted, only by the majority vote of the Whole Board or by the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class.

Notwithstanding anything contained in this Restated Certificate of incorporation to the contrary, the affirmative vote of the holders of at least 75 percent of the Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with, this Article FIFTEENTH.

SIXTEENTH: The provisions of Section 2 of Article FOURTH and the provisions of Articles FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, ELEVENTH, FOURTEENTH, FIFTEENTH and this Article SIXTEENTH, shall not be amended, altered, changed or repealed, and no provision inconsistent with any of them shall be adopted, except by the affirmative vote of the holders of at least seventy-five percent (75%) of the Voting Stock, voting together as a single class. The Corporation reserves the right to amend, alter, change or repeal any other provision contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders are granted subject to this reservation.

This Restated Certificate of Incorporation was duly adopted in accordance with the applicable provisions of Sections 242, 245 and 228 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, CMG Information Services, Inc. has caused its corporation seal to be affixed hereto and this Certificate to be signed by David S. Wetherell, its President, and attested by William Williams, II, its Assistant Secretary this 8th day of November, 1993.

CMG INFORMATION SERVICES, INC.

By: /s/ David S. Wetherell  
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David S. Wetherell, President

ATTEST:

By: /s/ William Williams II  
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William Williams II, Assistant Secretary

[Corporate Seal]

CERTIFICATE OF AMENDMENT  
OF  
RESTATED CERTIFICATE OF INCORPORATION  
OF  
CMG INFORMATION SERVICES, INC.

CMG INFORMATION SERVICES, INC. a corporation organized and existing under the laws of the State of Delaware, does hereby certify as follows:

FIRST: That the Board of Directors of said Corporation by unanimous vote pursuant to Section 141 of the General Corporation Law of Delaware adopted a resolution proposing and declaring advisable the following amendment to the Restated Certificate of Incorporation of the Corporation and directing that said amendment be submitted to the stockholders for their review and consent:

VOTED: That the Board of Directors of CMG Information Services, Inc. hereby approves and declares advisable an amendment to the Restated Certificate of Incorporation of this Corporation as follows:

That ARTICLE FOURTH (a) of the Restated Certificate of Incorporation of this Corporation be and it is hereby amended to increase the number of authorized shares of capital stock of the Corporation from 15,000,000 to 45,000,000 so that said ARTICLE FOURTH (a) shall be and read as follows:

FOURTH. (a) The total number of shares of capital stock which the Corporation is authorized to issue is 45,000,000, of which 40,000,000 shares shall be common stock, par value \$.01 per share ("Common Stock") and 5,000,000 shares shall be preferred stock, par value \$.01 per share ("Preferred Stock").

and further,

VOTED: That the foregoing amendment to the Restated Certificate of Incorporation of this Corporation be submitted to the stockholders of this Corporation for their approval at the 1996 Special Meeting of Stockholders.

SECOND: That thereafter, pursuant to the resolution of the Board of Directors, the 1996 Special Meeting of the Stockholders of the Corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of Delaware, at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation law of Delaware.

FOURTH: That the capital of the Corporation shall not be reduced under or by reason of the aforesaid amendment.

IN WITNESS WHEREOF, CMG INFORMATION SERVICES, INC. has caused this Certificate to be signed by David S. Wetherell, its President, and William Williams II, its Assistant Secretary, this 22nd day of March, 1996.

(SEAL) CMG INFORMATION SERVICES, INC.

By: /s/ David S. Wetherell  
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David S. Wetherell, President

ATTEST: /s/ William Williams II  
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William Williams II, Assistant Secretary

CERTIFICATE OF AMENDMENT  
OF  
RESTATED CERTIFICATE OF INCORPORATION  
OF  
CMG INFORMATION SERVICES, INC.

CMG INFORMATION SERVICES, INC., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

FIRST: That the Board of Directors of said Corporation by unanimous vote pursuant to Section 141 of the General Corporation Law of Delaware adopted resolutions proposing and declaring advisable the following amendments to the Restated Certificate of Incorporation of the Corporation and directing that said amendments be submitted to the stockholders of the Corporation for their review and consent:

VOTED: That the Board of Directors of CMG Information Services, Inc. hereby approves and declares advisable an amendment to the Restated Certificate of Incorporation of this Corporation as follows:

That ARTICLE FIRST of the Restated Certificate of Incorporation of this Corporation be and it is hereby amended to change the name of the Corporation from CMG Information Services, Inc. to CMGI, Inc. so that said ARTICLE FIRST shall be and read as follows:

FIRST: The name of the Corporation is CMGI, Inc.

and further,

VOTED: That the Board of Directors of CMG Information Services, Inc. hereby approves and declares advisable an amendment to the Restated Certificate of Incorporation of this Corporation as follows:

That ARTICLE FOURTH (a) of the Restated Certificate of Incorporation of this Corporation be and it is hereby amended to increase the authorized shares of capital stock of the Corporation from 45,000,000 to 105,000,000 so that said ARTICLE FOURTH (a) shall be and read as follows:

FOURTH: (a) The total number of shares of capital stock which the Corporation is authorized to issue is one hundred and five million (105,000,000) shares of which one hundred million (100,000,000) shares shall be common stock, par value \$0.01 per share ("Common Stock") and 5,000,000 shares shall be preferred stock, par value \$0.01 per share ("Preferred Stock").

and further,

VOTED: That the foregoing amendments to the Restated Certificate of Incorporation of this Corporation are advisable and in the best interest of the Corporation and that they be submitted to the stockholders of this Corporation for their consideration and approval at the 1998 Annual Meeting of Stockholders.

SECOND: That thereafter, pursuant to the resolution of the Board of Directors, the 1998 Annual Meeting of Stockholders of the Corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of Delaware, at which meeting the necessary number of shares as required by statute were voted in favor of the amendments.

THIRD: That the aforesaid amendments were duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of Delaware.

FOURTH: That the capital of the Corporation shall not be reduced under or by reason of the aforesaid amendments.

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IN WITNESS WHEREOF, CMG INFORMATION SERVICES, INC. has caused this Certificate to be signed by David S. Wetherell, its President, and William Williams II, its Assistant Secretary, this 17th day of December, 1998.

CMG INFORMATION SERVICES, INC.

By: /s/ David S. Wetherell  
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David S. Wetherell, President

ATTEST: /s/ William Williams II  
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William Williams II,  
Assistant Secretary

CERTIFICATE OF  
DESIGNATIONS, PREFERENCES, AND RIGHTS

OF

SERIES B CONVERTIBLE PREFERRED STOCK

OF

CMGI, INC.

(Pursuant to Section 151 of the  
Delaware Corporation Law)

CMGI, INC., a corporation organized and existing under the Delaware General Corporation Law (the "CORPORATION"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation on December 17, 1998 pursuant to authority of the Board of Directors as required by Section 151(g) of the Delaware Corporation Law:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation (the "BOARD OF DIRECTORS" or the "BOARD") in accordance with the provisions of its Articles of Incorporation, the Board of Directors hereby authorizes a series of the Corporation's previously authorized Preferred Stock, par value \$.01 per share (the "PREFERRED STOCK"), and hereby states the designation and number of shares, and fixes the relative rights, preferences, privileges, powers and restrictions thereof as follows:

Series B Convertible Preferred Stock:



I. DESIGNATION AND AMOUNT

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The designation of this series, which consists of 50,000 shares of Preferred Stock, is Series B Convertible Preferred Stock (the "SERIES B PREFERRED STOCK") and the stated value shall be One Thousand Dollars (\$1,000) per share (the "STATED VALUE").

II. RANK

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The Series B Preferred Stock shall rank (i) prior to the Corporation's common stock, par value \$.01 per share (the "COMMON STOCK"); (ii) prior to any class or series of capital stock of the Corporation hereafter created (unless, with the consent of the holders of Series B Preferred Stock obtained in accordance with Article X hereof, such class or series of capital stock specifically, by its terms, ranks senior to or pari passu with the Series B Preferred Stock)

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(collectively, with the Common Stock, "JUNIOR SECURITIES"); (iii) pari passu

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with any class or series of capital stock of the Corporation hereafter created (with the consent of the holders of Series B Preferred Stock obtained in accordance with Article X hereof) specifically ranking, by its terms, on parity with the Series B Preferred Stock ("PARI PASSU SECURITIES"); and (iv) junior to

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any class or series of capital stock of the Corporation hereafter created (with the consent of the holders of Series B Preferred Stock obtained in accordance with Article X hereof) specifically ranking, by its terms, senior to the Series B Preferred Stock ("SENIOR SECURITIES"), in each case as to distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

III. DIVIDENDS

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The Series B Preferred Stock shall not bear any dividends. Except as provided below, in no event, so long as any Series B Preferred Stock shall remain outstanding, shall any dividend whatsoever be declared or paid upon, nor shall any distribution be made upon, any Junior Securities, nor shall any shares of Junior Securities be purchased or redeemed by the Corporation nor shall any moneys be paid to or made available for a sinking fund for the purchase or redemption of any Junior Securities (other than a distribution of Junior Securities), without, in each such case, the written consent of the holders of a majority of the outstanding shares of Series B Preferred Stock, voting together as a class. Notwithstanding the foregoing, the Corporation may (i) declare or pay upon any Junior Securities any dividend payable in equity interests of a subsidiary of the Corporation; provided that, the holders of the Series B

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Preferred Stock then outstanding shall have first received, or simultaneously received, a like distribution on each outstanding share of Series B Preferred Stock, based on the number of shares of Common Stock into which each share of Series B Preferred Stock is convertible on the record date for such distribution (without regard to any limitations on conversion and based upon the then prevailing Conversion Price (as defined below) using the record date as the Conversion Date (as defined below)) or (ii) redeem shares of Common Stock which had been issued as restricted stock pursuant to a stock option plan approved by the stockholders of the Corporation.

IV. LIQUIDATION PREFERENCE

A. LIQUIDATION EVENT. If the Corporation shall commence a voluntary case

under the Federal bankruptcy laws or any other applicable Federal or State bankruptcy, insolvency or similar law, or consent to the entry of an order for relief in an involuntary case under any law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or if a decree or order for relief in respect of the Corporation shall be entered by a court having jurisdiction in the premises in an involuntary case under the Federal bankruptcy laws or any other applicable Federal or state bankruptcy, insolvency or similar law resulting in the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and any such decree or order shall be unstayed and in effect for a period of thirty (30) consecutive days and, on account of any such event, the Corporation shall liquidate, dissolve or wind up, or if the Corporation shall otherwise liquidate, dissolve or wind up (each such event being considered a "LIQUIDATION EVENT"), no distribution shall be made to the holders of any shares of capital stock of the Corporation (other than Senior Securities) upon liquidation, dissolution or winding up unless prior thereto, the holders of shares of Series B Preferred Stock, subject to Article VI, shall have received the Liquidation Preference (as defined in Article IV.C) with respect to each share. If upon the occurrence of a Liquidation Event, the assets and funds available for distribution among the holders of the Series B Preferred Stock and holders of Pari Passu Securities (including any dividends or distribution paid

on any Pari Passu Securities after the date of filing of this Certificate of

Designation) shall be insufficient to permit the payment to such holders of the preferential amounts payable thereon, then the entire assets and funds of the Corporation legally available for distribution to the Series B Preferred Stock and the Pari Passu Securities shall be distributed ratably among such shares in

proportion to the ratio that the Liquidation Preference payable on each such share bears to the aggregate liquidation preference payable on all such shares. Any prior dividends or distribution made after the date of filing of this Certificate of Designation shall offset, dollar for dollar, the amount payable to the class or series to which such distribution was made.

B. CERTAIN ACTS DEEMED LIQUIDATION EVENT. At the option of the holders of a

majority-in-interest of the then outstanding shares of Series B Preferred Stock, the sale, conveyance or disposition of all or substantially all of the assets of the Corporation, the effectuation by the Corporation of a transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of, or the consolidation, merger or other business combination of the Corporation with or into any other Person (as defined below) or Persons when the Corporation is not the survivor shall either: (i) be deemed to be a liquidation, dissolution or winding up of the Corporation pursuant to which the Corporation shall be required to distribute upon consummation of and as a condition to such transaction an amount equal to the sum of (a) 118% of the Stated Value plus (b) four percent (4%) per annum of such Stated Value for the period beginning on the date of issuance of the Series B Preferred Stock (the "ISSUE DATE") and ending on the date of final distribution to the holder thereof (prorated for any portion of such period) with respect to each outstanding share of Series B Preferred Stock or (ii) be treated pursuant to Article VI.C(b) hereof. "PERSON" shall mean any individual, corporation, limited liability company, partnership, association, trust or other entity or organization.

C. LIQUIDATION PREFERENCE. For purposes hereof, the "LIQUIDATION PREFERENCE"

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with respect to a share of the Series B Preferred Stock shall mean an amount equal to the sum of (i) the Stated Value thereof plus (ii) and amount equal to four percent (4%) per annum of such Stated Value for the period beginning on the Issue Date and ending on the date of final distribution to the holder thereof (prorated for any portion of such period). The liquidation preference with respect to any Pari Passu Securities shall be as set forth in the Certificate of

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Designation filed in respect thereof.

V. REDEMPTION

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A. MANDATORY REDEMPTION. If any of the following events (each, a "MANDATORY REDEMPTION EVENT") shall occur:

(i) The Corporation fails to issue shares of Common Stock to the holders of Series B Preferred Stock upon exercise by the holders of their conversion rights in accordance with the terms of this Certificate of Designation (for a period of at least sixty (60) days if such failure is solely as a result of the circumstances governed by the second paragraph of Article VI.E below and the Corporation is using its best efforts to authorize a sufficient number of shares of Common Stock as soon as practicable), fails to transfer or to cause its transfer agent to transfer (electronically or in certificated form) any certificate for shares of Common Stock issued to the holders upon conversion of the Series B Preferred Stock as and when required by this Certificate of Designation or the Registration Rights Agreement, dated as of December 21, 1998, by and among the Corporation and the other signatories thereto (the "REGISTRATION RIGHTS AGREEMENT"), fails to remove any restrictive legend (or to withdraw any stop transfer instructions in respect thereof) on any certificate or any shares of Common Stock issued to the holders of Series B Preferred Stock upon conversion of the Series B Preferred Stock as and when required by this Certificate of Designation, the Securities Purchase Agreement dated as of December 21, 1998, by and between the Corporation and the other signatories thereto (the "PURCHASE AGREEMENT") or the Registration Rights Agreement, or fails to fulfill its obligations pursuant to Sections 4(c), 4(e), 4(h), 4(i), 4(j) or 5 of the Purchase Agreement (or makes any announcement, statement or threat that it does not intend to honor the obligations described in this paragraph) and any such failure shall continue uncured (or any announcement, statement or threat not to honor its obligations shall not be rescinded in writing) for ten (10) business days after the Corporation shall have been notified thereof in writing by any holder of Series B Preferred Stock;

(ii) The Corporation fails to obtain effectiveness with the Securities and Exchange Commission (the "SEC") prior to May 22, 1999 of the Registration Statement (as defined in the Registration Rights Agreement) required to be filed pursuant to Section 2(a) of the Registration Rights Agreement, or fails to obtain the effectiveness of any additional Registration Statement (required pursuant to Section 3(b) of the Registration Rights Agreement) within one hundred fifty (150) days after the date the Corporation reasonably first determined (or reasonably should have determined) the need therefor, or any such Registration Statement, after its initial effectiveness, lapses in effect or sales of all of the Registrable Securities (as defined in the Registration Rights Agreement) otherwise cannot be made thereunder (whether by reason of the Corporation's failure to amend or supplement the prospectus included therein in accordance with

the Registration Rights Agreement, the Corporation's failure to file and obtain effectiveness with the SEC of an additional Registration Statement required pursuant to Section 3(b) of the Registration Rights Agreement or otherwise) for more than thirty (30) consecutive days or more than sixty (60) days in any twelve (12) month period after such Registration Statement becomes effective;

(iii) The Corporation or any "significant subsidiary" as such term is defined in Rule 1-02(w) of Regulation S-X promulgated under the Securities Act of 1933, as amended (a "SIGNIFICANT SUBSIDIARY") of the Corporation shall make an assignment for the benefit of creditors, or apply for or consent to the appointment of a receiver or trustee for it or for all or substantially all of its property or business; or such a receiver or trustee shall otherwise be appointed;

(iv) Bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors shall be instituted by or against the Corporation or any Significant Subsidiary of the Corporation;

(v) The Corporation shall fail to maintain the listing of the Common Stock on the Nasdaq National Market ("NASDAQ"), the Nasdaq SmallCap Market ("NASDAQ SMALLCAP"), the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX"); or

(vi) The Corporation (a) files a notification of registration under the Investment Company Act of 1940 (the "40 ACT"); (b) files a registration statement relating to its shares of Common Stock (or any other equity security) on Forms N-1A or N-2 or any other form prescribed for use by investment companies under regulations promulgated by the SEC; (c) is informed by the staff of the SEC's Division of Investment Management that (1) the staff will not support the Corporation's application for an order of exemption filed pursuant to Section 3(b)(2) under the 40 Act, or (2) the staff will not agree to recommend to the SEC that it extend the period of time under the statute during which the Corporation is exempted from the 40 Act; provided that the Corporation

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has failed, within forty-five (45) days of such event, to reduce the amount of its "investment securities" (as defined in Section 3(a)(2) of the 40 Act) to less than 40% of its total assets or to have such staff position withdrawn or does not, at the time of such event, qualify for the exception provided by Rule 3a-2 promulgated under the 40 Act; (d) is named in a complaint, filed by the SEC, seeking to compel the Corporation to register under the 40 Act; provided

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such complaint remains undismissed for a period of forty-five (45) days; or (e) is named in a complaint filed by or on behalf of the Corporation or any shareholder or group of shareholders thereof, where any one count thereof avers or alleges that the Corporation is an Investment Company required to register under the 40 Act; provided such complaint remains undismissed for a period of

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forty-five (45) days,

then, upon the occurrence and during the continuation of any Mandatory Redemption Event specified in subparagraphs (i), (ii), (v) or (vi), at the option of the holders of at least 50% of the then outstanding shares of Series B Preferred Stock by written notice (the "MANDATORY REDEMPTION NOTICE") to the Corporation of such Mandatory Redemption Event, or upon the occurrence of any Mandatory Redemption Event specified in subparagraphs (iii) or (iv), the Corporation shall purchase each holder's shares of Series B Preferred Stock for an amount per

share equal to the greater of (1) the sum of (a) Mandatory Redemption Percentage (as defined below) multiplied by the Stated Value of the shares to be redeemed plus (b) an amount equal to four percent (4%) per annum of such Stated Value for the period beginning on the Issue Date and ending on the date of payment of the Mandatory Redemption Amount (the "MANDATORY REDEMPTION DATE"), and (2) the "PARITY VALUE" of the shares to be redeemed, where parity value means the product of (a) the highest number of shares of Common Stock issuable upon conversion of such shares in accordance with Article VI below (without giving any effect to any limitations on conversions of shares contained herein, and treating the Trading Day (as defined in Article VI.B) immediately preceding the Mandatory Redemption Date as the "CONVERSION DATE" (as defined in Article VI.B(a)) for purposes of determining the lowest applicable Conversion Price, unless the Mandatory Redemption Event arises as a result of a breach in respect of a specific Conversion Date in which case such Conversion Date shall be the Conversion Date), multiplied by (b) the highest Closing Price (as defined below) for the Common Stock during the period beginning on the date of first occurrence of the Mandatory Redemption Event and ending one day prior to the Mandatory Redemption Date (the greater of such amounts being referred to as the "MANDATORY REDEMPTION AMOUNT"). "MANDATORY REDEMPTION PERCENTAGE" means 115% for purposes of subparagraphs (iii) and (iv) above, 118% for purposes of subparagraphs (ii) and (v) above and 120% for all other purposes. "CLOSING PRICE," as of any date, means the last sale price of the Common Stock on Nasdaq as reported by Bloomberg Financial Markets or an equivalent reliable reporting service mutually acceptable to and hereafter designated by the holders of a majority in interest of the shares of Series B Preferred Stock and the Corporation ("BLOOMBERG") or, if Nasdaq is not the principal trading market for such security, the last sale price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last sale price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last sale price of such security is available in the over-the-counter market on the electronic bulletin board for such security or in any of the foregoing manners, the average of the bid prices of any market makers for such security that are listed in the "pink sheets" by the National Quotation Bureau, Inc. If the Closing Price cannot be calculated for such security on such date in the manner provided above, the Closing Price shall be the fair market value as mutually determined by the Corporation and the holders of a majority in interest of shares of Series B Preferred Stock being converted for which the calculation of the Closing Price is required in order to determine the Conversion Price of such Series B Preferred Stock.

B. TRADING MARKET REDEMPTION. If the Series B Preferred Stock ceases to be

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convertible by any holder as a result of the limitations described in Article VI.A(c) below (a "TRADING MARKET REDEMPTION EVENT"), and the Corporation has not prior to, or within forty-five (45) days of, the date that such Trading Market Redemption Event arises, (i) obtained the Stockholder Approval (as defined in Article VI.A(c)) or (ii) eliminated any prohibitions under applicable law or the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Corporation or any of its securities on the Corporation's ability to issue shares of Common Stock in excess of the Maximum Share Amount (as defined in Article VI.A(c)), then the Corporation shall be obligated to redeem immediately all of the then outstanding Series B Preferred Stock, in accordance with this Article V.B. An irrevocable redemption notice (the "TRADING MARKET REDEMPTION NOTICE") shall be delivered promptly to the holders of Series B Preferred Stock at their registered address

appearing on the records of the Corporation and shall state (i) that the Maximum Share Amount (as defined in Article VI.A) has been issued upon exercise of the Series B Preferred Stock, (ii) that the Corporation is obligated to redeem all of the outstanding Series B Preferred Stock and (iii) the Mandatory Redemption Date, which shall be a date within five (5) business days of the earlier of (a) the date of the Redemption Notice or (b) the date on which the holders of the Series B Preferred Stock notify the Corporation of the occurrence of a Trading Market Redemption Event. On the Mandatory Redemption Date, the Corporation shall make payment of the Mandatory Redemption Amount (as defined in Article V.A above) in cash.

C. OPTIONAL REDEMPTION. Notwithstanding anything to the contrary contained

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in this Article V, so long as (i) no Mandatory Redemption Event or Trading Market Redemption Event shall have occurred and be continuing, (ii) any Registration Statement required to be filed and be effective pursuant to the Registration Rights Agreement is then in effect and has been in effect and sales of all of the Registrable Securities (as defined in the Registration Rights Agreement) can be made thereunder for at least twenty (20) days prior to the Optional Redemption Date (as defined below) and (iii) the Corporation has a sufficient number of authorized shares of Common Stock reserved for issuance upon full conversion of the Series B Preferred Stock, then at any time after December 21, 1999, on any day on which, and for a period of ten (10) consecutive Trading Days prior thereto, the Closing Bid Price (as defined in Article VI.B(a)) is less than \$73.00 (as adjusted for stock splits, stock dividends and similar events, the "REDEMPTION THRESHOLD"), the Corporation shall have the right, exercisable on not less than fifteen (15) Trading Days prior written notice to the holders of Series B Preferred Stock (which notice may not be sent to the holders of the Series B Preferred Stock until the Corporation is permitted to redeem the Series B Preferred Stock pursuant to this Article V.C), to redeem all of the outstanding shares of Series B Preferred Stock in accordance with this Article V. Any notice of redemption hereunder (an "OPTIONAL REDEMPTION") shall be delivered to the holders of Series B Preferred Stock at their registered addresses appearing on the books and records of the Corporation and shall state (1) that the Corporation is exercising its right to redeem all of the outstanding shares of Series B Preferred Stock and (2) the date of redemption (the "OPTIONAL REDEMPTION NOTICE"). On the date fixed for redemption (the "OPTIONAL REDEMPTION DATE"), the Corporation shall make payment of the Optional Redemption Amount (as defined below) to or upon the order of the holders as specified by the holders in writing to the Corporation at least one (1) business day prior to the Optional Redemption Date. If the Corporation exercises its right to redeem the Series B Preferred Stock, the Corporation shall make payment to the holders of an amount in cash (the "OPTIONAL REDEMPTION AMOUNT") equal to the sum of (i) 115% multiplied by the Stated Value of the shares of Series B Preferred Stock to be redeemed and (ii) an amount equal to four percent (4%) per annum of such Stated Value for the period beginning on the Issue Date and ending on the Optional Redemption Date, for each share of Series B Preferred Stock then held. Notwithstanding notice of an Optional Redemption, the holders shall at all times prior to the Optional Redemption Date maintain the right to convert all or any shares of Series B Preferred Stock in accordance with Article VI and any shares of Series B Preferred Stock so converted after receipt of an Optional Redemption Notice and prior to the Optional Redemption Date set forth in such notice and payment of the aggregate Optional Redemption Amount shall be deducted from the shares of Series B Preferred Stock which are otherwise subject to redemption pursuant to such notice. If the Corporation delivers an Optional Redemption Notice and fails to pay the Optional Redemption Amount due to the holders of the Series B Preferred Stock within two (2) business days following the Optional Redemption Date,

the Corporation shall forever forfeit its right to redeem the Series B Preferred Stock pursuant to this Article V.C. On the Optional Redemption Date, against delivery of the Optional Redemption Amount, the holders of such redeemed shares of Series B Preferred Stock shall surrender the certificates representing such shares of Series B Preferred Stock in escrow to counsel designated by such holders with such shares to be released to the Corporation by such counsel upon receipt of the Optional Redemption Amount by such holders.

D. REDEMPTION IN LIEU OF AUTOMATIC CONVERSION. Notwithstanding anything to

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the contrary contained in this Article V and subject to the terms of this Article V.D, if on the Automatic Conversion Date (as defined in Article VIII) the Corporation is unable to issue shares of Common Stock upon conversion of the Series B Preferred Stock as a result of the Cap Amount being issued, the Corporation shall, in lieu of issuing shares of Common Stock to the holders upon Automatic Conversion in accordance with the terms of Article VIII below, redeem all of such shares of Series B Preferred Stock which the Corporation is unable to convert as a result of the Cap Amount being issued for an amount in cash equal to the sum of (i) the Stated Value of the shares of Series B Preferred Stock to be redeemed and (ii) an amount equal to four (4%) per annum of such Stated Value beginning on the Issue Date and ending on the Automated Conversion Date, for each share of Series B Preferred Stock being redeemed (the "REDEMPTION IN LIEU OF AUTOMATIC CONVERSION AMOUNT"). The Corporation shall effect a redemption pursuant to this Article V.D. by sending written notice to the holders of the Series B Preferred Stock at least fifteen (15) Trading Days prior to the Automatic Conversion Date of its election to redeem the shares of Series B Preferred Stock eligible for redemption pursuant to this Article V.D. (the "REDEMPTION IN LIEU OF AUTOMATIC CONVERSION NOTICE").

E. QUALIFIED PUBLIC OFFERING REDEMPTION. Notwithstanding anything to the

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contrary contained in this Article V, so long as (i) no Mandatory Redemption Event or Trading Market Redemption Event shall have occurred and be continuing, (ii) any Registration Statement required to be filed and to be effective pursuant to the Registration Rights Agreement is then in effect and has been in effect and sales of all of the Registrable Securities (as defined in the Registration Rights Agreement) can be made thereunder for at least twenty (20) days prior to the date the Qualified Public Offering Redemption Notice (as defined below) is sent and at all times through and including the Qualified Public Offering Redemption Date (as defined below) and (iii) the Corporation has a sufficient number of authorized shares of Common Stock reserved for issuance upon full conversion of the Series B Preferred Stock, then at any time after the Issue Date, if the underwriters in such Qualified Public Offering (as defined in the Registration Rights Agreement) so request, the Corporation shall have the right, exercisable on not less than fifteen (15) Trading Days prior written notice to the holders of Series B Preferred Stock, to redeem all of the outstanding shares of Series B Preferred Stock in accordance with this Article V. Any notice of redemption hereunder (a "QUALIFIED PUBLIC OFFERING REDEMPTION") shall be delivered to the holders of Series B Preferred Stock at their registered addresses appearing on the books and records of the Corporation and shall state (1) that the Corporation is exercising its right to redeem all of the outstanding shares of Series B Preferred Stock and (2) the date of redemption which shall be the date of the consummation of the Qualified Public Offering (the "QUALIFIED PUBLIC OFFERING REDEMPTION NOTICE"). On the date of consummation of the Qualified Public Offering (the "QUALIFIED PUBLIC OFFERING REDEMPTION DATE"), the Corporation shall make payment of the Qualified Public Offering Redemption Amount (as defined below) to or upon the order of the holders as specified by the holders in writing to the Corporation at least one (1)

business day prior to the Qualified Public Offering Redemption Date. If the Corporation exercises its right to redeem the Series B Preferred Stock, the Corporation shall make payment to the holders of an amount in cash (the "QUALIFIED PUBLIC OFFERING REDEMPTION AMOUNT") equal to the sum of (i) 118% multiplied by the Stated Value of the shares of Series B Preferred Stock to be redeemed and (ii) an amount equal to four percent (4%) per annum of such Stated Value for the period beginning on the Issue Date and ending on the Qualified Public Offering Redemption Date, for each share of Series B Preferred Stock then held. Notwithstanding notice of an Qualified Public Offering Redemption, the holders shall at all times prior to the Qualified Public Offering Redemption Date maintain the right to convert all or any shares of Series B Preferred Stock in accordance with Article VI and any shares of Series B Preferred Stock so converted after receipt of an Qualified Public Offering Redemption Notice and prior to the Qualified Public Offering Redemption Date set forth in such notice and payment of the aggregate Qualified Public Offering Redemption Amount shall be deducted from the shares of Series B Preferred Stock which are otherwise subject to redemption pursuant to such notice. If the Corporation delivers an Qualified Public Offering Redemption Notice and fails to pay the Qualified Public Offering Redemption Amount due to the holders of the Series B Preferred Stock within two (2) business days following the Qualified Public Offering Redemption Date, the Corporation shall forever forfeit its right to redeem the Series B Preferred Stock pursuant to this Article V.E. On the Qualified Public Offering Redemption Date, against delivery of the Qualified Public Offering Redemption Amount, the holders of such redeemed shares of Series B Preferred Stock shall surrender the certificates representing such shares of Series B Preferred Stock in escrow to counsel designated by such holders with such shares to be released to the Corporation by such counsel upon receipt of the Qualified Public Offering Redemption Amount by such holders.

F. FAILURE TO PAY REDEMPTION AMOUNTS. In the case of a Mandatory Redemption

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Event or the delivery of an Optional Redemption Notice, Redemption In Lieu of Automatic Conversion Notice or a Qualified Public Offering Redemption Notice, if the Corporation fails to pay the Mandatory Redemption Amount, Optional Redemption Amount, Redemption In Lieu of Automatic Conversion Amount or Qualified Public Offering Redemption Amount, as applicable, within five (5) business days of written notice that such amount is due and payable, then (assuming there are sufficient authorized shares) in addition to all other available remedies, each holder of Series B Preferred Stock shall have the right at any time, so long as the Mandatory Redemption Event continues, or at any time after delivery of an Optional Redemption Notice, Redemption In Lieu of Automatic Conversion Notice or a Qualified Public Offering Redemption Notice, to require the Corporation, upon written notice, to immediately issue (in accordance with and subject to the terms of Article VI below), in lieu of the Mandatory Redemption Amount, Optional Redemption Amount, Redemption In Lieu of Automatic Conversion Amount or Qualified Public Offering Redemption Amount, as applicable, the number of shares of Common Stock of the Corporation equal to such applicable redemption amount divided by any Conversion Price, as chosen in the sole discretion of the holder of Series B Preferred Stock, in effect from the date of the Mandatory Redemption Event (or the date of delivery of an Optional Redemption Notice, Redemption In Lieu of Automatic Conversion Notice or a Qualified Public Offering Redemption Notice) until the date such holder elects to exercise its rights pursuant to this Article V.E.



VI. CONVERSION AT THE OPTION OF THE HOLDER

A. OPTIONAL CONVERSION

(a) CONVERSION AMOUNT. Each holder of shares of Series B Preferred

Stock may, at its option at any time and from time to time, upon surrender of the certificates therefor, convert any or all of its shares of Series B Preferred Stock into Common Stock as set forth below (an "OPTIONAL CONVERSION"). Each share of Series B Preferred Stock shall be convertible into such number of fully paid and nonassessable shares of Common Stock as such Common Stock exists on the Issue Date, or any other shares of capital stock or other securities of the Corporation into which such Common Stock is thereafter changed or reclassified, as is determined by dividing (1) the sum of (a) the Stated Value thereof plus (b) the Premium Amount (as defined below), by (2) the then effective Conversion Price (as defined below); provided, however, that in no

event (other than pursuant to the Automatic Conversion (as defined in Article VII)) shall a holder of shares of Series B Preferred Stock be entitled to convert any such shares in excess of that number of shares upon conversion of which the sum of (x) the number of shares of Common Stock beneficially owned by the holder and its affiliates (other than shares of Common Stock which may be deemed beneficially owned through the ownership of the unconverted portion of the shares of Series B Preferred Stock or the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitations contained herein) and (y) the number of shares of Common Stock issuable upon the conversion of the shares of Series B Preferred Stock with respect to which the determination of this proviso is being made, would result in beneficial ownership by a holder and such holder's affiliates of more than 4.9% of the outstanding shares of Common Stock. For purposes of the proviso to the immediately preceding sentence, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and Regulation 13D-G thereunder, except as otherwise provided in clause (x) of such proviso. The "PREMIUM AMOUNT" means the product of the Stated Value, multiplied by .04, multiplied by (N/365), where "N" equals the number of days elapsed from the Issue Date to and including the Conversion Date (as defined in Article VI.B).

(b) LIMITATION OF NUMBER OF SHARES OF COMMON STOCK TO BE ISSUED.

Subject to waiver by the Corporation, the maximum number of shares of Common Stock to be issued upon conversion of the Series B Preferred Stock shall be 1,041,667 shares (as adjusted for stock splits, stock dividends and similar events, the "CAP AMOUNT"). If the Corporation has issued a number of shares of Common Stock upon conversion of the Series B Preferred Stock equal to the Cap Amount, unless the Corporation waives the limitations set forth in this Article VI.A(b) and issues shares of Common Stock upon conversion of the Series B Preferred Stock in excess of the Cap Amount, on the Automatic Conversion Date (as defined in Article VIII) the Corporation shall be required to redeem the outstanding shares Series B Preferred Stock in accordance with Article V.D.

(c) TRADING MARKET LIMITATION. Unless (i) permitted by the

applicable rules and regulations of the principal securities market on which the Common Stock is listed or traded or (ii) the Corporation has obtained approval of the issuance of the Common Stock upon conversion of the Series B Preferred Stock in accordance with applicable law and the rules and regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Corporation or any of its securities (the "STOCKHOLDER APPROVAL"), in no event shall the total number of shares of Common Stock issued upon

conversion of the Series B Preferred Stock (including any shares of capital stock or rights to acquire shares of capital stock issued by the Corporation which are aggregated or integrated with the Common Stock issued or issuable upon conversion of the Series B Preferred Stock for purposes of any such rule or regulation) exceed the maximum number of shares of Common Stock that the Corporation can so issue pursuant to any rule of the principal United States securities market on which the Common Stock trades (including Rule 4460(i) of the Nasdaq Stock Market or any successor rule)(the "MAXIMUM SHARE AMOUNT") which, as of the Issue Date, shall be 4,614,296 (19.99% of the total shares of Common Stock outstanding on the Issue Date), subject to equitable adjustments from time to time for stock splits, stock dividends, combinations, capital reorganizations and similar events relating to the Common Stock occurring after the Issue Date. With respect to each holder of Series B Preferred Stock, the Maximum Share Amount shall refer to such holder's pro rata share thereof

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determined in accordance with Article XI below. In the event that (a) the aggregate number of shares of Common Stock actually issued upon conversion of the Series B Preferred Stock represents at least twenty percent (20%) of the Maximum Share Amount and (b) the sum of (x) the aggregate number of shares of Common Stock actually issued upon conversion of the outstanding Series B Preferred Stock plus (y) the aggregate number of shares of Common Stock that

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remain issuable upon conversion of Series B Preferred Stock at the then effective Conversion Price, represents at least one hundred percent (100%) of the Maximum Share Amount (the "TRIGGERING EVENT"), the Corporation will use its best efforts to seek and obtain Stockholder Approval (or obtain such other relief as will allow conversions hereunder in excess of the Maximum Share Amount) as soon as practicable following the Triggering Event.

B. CONVERSION PRICE.

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(a) CALCULATION OF CONVERSION PRICE. Subject to subparagraph (b)

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below, the "CONVERSION PRICE" shall be (i) prior to the earliest of (A) December 22, 1999, (B) the date the Corporation makes a public announcement that it intends to merge or consolidate with any other corporation (other than a merger in which the Corporation is the continuing Corporation and the capital stock of the Corporation remains unchanged) or sell or transfer substantially all of the assets of the Corporation, (C) the date any person, group or entity (including the Corporation) publicly announces a tender offer to purchase 50% or more of the Corporation's Common Stock (or any other takeover scheme), (D) the date there is a material adverse change in the business, operations, assets, financial condition or prospects of the Corporation or its subsidiaries, taken as a whole or (E) the occurrence of any Mandatory Redemption Event or after delivery of any Qualified Public Offering Redemption Notice by the Corporation (the earliest of such dates being hereafter referred to as the "MARKET PRICE TRIGGER DATE"), the Fixed Conversion Price and (ii) beginning on the Market Price Trigger Date, the lesser of the Market Price and the Fixed Conversion Price; provided, however, that in the event the Market Price Trigger Date arises

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as a result of the delivery of a Qualified Public Offering Redemption Notice prior to December 22, 1999, then, during the period beginning on the date the Qualified Public Offering Redemption Notice is delivered to the holders of the Series B Preferred Stock and ending on the earlier of (x) the Qualified Public Offering Redemption Date and (y) December 21, 1999, the average Conversion Price for the shares of Series B Preferred Stock converted during such period shall be no less than the price of the Common Stock offered in the Qualified Public Offering (with an adjustment to be made after the consummation of the Qualified Public Offering, if necessary, in the number of shares of Common Stock issued upon

conversion of the Series B Preferred Stock by the Corporation and the holders of the Series B Preferred Stock who have converted during such period). The Conversion Price shall be subject to adjustments pursuant to the provisions of Article VI.C below. "MARKET PRICE" shall mean the average of the Closing Bid Prices for any three (3) consecutive Trading Days (the "MARKET PRICE DAYS") during the ten (10) Trading Day period ending one (1) Trading Day prior to the date (the "CONVERSION DATE") the Notice of Conversion (as defined in Article VI.E) is sent by a holder to the Corporation via facsimile (the "PRICING PERIOD"). The Market Price Days shall be designated by the converting holder at the time of conversion (from among the days comprising the Pricing Period) and such designation shall be set forth in the Conversion Notice. "FIXED CONVERSION PRICE" shall mean \$104.00. "CLOSING BID PRICE" means, for any security as of any date, the closing bid price on Nasdaq as reported by Bloomberg or, if Nasdaq is not the principal trading market for such security, the closing bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the closing bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price of such security is available in the over-the-counter market on the electronic bulletin board for such security or in any of the foregoing manners, the average of the bid prices of any market makers for such security that are listed in the "pink sheets" by the National Quotation Bureau, Inc. If the Closing Bid Price cannot be calculated for such security on such date in the manner provided above, the Closing Bid Price shall be the fair market value as mutually determined by the Corporation and the holders of a majority in interest of shares of Series B Preferred Stock being converted for which the calculation of the Closing Bid Price is required in order to determine the Conversion Price of such Series B Preferred Stock. "TRADING DAY" shall mean any day on which the Common Stock is traded for any period on Nasdaq, or on the principal securities exchange or other securities market on which the Common Stock is then being traded.

(b) CONVERSION PRICE DURING MAJOR ANNOUNCEMENTS. Notwithstanding

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anything contained in subparagraph (a) of this Paragraph B to the contrary, in the event the Corporation (i) makes a public announcement that it intends to consolidate or merge with any other corporation (other than a merger in which the Corporation is the surviving or continuing corporation and its capital stock is unchanged) or sell or transfer all or substantially all of the assets of the Corporation or (ii) any person, group or entity (including the Corporation) publicly announces a tender offer to purchase 50% or more of the Corporation's Common Stock (or any other takeover scheme) (the date of the announcement referred to in clause (i) or (ii) is hereinafter referred to as the "Announcement Date"), then the Conversion Price shall, effective upon the Announcement Date and continuing through the Adjusted Conversion Price Termination Date (as defined below), be equal to the lower of (x) the Conversion Price which would have been applicable for an Optional Conversion occurring on the Announcement Date and (y) the Conversion Price that would otherwise be in effect. From and after the Adjusted Conversion Price Termination Date, the Conversion Price shall be determined as set forth in subparagraph (a) of this Article VI.B. For purposes hereof, "ADJUSTED CONVERSION PRICE TERMINATION DATE" shall mean, with respect to any proposed transaction or tender offer (or takeover scheme) for which a public announcement as contemplated by this subparagraph (b) has been made, the date upon which the Corporation (in the case of clause (i) above) or the person, group or entity (in the case of clause (ii) above) consummates or publicly announces the termination or abandonment of the proposed transaction or tender offer (or takeover scheme) which caused this subparagraph (b) to become operative.

C. ADJUSTMENTS TO CONVERSION PRICE. The Conversion Price shall be

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subject to adjustment from time to time as follows:

(a) ADJUSTMENT TO CONVERSION PRICE DUE TO STOCK SPLIT, STOCK

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DIVIDEND, ETC. If at any time when Series B Preferred Stock is issued and

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outstanding, the number of outstanding shares of Common Stock is increased or decreased by a stock split, stock dividend, combination, reclassification, rights offering below the Trading Price (as defined below) to all holders of Common Stock or other similar event, which event shall have taken place during the reference period for determination of the Conversion Price for any Optional Conversion or Automatic Conversion of the Series B Preferred Stock, then the Conversion Price shall be calculated giving appropriate effect to the stock split, stock dividend, combination, reclassification or other similar event. In such event, the Corporation shall notify the Transfer Agent of such change on or before the effective date thereof. "TRADING PRICE," which shall be measured as of the record date in respect of the rights offering, means (i) the average of the last reported sale prices for the shares of Common Stock on Nasdaq as reported by Bloomberg, as applicable, for the five (5) Trading Days immediately preceding such date, or (ii) if Nasdaq is not the principal trading market for the shares of Common Stock, the average of the last reported sale prices on the principal trading market for the Common Stock during the same period as reported by Bloomberg, or (iii) if market value cannot be calculated as of such date on any of the foregoing bases, the Trading Price shall be the fair market value as reasonably determined in good faith by (a) the Board of Directors of the Corporation or, (b) at the option of a majority-in-interest of the holders of the outstanding Series B Preferred Stock by an independent investment bank of nationally recognized standing in the valuation of businesses similar to the business of the Corporation.

(b) ADJUSTMENT DUE TO MERGER, CONSOLIDATION, ETC. If, at any time

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when Series B Preferred Stock is issued and outstanding and prior to the conversion of all Series B Preferred Stock, there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization, or other similar event, as a result of which shares of Common Stock of the Corporation shall be changed into the same or a different number of shares of another class or classes of stock or securities of the Corporation or another entity, or in case of any sale or conveyance of all or substantially all of the assets of the Corporation other than in connection with a plan of complete liquidation of the Corporation, then the holders of Series B Preferred Stock shall thereafter have the right to receive upon conversion of the Series B Preferred Stock, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore issuable upon conversion, such stock, securities or assets which the holders of Series B Preferred Stock would have been entitled to receive in such transaction had the Series B Preferred Stock been converted in full immediately prior to such transaction (without regard to any limitations on conversion contained herein), and in any such case appropriate provisions shall be made with respect to the rights and interests of the holders of Series B Preferred Stock to the end that the provisions hereof (including, without limitation, provisions for adjustment of the Conversion Price and of the number of shares of Common Stock issuable upon conversion of the Series B Preferred Stock) shall thereafter be applicable, as nearly as may be practicable in relation to any securities or assets thereafter deliverable upon the

conversion of Series B Preferred Stock. The Corporation shall not effect any transaction described in this subsection (b) unless (a) it first gives, to the extent practical, thirty (30) days' prior written notice (but in any event at least fifteen (15) business days prior written notice) of the record date of the special meeting of stockholders to approve, or if there is no such record date, the consummation of, such merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event or sale of assets (during which time the holders of Series B Preferred Stock shall be entitled to convert the Series B Preferred Stock) and (b) the resulting successor or acquiring entity (if not the Corporation) assumes by written instrument the obligations of this subsection (b). The above provisions shall similarly apply to successive consolidations, mergers, sales, transfers or share exchanges.

(c) ADJUSTMENT FOR UNDERWRITERS' LOCK-UP. In the event the holders

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of Series B Preferred Stock are required to enter into a Lock-Up Agreement (as defined in Section 4(f) of the Registration Rights Agreement), from the beginning of such Underwriters' Lock-Up Period (as defined in Section 4(f) of the Registration Rights Agreement) until the fifth (5th) Trading Day following the last day of such Underwriters' Lock-Up Period, the Conversion Price shall not exceed the lesser of (i) the Fixed Conversion Price and (ii) the Market Price in effect one (1) Trading Day prior to the beginning of such Underwriters' Lock-Up Period.

(d) ADJUSTMENT DUE TO DISTRIBUTION. Subject to Article III, if the

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Corporation shall declare or make any distribution of its assets (or rights to acquire its assets) to holders of Common Stock as a dividend, stock repurchase, by way of return of capital or otherwise (including any dividend or distribution to the Corporation's shareholders in cash or shares (or rights to acquire shares) of capital stock of a subsidiary (i.e., a spin-off)) (a "DISTRIBUTION"), then the holders of Series B Preferred Stock shall be entitled, upon any conversion of shares of Series B Preferred Stock after the date of record for determining shareholders entitled to such Distribution, to receive the amount of such assets which would have been payable to the holder with respect to the shares of Common Stock issuable upon such conversion had such holder been the holder of such shares of Common Stock on the record date for the determination of shareholders entitled to such Distribution.

(e) PURCHASE RIGHTS. Subject to Article III, if at any time when

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any Series B Preferred Stock is issued and outstanding, the Corporation issues any convertible securities or rights to purchase stock, warrants, securities or other property (the "PURCHASE RIGHTS") pro rata to the record holders of any class of Common Stock, then the holders of Series B Preferred Stock will 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 Common Stock acquirable upon complete conversion of the Series B Preferred Stock (without regard to any limitations on conversion contained herein) 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.

(f) ADJUSTMENT FOR RESTRICTED PERIODS. In the event that (i) the

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Corporation fails to obtain effectiveness with the Securities and Exchange Commission of any Registration Statement (as defined in the Registration Rights Agreement) required to be filed pursuant to the Registration Rights Agreement on or prior to the date on which such Registration

Statement is required to become effective pursuant to the terms of the Registration Rights Agreement, or (ii) any such Registration Statement lapses in effect, or sales of all of the Registrable Securities (as defined in the Registration Rights Agreement) otherwise cannot be made thereunder, whether by reason of the Corporation's failure or inability to amend or supplement the prospectus (the "PROSPECTUS") included therein in accordance with the Registration Rights Agreement or otherwise, after such Registration Statement becomes effective (including, without limitation, during an Allowed Delay (as defined in Section 3(f) of the Registration Rights Agreement), then, if any holder of Series B Preferred Stock elects to convert the shares of Series B Preferred Stock held by such holder into Common Stock at any time during the period beginning on the first day of the Restricted Period (as defined below) and ending one (1) Trading Day after the end of such Restricted Period, at the election of each holder of Series B Preferred Stock, the Pricing Period shall be comprised of, (x) in the case of an event described in clause (i), the ten (10) Trading Days preceding the date on which such Registration Statement is required to become effective pursuant to the terms of the Registration Rights Agreement plus all Trading Days through and including the third (3rd) Trading Day following the actual date of effectiveness of the Registration Statement; and (y) in the case of an event described in clause (ii), the ten (10) Trading Days preceding the date on which the holder of the Series B Preferred Stock is first notified that sales may not be made under the Prospectus, plus all Trading Days through and including the third (3rd) Trading Day following the date on which the Holder is first notified that such sales may again be made under the Prospectus (such periods described in clauses (x) and (y) shall be referred to as the "RESTRICTED PERIODS"). If a holder of Series B Preferred Stock determines that sales may not be made pursuant to the Prospectus (whether by reason of the Corporation's failure or inability to amend or supplement the Prospectus or otherwise) it shall so notify the Corporation in writing and, unless the Corporation provides such holder with a written opinion of the Corporation's counsel to the contrary, such determination shall be binding for purposes of this paragraph.0

(g) NOTICE OF ADJUSTMENTS. Upon the occurrence of each adjustment or

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readjustment of the Conversion Price pursuant to this Article VI.C, the Corporation, at its expense, shall promptly compute such adjustment or readjustment and prepare and furnish to each holder of Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Stock, furnish to such holder a like certificate setting forth (i) such adjustment or readjustment, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon conversion of a share of Series B Preferred Stock.

D. MECHANICS OF CONVERSION. In order to convert Series B Preferred Stock

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into full shares of Common Stock, a holder of Series B Preferred Stock shall:  
(i) submit a copy of the fully executed notice of conversion in the form attached hereto as Exhibit A ("NOTICE OF CONVERSION") to the Corporation by facsimile dispatched on the Conversion Date (or by other means resulting in, or reasonably expected to result in, notice to the Corporation on the Conversion Date) at the office of the Corporation or its designated Transfer Agent for the Series B Preferred Stock that the holder elects to convert the same, which notice shall specify the number of shares of Series B Preferred Stock to be converted, the applicable Conversion Price and a calculation of the number of shares of Common Stock issuable upon such conversion

(together with a copy of the first page of each certificate to be converted) prior to Midnight, New York City time (the "CONVERSION NOTICE DEADLINE") on the date of conversion specified on the Notice of Conversion; and (ii) surrender the original certificates representing the Series B Preferred Stock being converted (the "PREFERRED STOCK CERTIFICATES"), duly endorsed, along with a copy of the Notice of Conversion to the office of the Corporation or the Transfer Agent for the Series B Preferred Stock as soon as practicable thereafter. The Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion, unless either the Preferred Stock Certificates are 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 (subject to the requirements of subparagraph (a) below). In the case of a dispute as to the calculation of the Conversion Price, the Corporation shall promptly issue such number of shares of Common Stock that are not disputed in accordance with subparagraph (b) below. The Corporation shall submit the disputed calculations to its outside accountant via facsimile within two (2) business days of receipt of the Notice of Conversion. The accountant shall audit the calculations and notify the Corporation and the holder of the results no later than 48 hours from the time it receives the disputed calculations. The accountant's calculation shall be deemed conclusive absent manifest error.

(a) LOST OR STOLEN CERTIFICATES. Upon receipt by the Corporation

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of evidence of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing shares of Series B Preferred Stock, and (in the case of loss, theft or destruction) of indemnity reasonably satisfactory to the Corporation, and upon surrender and cancellation of the Preferred Stock Certificate(s), if mutilated, the Corporation shall execute and deliver new Preferred Stock Certificate(s) of like tenor and date.

(b) DELIVERY OF COMMON STOCK UPON CONVERSION. Upon the surrender of

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certificates as described above together with a Notice of Conversion, the Corporation shall issue and, within two (2) business days after such surrender (or, in the case of lost, stolen or destroyed certificates, after provision of agreement and indemnification pursuant to subparagraph (a) above) (the "DELIVERY PERIOD"), deliver (or cause its Transfer Agent to so issue and deliver) in accordance with the terms hereof and the Purchase Agreement (including, without limitation, in accordance with the requirements of Section 2(g) of the Purchase Agreement) to or upon the order of the holder (i) that number of shares of Common Stock for the portion of the shares of Series B Preferred Stock converted as shall be determined in accordance herewith and (ii) a certificate representing the balance of the shares of Series B Preferred Stock not converted, if any. In addition to any other remedies available to the holder, including actual damages and/or equitable relief, the Corporation shall pay to a holder \$2,000 per day in cash for each day beyond a two (2) day grace period following the Delivery Period that the Corporation fails to deliver Common Stock (a "DELIVERY DEFAULT") issuable upon surrender of shares of Series B Preferred Stock with a Notice of Conversion until such time as the Corporation has delivered all such Common Stock (the "DELIVERY DEFAULT PAYMENTS"). Such Delivery Default Payments shall be paid to such holder by the fifth day of the month following the month in which it has accrued or, at the option of the holder (by written notice to the Corporation by the first day of the month following the month in which it has accrued), shall be convertible into Common Stock in accordance with the terms of this Article VI.

In lieu of delivering physical certificates representing the Common Stock issuable upon conversion, provided the Corporation's Transfer Agent is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer ("FAST") program, upon request of the holder and its compliance with the provisions contained in Article VI.A and in this Article VI.D, the Corporation shall use its best efforts to cause its Transfer Agent to electronically transmit the Common Stock issuable upon conversion to the holder by crediting the account of holder's Prime Broker with DTC through its Deposit Withdrawal Agent Commission ("DWAC") system. The time periods for delivery and penalties described in the immediately preceding paragraph shall apply to the electronic transmittals described herein.

(c) CASH IN LIEU OF FRACTIONAL SHARES. If any conversion of Series

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B Preferred Stock would result in a fractional share of Common Stock or the right to acquire a fractional share of Common Stock, the Corporation shall pay to the holder of such fractional share, cash in lieu of such fractional share in an amount equal to such fraction multiplied by the Closing Price of the Common Stock on the Conversion Date.

(d) CONVERSION DATE. The "CONVERSION DATE" shall be the date

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specified in the Notice of Conversion, provided that the Notice of Conversion is submitted by facsimile (or by other means resulting in, or reasonably expected to result in, notice) to the Corporation or its Transfer Agent before Midnight, New York City time, on the Conversion Date. The person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such securities as of the Conversion Date and all rights with respect to the shares of Series B Preferred Stock surrendered shall forthwith terminate except the right to receive the shares of Common Stock or other securities or property issuable on such conversion and except that the holders preferential rights as a holder of Series B Preferred Stock shall survive to the extent the Corporation fails to deliver such securities.

E. RESERVATION OF SHARES. A number of shares of the authorized but unissued

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Common Stock sufficient to provide for the conversion of the Series B Preferred Stock outstanding (based on the lesser of the then current Market Price and the Fixed Conversion Price) shall at all times be reserved by the Corporation, free from preemptive rights, for such conversion or exercise. As of the date of issuance of the Series B Preferred Stock, 2,083,332 authorized and unissued shares of Common Stock have been duly reserved for issuance upon conversion of the Series B Preferred Stock (the "RESERVED AMOUNT"). The Reserved Amount shall be increased from time to time in accordance with the Company's obligations pursuant to Section 4(h) of the Purchase Agreement. In addition, if the Corporation shall issue any securities or make any change in its capital structure which would change the number of shares of Common Stock into which each share of the Series B Preferred Stock shall be convertible, the Corporation shall at the same time also make proper provision so that thereafter there shall be a sufficient number of shares of Common Stock authorized and reserved, free from preemptive rights, for conversion of the outstanding Series B Preferred Stock.

If at any time a holder of shares of Series B Preferred Stock submits a Notice of Conversion, and the Corporation does not have sufficient authorized but unissued shares of Common Stock available to effect such conversion in accordance with the provisions of this Article VI (a "CONVERSION DEFAULT"), subject to Article XI, the Corporation shall issue to the



holder all of the shares of Common Stock which are available to effect such conversion. The number of shares of Series B Preferred Stock included in the Notice of Conversion which exceeds the amount which is then convertible into available shares of Common Stock (the "EXCESS AMOUNT") shall, notwithstanding anything to the contrary contained herein, not be convertible into Common Stock in accordance with the terms hereof until (and at the holder's option at any time after) the date additional shares of Common Stock are authorized by the Corporation to permit such conversion, at which time the Conversion Price in respect thereof shall be the lesser of (i) the Conversion Price on the Conversion Default Date (as defined below) and (ii) the Conversion Price on the Conversion Date elected by the holder in respect thereof. The Corporation shall use its best efforts to effect an increase in the authorized number of shares of Common Stock as soon as possible following the earlier of (i) such time that a holder of Series B Preferred Stock notifies the Corporation or that the Corporation otherwise becomes aware that there are or likely will be insufficient authorized and unissued shares to allow full conversion thereof and (ii) a Conversion Default. In addition, the Corporation shall pay to the holder payments ("CONVERSION DEFAULT PAYMENTS") for a Conversion Default in the amount of (a) .24, multiplied by (b) the sum of the Stated Value plus the Premium Amount per share of Series B Preferred Stock held by such holder through the Authorization Date (as defined below), multiplied by (c)  $(N/365)$ , where N = the number of days from the day the holder submits a Notice of Conversion giving rise to a Conversion Default (the "CONVERSION DEFAULT DATE") to the date (the "AUTHORIZATION DATE") that the Corporation authorizes a sufficient number of shares of Common Stock to effect conversion of the full number of shares of Series B Preferred Stock. The Corporation shall send notice to the holder of the authorization of additional shares of Common Stock, the Authorization Date and the amount of holder's accrued Conversion Default Payments. The accrued Conversion Default Payment for each calendar month shall be paid in cash or shall be convertible into Common Stock at the applicable Conversion Price, at the holder's option, as follows:

(a) In the event the holder elects to take such payment in cash, cash payment shall be made to holder by the fifth day of the month following the month in which it has accrued; and

(b) In the event the holder elects to take such payment in Common Stock, the holder may convert such payment amount into Common Stock at the Conversion Price (as in effect at the time of Conversion) at any time after the fifth day of the month following the month in which it has accrued in accordance with the terms of this Article VI (so long as there is then a sufficient number of authorized shares of Common Stock).

The holder's election shall be made in writing to the Borrower at any time prior to 9:00 p.m, New York City Time, on the third (3rd) day of the month following the month in which Conversion Default payments have accrued. If no election is made, the holder shall be deemed to have elected to receive cash. Nothing herein shall limit the holder's right to pursue actual damages (to the extent in excess of the Conversion Default Payments) for the Corporation's failure to maintain a sufficient number of authorized shares of Common Stock, and each holder shall have the right to pursue all remedies available at law or in equity (including a decree of specific performance and/or injunctive relief).

F. NOTICE OF CONVERSION PRICE ADJUSTMENTS. Upon the occurrence of each

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adjustment or readjustment of the Conversion Price pursuant to this Article VI, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustment or readjustment, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon conversion of a share of Series B Preferred Stock.

G. STATUS AS STOCKHOLDERS. Upon submission of a Notice of Conversion by a

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holder of Series B Preferred Stock, (i) the shares covered thereby (other than the shares, if any, which cannot be issued because their issuance would exceed such holder's allocated portion of the Reserved Amount or Maximum Share Amount) shall be deemed converted into shares of Common Stock and (ii) the holder's rights as a holder of such converted shares of Series B Preferred Stock shall cease and terminate, excepting only the right to receive certificates for such shares of Common Stock and to any remedies provided herein or otherwise available at law or in equity to such holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. Notwithstanding the foregoing, if a holder has not received certificates for all shares of Common Stock prior to the tenth (10th) business day after the expiration of the Delivery Period with respect to a conversion of shares of Series B Preferred Stock for any reason, then (unless the holder otherwise elects to retain its status as a holder of Common Stock by so notifying the Corporation) the holder shall regain the rights of a holder of such shares of Series B Preferred Stock with respect to such unconverted shares of Series B Preferred Stock and the Corporation shall, as soon as practicable, return such unconverted shares of Series B Preferred Stock to the holder or, if such shares of Series B Preferred Stock have not been surrendered, adjust its records to reflect that such shares of Series B Preferred Stock have not been converted. In all cases, the holder shall retain all of its rights and remedies (including, without limitation, (i) the right to receive Conversion Default Payments pursuant to Article VI.E to the extent required thereby for such Conversion Default and any subsequent Conversion Default and (ii) the right to have the Conversion Price with respect to subsequent conversions determined in accordance with Article VI.E.) for the Corporation's failure to convert the Series B Preferred Stock.

VIIA CONVERSION BY THE CORPORATION

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Subject to the limitations on conversion set forth in Article VI.A(c) and so long as (i) all of the shares of Common Stock issuable upon conversion of all outstanding shares of Series B Preferred Stock are then (x) authorized and reserved for issuance, (y) registered for re-sale under the 1933 Act by the holders of the Series B Preferred Stock (or may otherwise be resold publicly without restriction) and (z) eligible to be traded on Nasdaq, the NYSE, the AMEX or Nasdaq SmallCap and (ii) there is not then a continuing Mandatory Redemption Event or Trading Market Redemption Event, then, at any time after the one (1) year anniversary of the date the Registration Statement required to be filed pursuant to Section 2(a) of the Registration

Rights Agreement is declared effective by the SEC (subject to extension for each Trading Day following effectiveness that sales of all of the Registrable Securities (as defined in the Registration Rights Agreement) cannot be made pursuant to the Registration Statement (whether by reason of the Company's failure to properly supplement or amend the prospectus included therein in accordance with the terms of the Registration Rights Agreement, during an Allowed Delay or otherwise), if the average Closing Bid Price of the Common Stock during any twenty (20) consecutive Trading Day period is greater than 150% of the Fixed Conversion Price (a "FORCED CONVERSION TRIGGER EVENT"), the Corporation shall have the right, exercisable on not less than fifteen (15) Trading Days prior written notice (the "CORPORATION CONVERSION NOTICE") to the holders of the Series B Preferred Stock (which notice may not be sent to the holders of the Series B Preferred Stock until the Corporation is permitted to convert the Series B Preferred Stock pursuant to this Article VII but must be sent within five (5) Trading Days of a Forced Conversion Trigger Event), to convert all of the outstanding shares of Series B Preferred Stock into shares of Common Stock in accordance with this Article VII and Article VI; provided,

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however, that a Corporation Conversion shall not be permitted if during the  
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period beginning on the date the Corporation Conversion Notice is delivered to the holders of the Series B Preferred Stock and ending on the Trading Day prior to the Corporation Conversion Date the average Closing Bid Price of the Common Stock for any five (5) consecutive Trading Days during such period is not greater than 150% of the Fixed Conversion Price. Any conversion hereunder (a "CORPORATION CONVERSION") shall be as of the date (the "CORPORATION CONVERSION DATE") specified in the Corporation Conversion Notice (but in no event prior to the fifteenth (15) trading day following the date of such notice). The Corporation Conversion shall be delivered to the holders of Series B Preferred Stock at their registered addresses appearing on the books and records of the Corporation, which notice shall contain substantially the same information as the Notice of Conversion described in Article VI.E. The Corporation Conversion Date shall be the "Conversion Date" for purposes of determining the Conversion Price and the time within which certificates representing the Common Stock must be delivered to the holder upon a Corporation Conversion.

#### VIIIA AUTOMATIC CONVERSION

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Subject to the limitations on conversion set forth in Articles VI.A(b) and VI.A(c) and so long as (i) all of the shares of Common Stock issuable upon conversion of all outstanding shares of Series B Preferred Stock are then (x) authorized and reserved for issuance, (y) registered for re-sale under the 1933 Act by the holders of the Series B Preferred Stock (or may otherwise be resold publicly without restriction) and (z) eligible to be traded on Nasdaq, the NYSE, the AMEX or Nasdaq SmallCap and (ii) there is not then a continuing Mandatory Redemption Event or Trading Market Redemption Event, each share of Series B Preferred Stock issued and outstanding on December 22, 2000 (the "AUTOMATIC CONVERSION DATE"), automatically shall be converted into shares of Common Stock on such date at the then effective Market Price in accordance with, and subject to, the provisions of Article VI hereof (the "AUTOMATIC CONVERSION"). The Automatic Conversion Date shall be delayed by one (1) Trading Day for each Trading Day occurring prior thereto and prior to the full conversion of the Series B Preferred Stock that (i) any Registration Statement required to be filed and to be effective pursuant to the Registration Rights Agreement is not effective or sales of all of the Registrable Securities (as defined in the Registration Rights Agreement) otherwise cannot be

made thereunder (whether by reason of the Company's failure to properly supplement or amend the prospectus included therein in accordance with the terms of the Registration Rights Agreement or otherwise, including any Allowed Delays (as defined in Section 3(f) of the Registration Rights Agreement), (ii) any Mandatory Redemption Event (as defined in Article V.A) or Trading Market Redemption Event exists, without regard to whether any cure periods shall have run, (iii) that the Corporation is in breach of any of its obligations pursuant to Section 4(h) of the Purchase Agreement or (iv) at the option of each holder of Series B Preferred Stock, such holder is subject to a Lock-Up Agreement (as defined in the Registration Rights Agreement). The Automatic Conversion Date shall be the Conversion Date for purposes of determining the Conversion Price (using the Market Price as the Conversion Price) and the time within which certificates representing the Common Stock must be delivered to the holder.

#### IXA VOTING RIGHTS

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The holders of the Series B Preferred Stock have no voting power whatsoever, except as otherwise provided by the Delaware General Corporation Law ("DGCL"), in this Article IX, and in Article X below.

Notwithstanding the above, the Corporation shall provide each holder of Series B Preferred Stock with prior notification of any meeting of the shareholders (and copies of proxy materials and other information sent to shareholders). In the event of any taking by the Corporation of a record of its shareholders for the purpose of determining shareholders who are entitled to receive payment of any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire (including by way of merger, consolidation or recapitalization) any share of any class or any other securities or property, or to receive any other right, or for the purpose of determining shareholders who are entitled to vote in connection with any proposed sale, lease or conveyance of all or substantially all of the assets of the Corporation, or any proposed liquidation, dissolution or winding up of the Corporation, the Corporation shall mail a notice to each holder, at least ten (10) days prior to the record date specified therein (or thirty (30) days prior to the consummation of the transaction or event, whichever is earlier), of the date on which any such record is to be taken for the purpose of such dividend, distribution, right or other event, and a brief statement regarding the amount and character of such dividend, distribution, right or other event to the extent known at such time.

To the extent that under the DGCL the vote of the holders of the Series B Preferred Stock, voting separately as a class or series as applicable, is required to authorize a given action of the Corporation, the affirmative vote or consent of the holders of at least a majority of the shares of the Series B Preferred Stock represented at a duly held meeting at which a quorum is present or by written consent of a majority of the shares of Series B Preferred Stock (except as otherwise may be required under the DGCL) shall constitute the approval of such action by the class. To the extent that under the DGCL holders of the Series B Preferred Stock are entitled to vote on a matter with holders of Common Stock, voting together as one class, each share of Series B Preferred Stock shall be entitled to a number of votes equal to the number of shares of Common Stock into which it is then convertible using the record date for the taking of such vote of shareholders as the date as of which the Conversion Price is calculated. Holders of the Series B Preferred Stock shall be entitled to notice of all shareholder meetings or

written consents (and copies of proxy materials and other information sent to shareholders) with respect to which they would be entitled to vote, which notice would be provided pursuant to the Corporation's bylaws and the DGCL.

XA PROTECTIVE PROVISIONS  
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So long as shares of Series B Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by the DGCL) of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock:

(a) alter or change the rights, preferences or privileges of the Series B Preferred Stock or any capital stock of the Corporation so as to affect adversely the Series B Preferred Stock;

(b) create any new class or series of capital stock having a preference over the Series B Preferred Stock as to distribution of assets upon liquidation, dissolution or winding up of the Corporation (as previously defined in Article II hereof, "SENIOR SECURITIES");

(c) create any new class or series of capital stock ranking pari  
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passu with the Series B Preferred Stock as to distribution of assets upon  
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liquidation, dissolution or winding up of the Corporation (as previously defined in Article II hereof, "PARI PASSU SECURITIES");  
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(d) increase the authorized number of shares of Series B Preferred Stock;

(e) issue any Senior Securities or Pari Passu Securities;  
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(f) increase the par value of the Common Stock, or

(g) do any act or thing not authorized or contemplated by this Certificate of Designation which would result in taxation of the holders of shares of the Series B Preferred Stock under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended).

In the event holders of at least a majority of the then outstanding shares of Series B Preferred Stock agree to allow the Corporation to alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock, pursuant to subsection (a) above, so as to affect the Series B Preferred Stock, then the Corporation will deliver notice of such approved change to the holders of the Series B Preferred Stock that did not agree to such alteration or change (the "DISSENTING HOLDERS") and Dissenting Holders shall have the right for a period of thirty (30) days to convert pursuant to the terms of this Certificate of Designation as they exist prior to such alteration or change or continue to hold their shares of Series B Preferred Stock.

XIA PRO RATA ALLOCATIONS

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The Maximum Share Amount, the Cap Amount and the Reserved Amount (including any increases thereto) shall be allocated by the Corporation pro rata among the holders of Series B Preferred Stock based on the number of shares of Series B Preferred Stock issued to each holder. Each increase to the Maximum Share Amount, the Cap Amount and the Reserved Amount shall be allocated pro rata among the holders of Series B Preferred Stock based on the number of shares of Series B Preferred Stock held by each holder at the time of the increase in the Maximum Share Amount, the Cap Amount or Reserved Amount. In the event a holder shall sell or otherwise transfer any of such holder's shares of Series B Preferred Stock, each transferee shall be allocated a pro rata portion of such transferor's Maximum Share Amount, the Cap Amount and Reserved Amount. Any portion of the Maximum Share Amount, the Cap Amount or Reserved Amount which remains allocated to any person or entity which does not hold any Series B Preferred Stock shall be allocated to the remaining holders of shares of Series B Preferred Stock, pro rata based on the number of shares of Series B Preferred Stock then held by such holders.

IN WITNESS WHEREOF, this Certificate of Designation is executed on behalf of the Corporation this 22nd day of December, 1998.

CMGI, INC.

By: /s/Andrew J. Hajduky III

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Andrew J. Hajduky III  
Executive Vice President

NOTICE OF CONVERSION

(To be Executed by the Registered Holder
in order to Convert the Series B Preferred Stock)

The undersigned hereby irrevocably elects to convert \_\_\_\_\_ shares of Series B Preferred Stock, represented by stock certificate No(s). \_\_\_\_\_ (the "PREFERRED STOCK CERTIFICATES") into shares of common stock ("COMMON STOCK") of CMGI, Inc., a Delaware corporation (the "CORPORATION") according to the conditions of the Certificate of Designation of Series B Preferred Stock, as of the date written below. If securities are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates. No fee will be charged to the Holder for any conversion, except for transfer taxes, if any. A copy of each Preferred Stock Certificate is attached hereto (or evidence of loss, theft or destruction thereof).

The Corporation shall electronically transmit the Common Stock issuable pursuant to this Notice of Conversion to the account of the undersigned or its nominee with DTC through its Deposit Withdrawal Agent Commission system ("DWAC Transfer").

Name of DTC Prime Broker:
Account Number:

In lieu of receiving shares of Common Stock issuable pursuant to this Notice of Conversion by way of a DWAC Transfer, the undersigned hereby requests that the Corporation issue a certificate or certificates for the number of shares of Common Stock set forth above (which numbers are based on the Holder's calculation attached hereto) in the name(s) specified immediately below or, if additional space is necessary, on an attachment hereto:

Name:
Address:

The undersigned represents and warrants that all offers and sales by the undersigned of the securities issuable to the undersigned upon conversion of the Series B Preferred Stock shall be made pursuant to registration of the securities under the Securities Act of 1933, as amended (the "ACT"), or pursuant to an exemption from registration under the Act.

Date of Conversion:
Market Price Days:
Applicable Conversion Price:
Number of Shares of Common Stock to be Issued:

Signature:
Name:
Address:

\*The Corporation is not required to issue shares of Common Stock until the original Series B Preferred Stock Certificate(s) (or evidence of loss, theft or destruction thereof) to be converted are received by the Corporation or its Transfer Agent. The Corporation shall issue and deliver shares of Common Stock to an overnight courier not later than two (2) business days following receipt of the original Preferred Stock Certificate(s) to be converted, and shall make payments pursuant to the Certificate of Designation for the number of business days such issuance and delivery is late.





## CMGI Completes Private Placement of \$50 Million

ANDOVER, Mass.--(BUSINESS WIRE)--Dec. 22, 1998--CMGI, Inc. (NASDAQ:CMGI) today announced it has completed a \$50 million private placement of its 4% Series A convertible preferred stock with funds managed by Rose Glen Capital Management L.P. The convertible preferred stock converts into common shares of CMGI based upon a conversion price of approximately 116% of the average closing price of CMGI during the three trading days immediately preceding the execution of definitive documents on December 21, 1998. Under certain circumstances, the company has the option to redeem the preferred stock. Beginning one year after the date of issuance, if not redeemed, the conversion price may be adjusted based on the then market price of CMGI's common stock. The 4% yield is payable in shares of common stock.

Proceeds of the private placement will be used for acquisitions of controlling positions in companies and working capital purposes. ABOUT CMGI

A recognized leader in the Internet arena, CMGI (NASDAQ:CMGI) combines operating companies with strategic venture investments to create a broad and diverse set of businesses delivering Internet solutions. Microsoft, Intel and Sumitomo hold minority positions in CMGI.

The CMGI Internet Group consists of its majority-owned subsidiary companies Planet Direct, NaviSite, NaviNet, Engage Technologies, ADSmart, and The Password, as well as a minority interest in Magnitude Network.

The company's CMG@Ventures affiliates have ownership interests in Lycos, Inc. (NASDAQ:LCOS), blaxxun, GeoCities (NASDAQ:GCTY), Vicinity, ThingWorld.com, KOZ, Silknet, Chemdex, Speech Machines, Softway Systems, TicketsLive, Critical Path, Mother Nature, Raging Bull, Universal Learning Technology, Virtual Ink, Ancestry.com, and Visto. CMGI also includes CMG Direct, SalesLink, InSolutions and On-Demand Solutions as majority owned subsidiaries in the direct marketing, fulfillment and turn-key arenas.

Corporate headquarters is located at 100 Brickstone Square, Andover, MA 01810. Telephone: 978-684-3600. Fax: 978-684-3814. Additional information is available on the company's Web site, <http://www.cmgi.com>.

CONTACT: CMGI

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