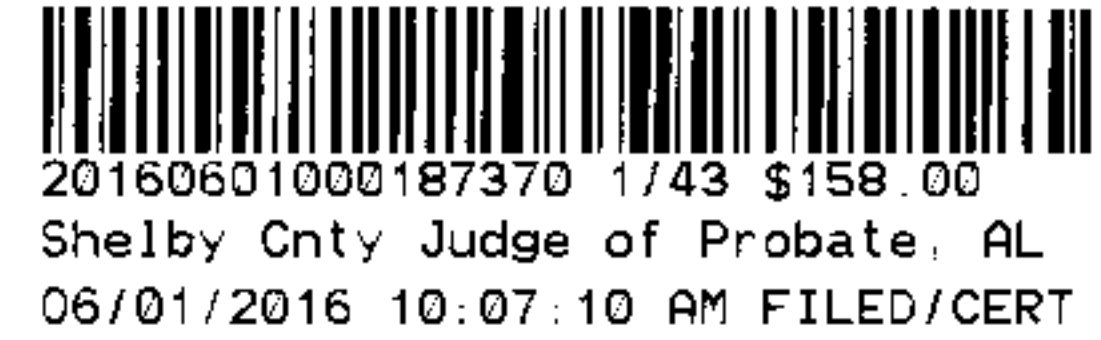


**THIRD AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
EPL, INC.**



PURSUANT TO THE ALABAMA BUSINESS CORPORATION LAW

Pursuant to §10A-2-10.07 of the Alabama Business Corporation Law (the "ABCL"), **EPL, INC.**, a corporation organized and existing under the law of the State of Alabama, does hereby adopt the following Third Amended and Restated Articles of Incorporation (the "Amended Articles") pursuant to action of the directors and shareholders of the Corporation in the manner provided by the ABCL as of the date hereof:

A. That the date of the filing of the original Articles of Incorporation of the Corporation was March 27, 1989, in the Shelby County, Alabama, Probate Judge's office and an Amendment to the Articles of Incorporation were filed on January 8, 2000, December 30, 2005 and March 30, 2007, in the Shelby County, Alabama Probate Judge's office.

B. That Amended and Restated Articles of Incorporation of the Corporation were filed on April 6, 2011, in the Shelby County, Alabama, Probate Judge's office.

C. That Second Amended and Restated Articles of Incorporation of the Corporation were filed on February 19, 2015, in the Shelby County, Alabama, Probate Judge's office (the "Existing Articles") and an Amendment to the Second Amended and Restated Articles of Incorporation were filed on February 19, 2015 in the Shelby County, Alabama, Probate Judge's office (the "Existing Articles").

C. That the number of shares of the Corporation outstanding at the time of adoption of the Amended Articles was 13,118,543 shares of \$0.01 par value Class A Common Stock and 6,893,747 shares of Series A Preferred Stock; and the number of shares entitled to vote thereon was 14,007,374 shares of Class A Common Stock and Series A Preferred Stock. The number of shares voted for the Amended Articles was 18,667,685 shares of Class A Common Stock and Series A Preferred Stock; and no shares of Class A Common Stock and Series A Preferred Stock were voted against such amendment.

D. That the Existing Articles are hereby amended and restated as follows (the Existing Articles as amended and restated by the Amended Articles are herein sometimes referred to as the "Articles" or the "Articles of Incorporation"):

**ARTICLE I  
NAME**

The name of this corporation is EPL, Inc. (the "Corporation").

## **ARTICLE II REGISTERED AGENT**

The address of the registered office of this Company in the State of Alabama is to be located at 22 Inverness Center Parkway, Suite 400, in the City of Birmingham, County of Shelby, Zip Code 35242. The registered agent in charge thereof is Wayne Benson.

## **ARTICLE III PURPOSE**

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the ABCL.

## **ARTICLE IV CAPITAL**

(a) The total number of shares of capital stock of all classes which the Corporation shall have authority to issue is 50,300,000 shares, consisting of 38,106,253 shares of Class A common stock, having par value of \$0.01 (the "Common Stock"), 6,893,747 shares of Series A Preferred Stock, having no par value (the "Series A Preferred Stock"), 300,000 shares of Series B Preferred Stock, having no par value (the "Series B Preferred Stock") and 5,000,000 shares of Series B-1 Preferred Stock, having no par value (the "Series B-1 Preferred Stock").

(b) The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of the shareholders (and written consents in lieu of meetings). Notwithstanding the foregoing or anything herein to the contrary, with respect to the election of directors: (i) the Common Stock and Series A Preferred Stock held by Dedagroup North America, Inc. and its affiliates (collectively, "Dedagroup"), exclusively and as a separate class, shall be entitled to elect five (5) directors of the Corporation (the "Dedagroup Directors"), including the chairman of the Board of Directors, (ii) for so long as it holds any Series A Preferred Stock of the Corporation, Peach State Federal Credit Union ("Peach State") shall be entitled to elect its chief executive officer as a director of the Corporation (the "Peach State Director"), (iii) the Series B Preferred Stock held shall be entitled, exclusively and as a separate class, to elect one (1) director of the Corporation (the "Series B Director"), and (iv) the Common Stock and Series A Preferred Stock held by all other holders thereof (i.e., other than Dedagroup and Peach State) shall be entitled, exclusively and as a separate class, to elect the balance of the total number of directors of the Corporation (though in no event less than two (2)) (the "Remaining Directors", and together with the Peach State Director and Series B Director herein collectively referred to as the "Non-Dedagroup Directors"). The shareholders in the voting class described in the foregoing subsection (iv) are entitled to cumulate their votes for the directors which they are entitled to select, meaning that such shareholders are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates. Within seven (7) days following the date hereof, the Corporation shall provide notice to all Series B Preferred Stock holders of a special meeting to be held no later than twenty (20) days after the date hereof for the purpose of electing the Series B Director. Until such

meeting is held, the Board of Directors shall consist only of the Dedagroup Directors, the Peach State Director, and the Remaining Directors.

The Corporation may from time to time issue its shares of stock for such consideration as may be fixed from time to time by the Board of Directors and may receive in payment thereof, in whole or in part, money, other property (tangible or intangible) actually received, or labor or services actually performed for the Corporation. In the absence of intentional fraud in the transaction, the judgment of the Board of Directors or the shareholders, as the case may be, as to the value of the consideration received for the shares shall be conclusive. Neither promissory notes nor future services, however, shall constitute payment or part payment for the issuance of the shares of the Corporation. When payment of the consideration for which the shares are to be issued shall have been received by the Corporation, such shares shall be deemed to be fully paid and non-assessable, and the holder of such shares shall not be liable for any further payment in respect thereof.

(c) There is hereby designated a series of Preferred Stock known as "Series A Preferred Stock." The Series A Preferred Stock shall consist of 6,893,747 shares. The Series A Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

(i) **Dividends.** From and after the date of the issuance of the shares of Series A Preferred Stock (the "Series A Original Issue Date"), dividends at the rate per annum of three and 25/100 percent (3.25%) of the "Series A Original Issue Price" (hereinafter defined) shall accrue on each outstanding share of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) (the "Accruing Dividends"). The "Series A Original Issue Price" of the Series A Preferred Stock is \$1.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or similar recapitalization, with respect to the Series A Preferred Stock. Accruing Dividends shall accrue from day to day, whether or not declared, shall be cumulative and shall be paid annually on the 2<sup>nd</sup> day of February of each year. The Corporation shall not declare, pay or set aside any dividends on any other shares of capital stock of the Corporation unless the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to the amount of the aggregate Accruing Dividends then accrued on such share of Series A Preferred Stock and not previously paid.

(ii) **Liquidation, Dissolution or Winding-Up; Certain Mergers, Consolidations and Asset Sales.**

(A) **Preferential Payments to Holders of Series A Preferred Stock.** In the event of any Deemed Liquidation Event (as defined in Section (ii)(C) hereof), the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets available for distribution to its stockholders, before any payment shall be made to the holders of Series B Preferred Stock, Series B-1 Preferred Stock, Common Stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock by reason of their ownership thereof, an amount equal to the Series A Original Issue Price, plus any Accruing



Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon. If upon any such Deemed Liquidation Event the remaining assets available for distribution to the Corporation's stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series A Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series A Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(B) Distribution of Remaining Assets. After the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation senior to the Common Stock, the remaining assets available for distribution to the Corporation's stockholders shall be distributed among the holders of the shares of Series A Preferred Stock, Common Stock and any other series of capital stock entitled to participate with the Common Stock in the distribution of such remaining assets, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock immediately prior to such Deemed Liquidation Event of the Corporation. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under this Section (ii) is hereinafter referred to as the "Series A Liquidation Amount."

(C) Deemed Liquidation Events. For purposes of this Section (ii) and other provisions hereof, the term "Deemed Liquidation Event" shall mean any of the following, unless the holders of at least a majority of the Series A Preferred Stock waive the provisions hereof by written notice given to the Corporation at least ten (10) days prior to the effective date of any such event:

(1) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions, including, without limitation, any sale of stock, reorganization, merger, consolidation, or share exchange, other than transactions in which the holders of the outstanding voting securities of the Corporation immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity), as a result of shares in the Corporation held by such holders prior to such transaction, greater than fifty percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such transaction or series of transactions; or

(2) the acquisition in any transaction or series of related transactions by a single person or entity of such number of shares of capital stock of the Corporation which results in such person or entity (in each case, together with its affiliates) owning fifty percent (50%) or more of the outstanding securities of the Corporation immediately after such acquisition (each event in clauses (1) and (2), a "Change of Control Transaction"); or

(3) the sale, lease, license, exchange, or other disposal, in a single transaction or series of related transactions, of all, or substantially all, of the Corporation's

property (with or without good will), other than in the usual and regular course of business, in accordance with Section 10A-2-12.02 of the ABCL, including, but not limited to, the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries; or

(4) dissolution of the Corporation in accordance with Section 10A-2-14.02 of the ABCL, as amended, or liquidation or winding-up of the business and affairs of the Corporation; or

(5) the assignment, license, or transfer to one or more persons, other than in the usual and regular course of business, of substantially all of the intellectual property of the Corporation.

Unless voted by a majority of the holders of the then outstanding Series A Preferred Stock not to be treated as a Deemed Liquidation Event, all consideration payable to the stockholders of the Corporation in connection with any Change of Control Transaction, or all consideration payable to the Corporation and distributable to its stockholders, together with all other available assets of the Corporation, in connection with any transaction described under Section (ii)(C)(3), Section (ii)(C)(4), or Section (ii)(C)(5), shall be, as applicable, paid by the purchaser to the holders of, or distributed by the Corporation in redemption (out of funds legally available therefor) of, the Series A Preferred Stock in accordance with the preferences and priorities set forth in Sections (ii)(A) and (B) above, with such preferences and priorities specifically intended to be applicable in any such Change of Control Transaction or other transaction referenced above as if such transaction were a liquidation. Furthermore, in the event the consideration payable in a Deemed Liquidation Event consists of cash and cash equivalents and assets other than cash and cash equivalents, the cash and cash equivalents shall be distributed first to the holders of Series A Preferred Stock in satisfaction of the amounts payable pursuant to subsection (ii)(A) before any other assets are distributed to the holders of Series A Preferred Stock in satisfaction of the remaining Series A Liquidation Amount. In furtherance of the foregoing, the Corporation shall take such actions as are necessary to give effect to the provisions of this Section (ii)(C), including without limitation, (I) in the case of a merger or consolidation, causing the definitive agreement relating to such merger or consolidation to provide for a rate at which the shares of Series A Preferred Stock are converted into or exchanged for cash, new securities or other property so as to give effect to the liquidation preferences and priorities provided for in Section (ii)(A) and (B), or otherwise causing such shares to be redeemed in a manner that gives effect to the liquidation preferences and priorities provided for in Section (ii)(A) and (B), and (II) in the case of a stock sale or other transaction referenced above, redeeming (or causing the acquiring person, firm or other entity, as applicable, to purchase) the Series A Preferred Stock in a manner that gives effect to the liquidation preferences and priorities provided for in Section (ii)(A) and (B), except to the extent it is not a Deemed Liquidation Event pursuant to this Section (ii)(C). Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the proceeds available for such redemption are not sufficient to redeem all outstanding shares of Series A Preferred Stock and of any other series of Preferred Stock ranking on redemption on parity with the Series A Preferred Stock that is required to then be redeemed, the Corporation shall redeem a pro rata portion of



each holder's shares of Series A Preferred Stock and any such other series of Preferred Stock to the fullest extent of such proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the proceeds available therefore were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The provisions of Section (vi)(C) and (D) shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series A Preferred Stock pursuant to this Section (ii)(C). The Corporation shall promptly provide to the holders of shares of Series A Preferred Stock such information concerning the terms of such Change of Control Transaction or other transaction referenced above and the value of the assets of the Corporation as may reasonably be requested by the holders of Series A Preferred Stock. The amount deemed distributed to the holders of Series A Preferred Stock upon any such transaction shall be the cash or the value of the property, rights or securities distributed to such holders by the Corporation or the acquiring person, firm or other entity, as applicable. Any election by a majority of the holders of Series A Preferred Stock pursuant to this Section (ii)(C) not to treat a transaction as a Deemed Liquidation Event shall be made by written notice to the Corporation, the other holders of Series A Preferred Stock, and the holders of Common Stock at least ten (10) days prior to the effective date of the relevant transaction. In the event that the requirements of this Section (ii)(C) are not complied with, the Corporation shall cause such closing to be postponed until such time as the requirements of this Section (ii)(C) have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in this Section (ii)(C).

(D) Non-Cash Assets. If any of the assets of the Corporation are to be distributed under Section (ii)(C), or for any purpose, in a form other than cash, then the board of directors shall promptly and reasonably determine in good faith the fair market value of the assets to be distributed to the holders of Series A Preferred Stock and/or Common Stock. The Corporation shall, upon receipt of such determination, give prompt written notice of the determination to each holder of shares of Series A Preferred Stock and/or Common Stock. Notwithstanding the foregoing, the fair market value of any securities shall be valued as provided in the definitive purchase or merger agreement relating to the Deemed Liquidation Event, or if no provision has been made, as follows:

(1) Securities not subject to investment letter or other similar restrictions on free marketability:

(aa) If traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing sale prices of the securities on the NASDAQ Stock Market or such exchange, as applicable, over the thirty (30) calendar day period ending three (3) calendar days prior to the consummation of a liquidation, dissolution or winding up of the Corporation;

(bb) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) calendar day period ending three (3) calendar days prior to the consummation of a liquidation, dissolution or winding up of the Corporation; or

(cc) If there is no active public market, the value shall be the fair market value thereof, as determined by a majority of the board of directors in good faith.

(2) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section (ii)(D)(1)(aa), (bb) or (cc) to reflect the approximate fair market value thereof, as determined by the board of directors in good faith.

(E) Allocation of Escrow. If there occurs a Deemed Liquidation Event pursuant to Section (ii)(C) and if any portion of the consideration payable to the stockholders of the Corporation is subject to contingencies, the acquisition agreement shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections (ii)(A) and (B) as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event, and (b) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections (ii)(A) and (B) after taking into account the previous payment of the Initial Consideration as part of the same transaction.

(iii) Voting.

(A) Except as otherwise set forth in subsection (b) above regarding the election of members of the Board of Directors, on any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the provisions of Section (iii)(B), (iii)(C), or (vi)(D) below, holders of Series A Preferred Stock shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

(B) The Corporation shall not, and in addition to any other vote required by law or by the Articles of Incorporation, without the written consent or affirmative vote of a majority of the Board of Directors including at least one (1) Non-Dedagroup Director, and the affirmative vote of a majority of the holders of Series A Preferred Stock and either Alabama One or Legacy Community Federal Credit Union, given in writing or by vote at a meeting, consent or voting (as the case may be) separately as a class, take any of the following actions:

(1) amend or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of, the Series A Preferred Stock or the Common Stock;



(2) authorize, create or issue shares of any class of stock or equity securities having rights, preferences, privileges or powers superior to or on parity with the Series A Preferred Stock;

(3) reclassify, alter, or amend any outstanding shares or equity securities, including existing securities having rights junior to the Series A Preferred Stock, into shares, or equity securities having rights, preferences, privileges or powers superior to or on parity with the Series A Preferred Stock;

(4) amend, alter, waive or repeal the Corporation's Articles in a manner that in any way affects the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of, Series A Preferred Stock;

(5) increase the authorized capital stock of the Corporation or increase or decrease the authorized number of shares of Series A Preferred Stock; or

(6) other than in the ordinary course of business consistent with past practices (i.e., with respect to trade payables, etc.), incur any indebtedness or issue any bonds, notes or other obligations, if the aggregate indebtedness of the Corporation and its subsidiaries for borrowed money following such action would exceed in the aggregate \$150,000.00, or guarantee, directly or indirectly, or permit any subsidiary to guarantee, directly or indirectly, any indebtedness.

(iv) **Optional Conversion.** The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(A) **Right to Convert.** Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The Series A Conversion Price shall initially be equal to the Series A Original Issue Price; *provided, however*, such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided in this Section (iv). In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock, *provided* such amounts are actually paid on the date fixed for payment.

(B) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation.



(C) Mechanics of Conversion.

(1) In order for a holder of Series A Preferred Stock to voluntarily convert such shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the principal office of the Corporation, together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in a form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by Corporation of such certificates (or lost certificate affidavits and agreement) shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver at such principal office of the Corporation to such holder of Series A Preferred Stock, or to his, her or its nominee, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(2) The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Articles. Before taking any action which would cause an adjustment reducing the Series A Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series A Conversion Price.

(3) All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any to receive notices and to vote, shall immediately cease and terminate at the Conversion Time, subject only the right of the holders thereof to receive shares of Common Stock in exchange therefor. Upon any such

conversion, no adjustment to the Series A Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(D) Adjustments to Series A Conversion Price for Diluting Issues.

(1) Special Definitions. For purposes of this Section (iv)(D), the following definitions shall apply:

(aa) "Options" shall mean options and warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities;

(bb) Intentionally Omitted;

(cc) "Series A Original Issue Date" shall mean the date on which the first share of Series A Preferred Stock was issued;

(dd) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(ee) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section (iv)(D)(3) below, deemed to be issued) by the Corporation after the Series A Original Issue Date, other than the following ("Exempted Securities"):

I. shares of Common Stock, Options or Convertible Securities issued or deemed issued upon the conversion or as a dividend or distribution on the Series A Preferred Stock;

II. shares of Common Stock, Options or Convertible Securities issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section (iv)(E) or (iv)(F) below;

III. (i) the 5,000,000 shares of Common Stock to be issued to Dedagroup in connection with its anticipated contribution of technology, and (ii) the shares of Common Stock to be issued to Dedagroup in consideration of the redemption by the Company of the shares of class B non-voting common stock held by Dedagroup;

IV. shares of Common Stock or Options issued or issuable to banks, to equipment lessors pursuant to a debt financing, to real property lessors or to sellers pursuant to an acquisition by the Corporation that enables the Corporation to acquire a strategic business or asset complementary to its existing business which does not result in a Deemed Liquidation Event, *provided* any such issuance is approved by the Board of Directors, including approval by a Series A Director;



V. shares of Common Stock, Options or Convertible Securities issued in connection with any other strategic transaction, *provided* any such issuance is approved by the Board of Directors, including approval by a Series A Director; or

VI. shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security.

(2) No Adjustment of Series A Conversion Price. Notwithstanding the provisions of Section (iv)(D)(3) and (4) below, no adjustment in the Series A Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Section (iv)(D)(5)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Series A Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(3) Deemed Issue of Additional Shares of Common Stock.

(aa) If the Corporation at any time or from time to time after the Series A Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities pursuant to Section (iv)(D)(1)(ee)) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(bb) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series A Conversion Price pursuant to the terms of Section (iv)(D)(4) below, are revised (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the Series A

Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series A Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (bb) shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (i) the Series A Conversion Price on the original adjustment date, or (ii) the Series A Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such adjustment date. If the change in such Option or Convertible Security causes an adjustment pursuant to this provision and such Option or Convertible Security is then further changed as a result of the adjustments made pursuant to this provision, no further adjustment shall be made hereunder as a result of the further automatic change in such Option or Convertible Security.

(cc) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities as defined in Section (iv)(D)(1)(cc)), the issuance of which did not result in an adjustment to the Series A Conversion Price pursuant to the terms of Section (iv)(D)(4) below (either because the consideration per share (determined pursuant to Section (iv)(D)(5) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series A Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series A Original Issue Date), are revised after the Series A Original Issue Date (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section (iv)(D)(3)(aa) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective. If the change in such Option or Convertible Security causes an adjustment pursuant to this provision and such Option or Convertible Security is then further changed as a result of the adjustments made pursuant to this provision, no further adjustment shall be made hereunder as a result of the further automatic change in such Option or Convertible Security.

(dd) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series A Conversion Price pursuant to the terms of Section (iv)(D)(4), the Series A Conversion Price shall be readjusted to such Series A Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(4) Adjustment of Series A Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section (iv)(D)(3)), without consideration or for a consideration per share less than the applicable Series A Conversion Price in effect immediately prior to such issue, then the Series A



Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) / (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

(aa) "CP<sub>2</sub>" shall mean the Series A Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(bb) "CP<sub>1</sub>" shall mean the Series A Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(cc) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Series A Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(dd) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP<sub>1</sub> (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP<sub>1</sub>); and

(ee) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(5) Determination of Consideration. For purposes of this Section (iv)(D), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(aa) Cash and Property. Such consideration shall:

I. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

II. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the board of directors of the Corporation;

III. in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed



as provided in clauses I. and II. above as determined in good faith by the board of directors of the Corporation.

(bb) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section (iv)(D)(3), relating to Options and Convertible Securities, shall be determined by dividing:

I. the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options or Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

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

(E) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issue Date effect a subdivision of the outstanding Common Stock, the Series A Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series A Original Issue Date combine the outstanding shares of Common Stock, the Series A Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(F) Adjustment for Certain Stock Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date 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 on the Common Stock in additional shares of Common Stock, then and in each such event the Series A Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction:



(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

*provided, however*, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and *provided further, however*, that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Series A Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(G) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of capital stock of the Corporation entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock ) or in other property and the provisions of Section (i) do not apply to such dividend or distribution, then and in each such event the holders of Series A Preferred Stock shall receive, simultaneously with the distribution to the holders of such capital stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock had been converted in to Common Stock on the date of such event.

(H) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section (ii)(C), if there shall occur any reorganization, recapitalization, reclassification, consolidation, share exchange or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by subsections (E), (F), or (G) of this Section (iv)), then, following any such reorganization, recapitalization, reclassification, consolidation, share exchange or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation, share exchange or merger would have been entitled to receive pursuant to such

transaction; and, in such case, appropriate adjustment (as determined in good faith by the board of directors of the Corporation) shall be made in the application of the provision in this Section (iv), with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section (iv) (including provision with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of Series A Preferred Stock.

(I) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section (iv), the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than fifteen (15) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in reasonable detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practical after written request at any time of any holder of Series A Preferred Stock (but in any event not later than fifteen (15) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

(J) Notice of Record Date. In the event:

(1) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(2) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, share exchange, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, share exchange, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Common Stock. Such notice shall be sent at least fifteen (15) days prior to the record date or



effective date for the event specified in such notice. Any notice required by the provisions hereof to be given to a holder of shares of Preferred Stock shall be deemed sent to such holder if deposited in the U.S. mail, postage prepaid, and addressed to such holder at his, her or its address appearing on the books of the Corporation.

(v) **Mandatory Conversion.**

(A) Upon the (1) the closing of the sale of shares of Common Stock to the public by the Corporation resulting in gross proceeds of at least Fifty-Five Million Dollars (\$55,000,000.00) in an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in a valuation per share for the Common Stock issuable upon conversion of the Series A Preferred Stock of not less than the product of five (5) multiplied by the Series A Original Purchase Price (a "Qualifying Public Offering") or (2) the affirmative vote of the holders of a majority of the outstanding shares of Series A Preferred Stock, voting separately as a class, all outstanding shares of Series A Preferred Stock plus all Accruing Dividends and all other declared but unpaid dividends on Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Series A Conversion Price (the "Mandatory Conversion").

(B) All holders of record of shares of Series A Preferred Stock shall be given written notice of the date of the Mandatory Conversion (the "Mandatory Conversion Date") and the place designated for Mandatory Conversion of all such shares of Series A Preferred Stock pursuant to this Section (v)(B). Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Series A Preferred Stock. Upon receipt of such notice, each holder of shares of Series A Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section (v). On the Mandatory Conversion Date, all outstanding shares of Series A Preferred Stock plus all Accruing Dividends shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Series A Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except for the rights of the holders thereof, upon surrender of their certificate for certificates therefore, to receive payment of the amount specified in Section (v)(A) above and to receive certificates for the number of shares of Common Stock into which such Series A Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Series A Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section (iv)(B) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(C) All certificates evidencing share of Series A Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Series A Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date.

(vi) **Optional Redemption.** The Corporation at its option may redeem all or any portion of the shares of Series A Preferred Stock outstanding at any time at a price equal to One Dollar (\$1.00) per share plus an amount equal to accrued and unpaid dividends thereon computed to the date fixed for redemption (whether or not earned or declared) (the "Redemption Price"). Any such redemption that is for less than all of the outstanding Series A Preferred Stock shall be pro rata among all Series A Preferred Shareholders. Notice of such redemption shall be given to the holders of record of the Series A Preferred Stock by mailing such notice at least thirty (30) days and not more than ninety (90) days before the redemption date to such holders at their addresses appearing on the books of the Corporation. The Corporation, upon mailing such notice may deposit an amount equal to the Redemption Price with a bank or trust company in Birmingham, Alabama to be held in trust for payment to the holders of Series A Preferred Stock at any time after such deposit. Upon such deposit, or if no deposit is made, then from and after the date fixed for redemption, the Series A Preferred Stock shall cease to be outstanding and the holders thereof shall cease to be Series A Preferred Shareholders with respect thereto.

(d) There is hereby designated a series of Preferred Stock known as "Series B Preferred Stock." The Series B Preferred Stock shall consist of 300,000 shares. The Series B Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

(i) **Dividends.** From and after the date of the issuance of the shares of Series B Preferred Stock (the "Series B Original Issue Date"), dividends at the rate per annum of three percent (3.00%) of the "Series B Original Issue Price" (hereinafter defined) shall accrue on each outstanding share of Series B Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) (the "Accruing Dividends"). The "Series B Original Issue Price" of the Series B Preferred Stock is \$1.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or similar recapitalization, with respect to the Series B Preferred Stock. Accruing Dividends shall accrue from day to day, whether or not declared, shall be cumulative and shall be paid annually on the 2<sup>nd</sup> day of February of each year. The Corporation shall not declare, pay or set aside any dividends on any other shares of capital stock of the Corporation unless the holders of the Series B Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series B Preferred Stock in an amount at least equal to the amount of the aggregate Accruing Dividends then accrued on such share of Series B Preferred Stock and not previously paid.



**(ii) Liquidation, Dissolution or Winding-Up; Certain Mergers, Consolidations and Asset Sales.**

(A) Preferential Payments to Holders of Series B Preferred Stock. In the event of any Deemed Liquidation Event (as defined in Section (ii)(C) hereof), the holders of shares of Series B Preferred Stock then outstanding shall be entitled to be paid out of the assets available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Series B Preferred Stock by reason of their ownership thereof, an amount equal to the Series B Original Issue Price, plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon. If upon any such Deemed Liquidation Event the remaining assets available for distribution to the Corporation's stockholders shall be insufficient to pay the holders of shares of Series B Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series B Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series B Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series B Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(B) Distribution of Remaining Assets. After the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock, Series B Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation senior to the Common Stock, the remaining assets available for distribution to the Corporation's stockholders shall be distributed among the holders of the shares of Series B Preferred Stock, Common Stock and any other series of capital stock entitled to participate with the Common Stock in the distribution of such remaining assets, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock immediately prior to such Deemed Liquidation Event of the Corporation. The aggregate amount which a holder of a share of Series B Preferred Stock is entitled to receive under this Section (ii) is hereinafter referred to as the "Series B Liquidation Amount."

(C) Deemed Liquidation Events. For purposes of this Section (ii) and other provisions hereof, the term "Deemed Liquidation Event" shall have the meaning set forth in Section (c)(ii)(C).

(D) Non-Cash Assets. If any of the assets of the Corporation are to be distributed under Section (c)(ii)(C), or for any purpose, in a form other than cash, then the board of directors shall promptly and reasonably determine in good faith the fair market value of the assets to be distributed to the holders of all Stock. The Corporation shall, upon receipt of such determination, give prompt written notice of the determination to each holder of shares of Stock. Notwithstanding the foregoing, the fair market value of any securities shall be valued as provided in Section (c)(ii)(D).

(E) Allocation of Escrow. If there occurs a Deemed Liquidation Event pursuant to Section (c)(ii)(C) and if any portion of the consideration payable to the stockholders of the Corporation is subject to contingencies, the allocation of funds shall be administered as set forth in Section (c)(ii)(E).

(iii) Voting.

(A) Except as otherwise set forth in subsection (b) above regarding the election of members of the Board of Directors, on any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent in lieu of meeting), each holder of outstanding shares of Series B Preferred Stock shall not be entitled to vote.

(iv) Optional Conversion. The holders of the Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(A) Right to Convert. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B Original Issue Price by the Series B Conversion Price (as defined below) in effect at the time of conversion. The Series B Conversion Price shall initially be equal to the Series B Original Issue Price; *provided, however*, such initial Series B Conversion Price, and the rate at which shares of Series B Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided in this Section (iv). In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series B Preferred Stock, *provided* such amounts are actually paid on the date fixed for payment.

(B) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series B Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation.

(C) Mechanics of Conversion.

(1) In order for a holder of Series B Preferred Stock to voluntarily convert such shares of Series B Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series B Preferred Stock (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the principal office of the Corporation, together with written notice that such holder elects to convert all or any number of the shares of the Series B Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such



conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in a form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by Corporation of such certificates (or lost certificate affidavits and agreement) shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver at such principal office of the Corporation to such holder of Series B Preferred Stock, or to his, her or its nominee, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(2) The Corporation shall at all times when the Series B Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series B Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock, the Corporation 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Articles. Before taking any action which would cause an adjustment reducing the Series B Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series B Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series B Conversion Price.

(3) All shares of Series B Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any to receive notices and to vote, shall immediately cease and terminate at the Conversion Time, subject only the right of the holders thereof to receive shares of Common Stock in exchange therefor. Upon any such conversion, no adjustment to the Series B Conversion Price shall be made for any declared but unpaid dividends on the Series B Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(D) Adjustments to Series B Conversion Price for Diluting Issues.

(1) Special Definitions. For purposes of this Section (iv)(D), the following definitions shall apply:

(aa) "Options" shall mean options and warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities;

(bb) Intentionally Omitted;

(cc) "Series B Original Issue Date" shall mean the date on which the first share of Series B Preferred Stock was issued;

(dd) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(ee) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section (iv)(D)(3) below, deemed to be issued) by the Corporation after the Series B Original Issue Date, other than the following ("Exempted Securities"):

I. shares of Common Stock, Options or Convertible Securities issued or deemed issued upon the conversion or as a dividend or distribution on the Series B Preferred Stock;

II. shares of Common Stock, Options or Convertible Securities issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section (iv)(E) or (iv)(F) below;

III. (i) the 5,000,000 shares of Common Stock to be issued to Dedagroup in connection with its anticipated contribution of technology, and (ii) the shares of Common Stock to be issued to Dedagroup in consideration of the redemption by the Company of the shares of class B non-voting common stock held by Dedagroup;

IV. shares of Common Stock or Options issued or issuable to banks, to equipment lessors pursuant to a debt financing, to real property lessors or to sellers pursuant to an acquisition by the Corporation that enables the Corporation to acquire a strategic business or asset complementary to its existing business which does not result in a Deemed Liquidation Event, *provided* any such issuance is approved by the Board of Directors, including approval by a Series B Director;

V. shares of Common Stock, Options or Convertible Securities issued in connection with any other strategic transaction, *provided* any such issuance is approved by the Board of Directors, including approval by a Series B Director; or

VI. shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security.

(2) No Adjustment of Series B Conversion Price. Notwithstanding the provisions of Section (iv)(D)(3) and (4) below, no adjustment in the Series B Conversion Price shall be made as the result of the issuance of Additional Shares of Common



Stock if: (a) the consideration per share (determined pursuant to Section (iv)(D)(5)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Series B Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series B Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(3) Deemed Issue of Additional Shares of Common Stock.

(aa) If the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities pursuant to Section (iv)(D)(1)(cc)) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(bb) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series B Conversion Price pursuant to the terms of Section (iv)(D)(4) below, are revised (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the Series B Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series B Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (bb) shall have the effect of increasing the Series B Conversion Price to an amount which exceeds the lower of (i) the Series B Conversion Price on the original adjustment date, or (ii) the Series B Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such adjustment date. If the change in such Option or Convertible Security causes an adjustment pursuant to this provision and such Option or Convertible Security is then further changed as a result of the adjustments made pursuant to this provision, no further adjustment shall be made hereunder as a result of the further automatic change in such Option or Convertible Security.

(cc) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities as defined in Section (iv)(D)(1)(ee)), the issuance of which did not result in an adjustment to the Series B Conversion Price pursuant to the terms of Section (iv)(D)(4) below (either because the consideration per share (determined pursuant to Section (iv)(D)(5) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series B Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series B Original Issue Date), are revised after the Series B Original Issue Date (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section (iv)(D)(3)(aa) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective. If the change in such Option or Convertible Security causes an adjustment pursuant to this provision and such Option or Convertible Security is then further changed as a result of the adjustments made pursuant to this provision, no further adjustment shall be made hereunder as a result of the further automatic change in such Option or Convertible Security.

(dd) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series B Conversion Price pursuant to the terms of Section (iv)(D)(4), the Series B Conversion Price shall be readjusted to such Series B Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(4) Adjustment of Series B Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section (iv)(D)(3)), without consideration or for a consideration per share less than the applicable Series B Conversion Price in effect immediately prior to such issue, then the Series B Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) / (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

(aa) "CP<sub>2</sub>" shall mean the Series B Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(bb) "CP<sub>1</sub>" shall mean the Series B Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;



(cc) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Series B Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(dd) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to  $CP_1$  (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by  $CP_1$ ); and

(ee) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(5) Determination of Consideration. For purposes of this Section (iv)(D), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(aa) Cash and Property. Such consideration shall:

I. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

II. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the board of directors of the Corporation;

III. in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses I. and II. above as determined in good faith by the board of directors of the Corporation.

(bb) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section (iv)(D)(3), relating to Options and Convertible Securities, shall be determined by dividing:

I. the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options or Convertible Securities, the

exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

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

(E) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series B Original Issue Date effect a subdivision of the outstanding Common Stock, the Series B Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series B Original Issue Date combine the outstanding shares of Common Stock, the Series B Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(F) Adjustment for Certain Stock Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date 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 on the Common Stock in additional shares of Common Stock, then and in each such event the Series B Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series B Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

*provided, however,* that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series B Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series B Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and *provided further, however,* that no such adjustment shall be made if the holders of Series B Preferred Stock simultaneously receive



(i) a dividend or other distribution of shares of Common Stock as they would have received if all outstanding shares of Series B Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Series B Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(G) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of capital stock of the Corporation entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock ) or in other property and the provisions of Section (i) do not apply to such dividend or distribution, then and in each such event the holders of Series B Preferred Stock shall receive, simultaneously with the distribution to the holders of such capital stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series B Preferred Stock had been converted in to Common Stock on the date of such event.

(H) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section (ii)(C), if there shall occur any reorganization, recapitalization, reclassification, consolidation, share exchange or merger involving the Corporation in which the Common Stock (but not the Series B Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by subsections (E), (F), or (G) of this Section (iv)), then, following any such reorganization, recapitalization, reclassification, consolidation, share exchange or merger, each share of Series B Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series B Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation, share exchange or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the board of directors of the Corporation) shall be made in the application of the provision in this Section (iv), with respect to the rights and interests thereafter of the holders of the Series B Preferred Stock, to the end that the provisions set forth in this Section (iv) (including provision with respect to changes in and other adjustments of the Series B Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of Series B Preferred Stock.

(I) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series B Conversion Price pursuant to this Section (iv), the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than fifteen (15) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series B Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series B Preferred Stock is convertible) and showing in reasonable detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as

promptly as reasonably practical after written request at any time of any holder of Series B Preferred Stock (but in any event not later than fifteen (15) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series B Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series B Preferred Stock.

(J) Notice of Record Date. In the event:

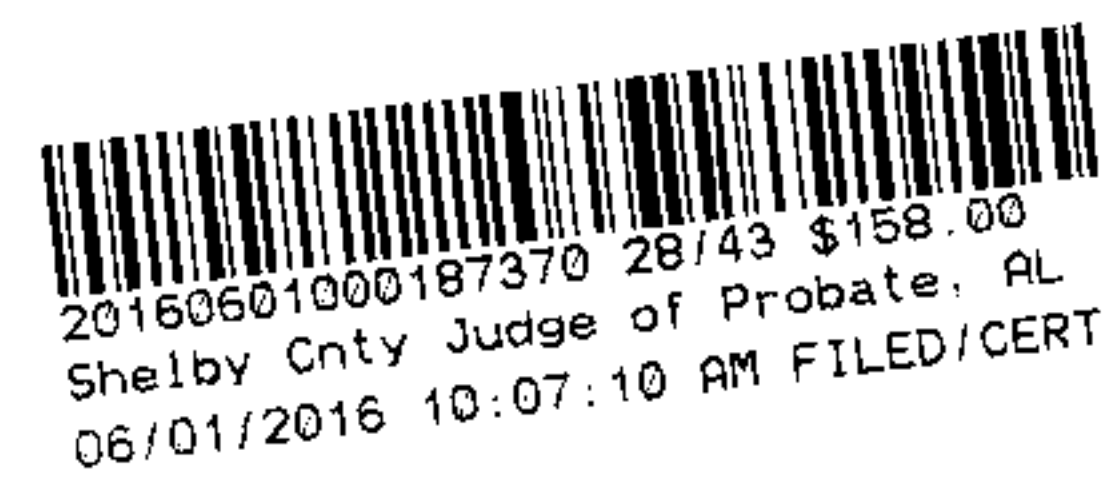
(1) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Series B Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(2) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series B Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, share exchange, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Series B Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, share exchange, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series B Preferred Stock and the Common Stock. Such notice shall be sent at least fifteen (15) days prior to the record date or effective date for the event specified in such notice. Any notice required by the provisions hereof to be given to a holder of shares of Preferred Stock shall be deemed sent to such holder if deposited in the U.S. mail, postage prepaid, and addressed to such holder at his, her or its address appearing on the books of the Corporation.

(v) Mandatory Conversion.

(A) Upon (1) the closing of the sale of shares of Common Stock to the public by the Corporation resulting in gross proceeds of at least Fifty-Five Million Dollars (\$55,000,000.00) in an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in a valuation per share for the Common Stock issuable upon conversion of the Series B Preferred Stock of not less than the product of five (5) multiplied by the Series B Original Purchase Price (a "Qualifying Public Offering") or (2) the affirmative vote of the holders of a majority of the outstanding shares of Series B Preferred Stock, voting separately as a class, all outstanding shares of Series B Preferred Stock plus all Accruing Dividends and all other declared but unpaid dividends on



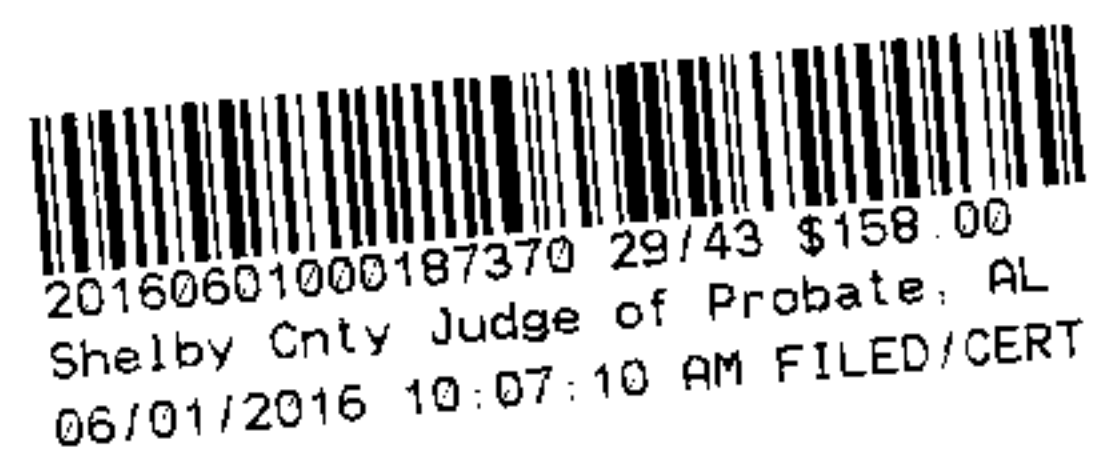


Series B Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Series B Conversion Price (the "Mandatory Conversion").

(B) All holders of record of shares of Series B Preferred Stock shall be given written notice of the date of the Mandatory Conversion (the "Mandatory Conversion Date") and the place designated for Mandatory Conversion of all such shares of Series B Preferred Stock pursuant to this Section (v)(B). Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Series B Preferred Stock. Upon receipt of such notice, each holder of shares of Series B Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section (v). On the Mandatory Conversion Date, all outstanding shares of Series B Preferred Stock plus all Accruing Dividends shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Series B Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except for the rights of the holders thereof, upon surrender of their certificate for certificates therefore, to receive payment of the amount specified in Section (v)(A) above and to receive certificates for the number of shares of Common Stock into which such Series B Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Series B Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section (iv)(B) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(C) All certificates evidencing share of Series B Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Series B Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date.

(vi) **Optional Redemption.** The Corporation at its option may redeem all or any portion of the shares of Series B Preferred Stock outstanding at any time at a price equal to One Dollar (\$1.00) per share plus an amount equal to accrued and unpaid dividends thereon computed to the date fixed for redemption (whether or not earned or declared) (the "Redemption Price"). Any such redemption that is for less than all of the outstanding Series B Preferred Stock shall be pro rata among all Series B Preferred Shareholders. Notice of such redemption shall be given to the holders of record of the Series B Preferred Stock by mailing such notice at least thirty (30) days and not more than ninety (90) days before the redemption date to such holders at



their addresses appearing on the books of the Corporation. The Corporation, upon mailing such notice may deposit an amount equal to the Redemption Price with a bank or trust company in Birmingham, Alabama to be held in trust for payment to the holders of Series B Preferred Stock at any time after such deposit. Upon such deposit, or if no deposit is made, then from and after the date fixed for redemption, the Series B Preferred Stock shall cease to be outstanding and the holders thereof shall cease to be Series B Preferred Shareholders with respect thereto.

(e) There is hereby designated a series of Preferred Stock known as "Series B-1 Preferred Stock." The Series B-1 Preferred Stock shall consist of 5,000,000 shares. The Series B-1 Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

(i) **Dividends.** From and after the date of the issuance of the shares of Series B-1 Preferred Stock (the "Series B-1 Original Issue Date"), dividends at the rate per annum of one-half of one percent (0.5%) of the "Series B-1 Original Issue Price" (hereinafter defined) shall accrue on each outstanding share of Series B-1 Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) (the "Accruing Dividends"). The "Series B-1 Original Issue Price" of the Series B-1 Preferred Stock is \$1.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or similar recapitalization, with respect to the Series B-1 Preferred Stock. Accruing Dividends shall accrue from day to day, whether or not declared, shall be cumulative and shall be paid annually on the 2<sup>nd</sup> day of February of each year. The Corporation shall not declare, pay or set aside any dividends on any other shares of capital stock of the Corporation unless the holders of the Series B-1 Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series B-1 Preferred Stock in an amount at least equal to the amount of the aggregate Accruing Dividends then accrued on such share of Series B-1 Preferred Stock and not previously paid.

(ii) **Liquidation, Dissolution or Winding-Up; Certain Mergers, Consolidations and Asset Sales.**

(A) **Preferential Payments to Holders of Series B-1 Preferred Stock.** In the event of any Deemed Liquidation Event (as defined in Section (ii)(C) hereof), the holders of shares of Series B-1 Preferred Stock then outstanding shall be entitled to be paid out of the assets available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Series B-1 Preferred Stock by reason of their ownership thereof, an amount equal to the Series B-1 Original Issue Price, plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon. If upon any such Deemed Liquidation Event the remaining assets available for distribution to the Corporation's stockholders shall be insufficient to pay the holders of shares of Series B-1 Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series B-1 Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series B-1 Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series B-1 Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect



of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(B) Distribution of Remaining Assets. After the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock, Series B-1 Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation senior to the Common Stock, the remaining assets available for distribution to the Corporation's stockholders shall be distributed among the holders of the shares of Series B-1 Preferred Stock, Common Stock and any other series of capital stock entitled to participate with the Common Stock in the distribution of such remaining assets, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock immediately prior to such Deemed Liquidation Event of the Corporation. The aggregate amount which a holder of a share of Series B-1 Preferred Stock is entitled to receive under this Section (ii) is hereinafter referred to as the "Series B-1 Liquidation Amount."

(C) Deemed Liquidation Events. For purposes of this Section (ii) and other provisions hereof, the term "Deemed Liquidation Event" shall have the meaning set forth in Section (c)(ii)(C).

(D) Non-Cash Assets. If any of the assets of the Corporation are to be distributed under Section (c)(ii)(C), or for any purpose, in a form other than cash, then the board of directors shall promptly and reasonably determine in good faith the fair market value of the assets to be distributed to the holders of all Stock. The Corporation shall, upon receipt of such determination, give prompt written notice of the determination to each holder of shares of Stock. Notwithstanding the foregoing, the fair market value of any securities shall be valued as provided in Section (c)(ii)(D).

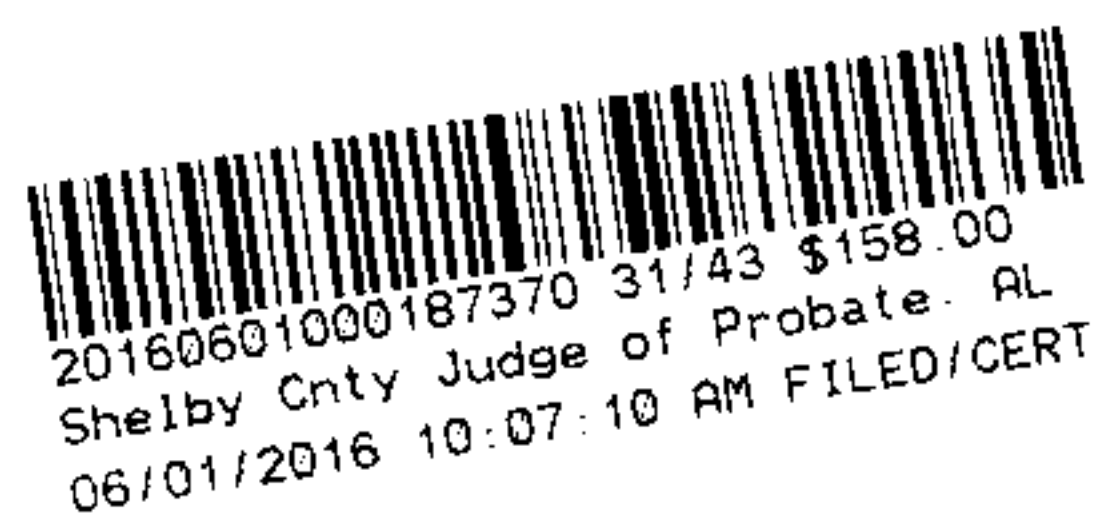
(E) Allocation of Escrow. If there occurs a Deemed Liquidation Event pursuant to Section (c)(ii)(C) and if any portion of the consideration payable to the stockholders of the Corporation is subject to contingencies, the allocation of funds shall be administered as set forth in Section (c)(ii)(E).

(iii) Voting.

(A) Except as otherwise set forth in subsection (b) above regarding the election of members of the Board of Directors, on any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent in lieu of meeting), each holder of outstanding shares of Series B-1 Preferred Stock shall not be entitled to vote.

(iv) Optional Conversion. The holders of the Series B-1 Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(A) Right to Convert. Each share of Series B-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without



the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B-1 Original Issue Price by the Series B-1 Conversion Price (as defined below) in effect at the time of conversion. The Series B-1 Conversion Price shall initially be equal to the Series B-1 Original Issue Price; *provided, however*, such initial Series B-1 Conversion Price, and the rate at which shares of Series B-1 Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided in this Section (iv). In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series B-1 Preferred Stock, *provided* such amounts are actually paid on the date fixed for payment.

(B) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series B-1 Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation.

(C) Mechanics of Conversion.

(1) In order for a holder of Series B-1 Preferred Stock to voluntarily convert such shares of Series B-1 Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series B-1 Preferred Stock (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the principal office of the Corporation, together with written notice that such holder elects to convert all or any number of the shares of the Series B-1 Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in a form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by Corporation of such certificates (or lost certificate affidavits and agreement) shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver at such principal office of the Corporation to such holder of Series B-1 Preferred Stock, or to his, her or its nominee, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(2) The Corporation shall at all times when the Series B-1 Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series B-1 Preferred Stock,



such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series B-1 Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B-1 Preferred Stock, the Corporation 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Articles. Before taking any action which would cause an adjustment reducing the Series B-1 Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series B-1 Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series B-1 Conversion Price.

(3) All shares of Series B-1 Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any to receive notices and to vote, shall immediately cease and terminate at the Conversion Time, subject only the right of the holders thereof to receive shares of Common Stock in exchange therefor. Upon any such conversion, no adjustment to the Series B-1 Conversion Price shall be made for any declared but unpaid dividends on the Series B-1 Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(D) Adjustments to Series B-1 Conversion Price for Diluting Issues.

(1) Special Definitions. For purposes of this Section (iv)(D), the following definitions shall apply:

(aa) "Options" shall mean options and warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities;

(bb) Intentionally Omitted;

(cc) "Series B-1 Original Issue Date" shall mean the date on which the first share of Series B-1 Preferred Stock was issued;

(dd) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(ee) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section (iv)(D)(3) below, deemed to be issued) by the Corporation after the Series B-1 Original Issue Date, other than the following ("Exempted Securities"):

I. shares of Common Stock, Options or Convertible Securities issued or deemed issued upon the conversion or as a dividend or distribution on the Series B-1 Preferred Stock;

II. shares of Common Stock, Options or Convertible Securities issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section (iv)(E) or (iv)(F) below;

III. (i) the 5,000,000 shares of Common Stock to be issued to Dedagroup in connection with its anticipated contribution of technology, and (ii) the shares of Common Stock to be issued to Dedagroup in consideration of the redemption by the Company of the shares of class B non-voting common stock held by Dedagroup;

IV. shares of Common Stock or Options issued or issuable to banks, to equipment lessors pursuant to a debt financing, to real property lessors or to sellers pursuant to an acquisition by the Corporation that enables the Corporation to acquire a strategic business or asset complementary to its existing business which does not result in a Deemed Liquidation Event, *provided* any such issuance is approved by the Board of Directors, including approval by a Series B-1 Director;

V. shares of Common Stock, Options or Convertible Securities issued in connection with any other strategic transaction, *provided* any such issuance is approved by the Board of Directors, including approval by a Series B-1 Director; or

VI. shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security.

(2) No Adjustment of Series B-1 Conversion Price. Notwithstanding the provisions of Section (iv)(D)(3) and (4) below, no adjustment in the Series B-1 Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Section (iv)(D)(5)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Series B-1 Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series B-1 Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(3) Deemed Issue of Additional Shares of Common Stock.

(aa) If the Corporation at any time or from time to time after the Series B-1 Original Issue Date shall issue any Options or Convertible Securities



(excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities pursuant to Section (iv)(D)(1)(ee)) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(bb) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series B-1 Conversion Price pursuant to the terms of Section (iv)(D)(4) below, are revised (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the Series B-1 Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series B-1 Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (bb) shall have the effect of increasing the Series B-1 Conversion Price to an amount which exceeds the lower of (i) the Series B-1 Conversion Price on the original adjustment date, or (ii) the Series B-1 Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such adjustment date. If the change in such Option or Convertible Security causes an adjustment pursuant to this provision and such Option or Convertible Security is then further changed as a result of the adjustments made pursuant to this provision, no further adjustment shall be made hereunder as a result of the further automatic change in such Option or Convertible Security.

(cc) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities as defined in Section (iv)(D)(1)(ee)), the issuance of which did not result in an adjustment to the Series B-1 Conversion Price pursuant to the terms of Section (iv)(D)(4) below (either because the consideration per share (determined pursuant to Section (iv)(D)(5) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series B-1 Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series B-1 Original Issue Date), are revised after the Series B-1 Original Issue Date (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible

Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section (iv)(D)(3)(aa) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective. If the change in such Option or Convertible Security causes an adjustment pursuant to this provision and such Option or Convertible Security is then further changed as a result of the adjustments made pursuant to this provision, no further adjustment shall be made hereunder as a result of the further automatic change in such Option or Convertible Security.

(dd) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series B-1 Conversion Price pursuant to the terms of Section (iv)(D)(4), the Series B-1 Conversion Price shall be readjusted to such Series B-1 Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(4) Adjustment of Series B-1 Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section (iv)(D)(3)), without consideration or for a consideration per share less than the applicable Series B-1 Conversion Price in effect immediately prior to such issue, then the Series B-1 Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) / (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

(aa) "CP<sub>2</sub>" shall mean the Series B-1 Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(bb) "CP<sub>1</sub>" shall mean the Series B-1 Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(cc) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Series B-1 Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(dd) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP<sub>1</sub> (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP<sub>1</sub>); and



(ee) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(5) Determination of Consideration. For purposes of this Section (iv)(D), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(aa) Cash and Property. Such consideration shall:

I. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

II. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the board of directors of the Corporation;

III. in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses I. and II. above as determined in good faith by the board of directors of the Corporation.

(bb) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section (iv)(D)(3), relating to Options and Convertible Securities, shall be determined by dividing:

I. the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options or Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

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

(E) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series B-1 Original Issue Date effect a subdivision of the outstanding Common Stock, the Series B-1 Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased

in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series B-1 Original Issue Date combine the outstanding shares of Common Stock, the Series B-1 Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(F) Adjustment for Certain Stock Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B-1 Original Issue Date 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 on the Common Stock in additional shares of Common Stock, then and in each such event the Series B-1 Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series B-1 Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

*provided, however*, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series B-1 Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series B-1 Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and *provided further, however*, that no such adjustment shall be made if the holders of Series B-1 Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock as they would have received if all outstanding shares of Series B-1 Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Series B-1 Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(G) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B-1 Original Issue Date shall make or issue, or fix a record date for the determination of holders of capital stock of the Corporation entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock ) or in other property and the provisions of Section (i) do not apply to



such dividend or distribution, then and in each such event the holders of Series B-1 Preferred Stock shall receive, simultaneously with the distribution to the holders of such capital stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series B-1 Preferred Stock had been converted in to Common Stock on the date of such event.

(H) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section (ii)(C), if there shall occur any reorganization, recapitalization, reclassification, consolidation, share exchange or merger involving the Corporation in which the Common Stock (but not the Series B-1 Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by subsections (E), (F), or (G) of this Section (iv)), then, following any such reorganization, recapitalization, reclassification, consolidation, share exchange or merger, each share of Series B-1 Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series B-1 Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation, share exchange or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the board of directors of the Corporation) shall be made in the application of the provision in this Section (iv), with respect to the rights and interests thereafter of the holders of the Series B-1 Preferred Stock, to the end that the provisions set forth in this Section (iv) (including provision with respect to changes in and other adjustments of the Series B-1 Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of Series B-1 Preferred Stock.

(I) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series B-1 Conversion Price pursuant to this Section (iv), the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than fifteen (15) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series B-1 Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series B-1 Preferred Stock is convertible) and showing in reasonable detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practical after written request at any time of any holder of Series B-1 Preferred Stock (but in any event not later than fifteen (15) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series B-1 Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series B-1 Preferred Stock.

(J) Notice of Record Date. In the event:

(1) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Series B-1 Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other

distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(2) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series B-1 Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, share exchange, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Series B-1 Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, share exchange, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series B-1 Preferred Stock and the Common Stock. Such notice shall be sent at least fifteen (15) days prior to the record date or effective date for the event specified in such notice. Any notice required by the provisions hereof to be given to a holder of shares of Preferred Stock shall be deemed sent to such holder if deposited in the U.S. mail, postage prepaid, and addressed to such holder at his, her or its address appearing on the books of the Corporation.

**(v) Mandatory Conversion.**

(A) Upon (1) the closing of the sale of shares of Common Stock to the public by the Corporation resulting in gross proceeds of at least Fifty-Five Million Dollars (\$55,000,000.00) in an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in a valuation per share for the Common Stock issuable upon conversion of the Series B-1 Preferred Stock of not less than the product of five (5) multiplied by the Series B-1 Original Purchase Price (a "Qualifying Public Offering") or (2) the affirmative vote of the holders of a majority of the outstanding shares of Series B-1 Preferred Stock, voting separately as a class, all outstanding shares of Series B-1 Preferred Stock plus all Accruing Dividends and all other declared but unpaid dividends on Series B-1 Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Series B-1 Conversion Price (the "Mandatory Conversion").

(B) All holders of record of shares of Series B-1 Preferred Stock shall be given written notice of the date of the Mandatory Conversion (the "Mandatory Conversion Date") and the place designated for Mandatory Conversion of all such shares of Series B-1 Preferred Stock pursuant to this Section (v)(B). Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Series B-1 Preferred Stock. Upon receipt of such notice, each holder of shares of Series B-1 Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock



to which such holder is entitled pursuant to this Section (v). On the Mandatory Conversion Date, all outstanding shares of Series B-1 Preferred Stock plus all Accruing Dividends shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Series B-1 Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except for the rights of the holders thereof, upon surrender of their certificate for certificates therefore, to receive payment of the amount specified in Section (v)(A) above and to receive certificates for the number of shares of Common Stock into which such Series B-1 Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Series B-1 Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section (iv)(B) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(C) All certificates evidencing share of Series B-1 Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Series B-1 Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date.

(vi) **Optional Redemption.** The Corporation at its option may redeem all or any portion of the shares of Series B-1 Preferred Stock outstanding at any time at a price equal to One Dollar (\$1.00) per share plus an amount equal to accrued and unpaid dividends thereon computed to the date fixed for redemption (whether or not earned or declared) (the "Redemption Price"). Any such redemption that is for less than all of the outstanding Series B-1 Preferred Stock shall be pro rata among all Series B-1 Preferred Shareholders. Notice of such redemption shall be given to the holders of record of the Series B-1 Preferred Stock by mailing such notice at least thirty (30) days and not more than ninety (90) days before the redemption date to such holders at their addresses appearing on the books of the Corporation. The Corporation, upon mailing such notice may deposit an amount equal to the Redemption Price with a bank or trust company in Birmingham, Alabama to be held in trust for payment to the holders of Series B-1 Preferred Stock at any time after such deposit. Upon such deposit, or if no deposit is made, then from and after the date fixed for redemption, the Series B-1 Preferred Stock shall cease to be outstanding and the holders thereof shall cease to be Series B-1 Preferred Shareholders with respect thereto.

**ARTICLE V  
NO SHAREHOLDERS PREEMPTIVE RIGHTS**


No shareholders of the corporation shall have preemptive rights to acquire shares of the corporation as provided under ABCL Section 10A-2-6.30.

**ARTICLE VI  
REQUIRED SHAREHOLDER VOTES**

Except as otherwise provided pursuant to the amendment of Article IV set forth above, including the voting provisions of Article IV, Section (c)(iii), as amended above, a majority of the votes entitled to be cast is required for a transaction which must be approved by the shareholders pursuant to *Code of Alabama* 1995 §§10A-2-11.03, 10A-2-12.02 and 10A-2-14.02.

**ARTICLE VII  
LIMITATION OF LIABILITY**

A director of the corporation shall not be liable to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for (a) the amount of financial benefit received by a director to which he or she is not entitled; (b) an intentional infliction of harm on the corporation or the shareholders; (c) a violation of Section 10A-2-8.33 of the ABCL; (d) an intentional violation of criminal law; or (e) a breach of the director's duty of loyalty to the corporation or its shareholders.

  
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**IN WITNESS WHEREOF**, the Corporation has caused its corporate seal to be affixed hereto and this Second Amendment to the Articles of Incorporation to be signed by its authorized officers this the 23<sup>rd</sup> day of May, 2016.

**EPL, INC.**

By: Wayne Benson  
Wayne A. Benson, President/CEO

**ATTEST:**

Ashlyn Fogg  
Secretary



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