

10-12-1999



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FORM PTO-1595

RECORDATION F
PA1DEPARTMENT OF COMMERCE
TRADEMARK OFFICE

To the Honorable Commissioner of Patents and Trademarks:

Please record the attached original document or copy thereof.

1. Name of conveying party(ies):

Omniview, Inc.

Additional name(s) of conveying party(ies) attached?
☐ YES ☒ NO

2. Name and address of receiving party(ies):

Interactive Pictures Corporation
1009 Commerce Park Drive, Suite 100
Oak Ridge, Tennessee

10-7-99

Additional name(s) & address(es) attached?
☐ YES ☒ NO

3. Nature of conveyance:

☐ Assignment ☐ Merger☐ Security Agreement ☒ Change of Name☐ Other _____Execution Date: August 1, 1996

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: November 5, 1998A. Patent Application No.(s):
(include series code or filing date)

B. Patent No.(s):

5,764,276

Additional application or patent numbers attached? ☐ YES ☒ NO

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Thomas H. Jackson, Esq.
Banner & Witcoff, Ltd.
Address: 1001 G Street, N.W., 11th Floor
City: Washington
State: D.C. Zip: 20001-45976. Total number of applications and patents involved: 17. Total Fee (37 CFR 3.41) \$ 40.00
☒ Enclosed ☐ Authorized to charge Deposit Account 19-0733

8. Should any fee adjustment be necessary to effect proper recordation, please debit or credit our Deposit Account No. 19-0733, as necessary.

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Thomas H. Jackson, Reg. 29,808
Name of Person Signing
SignatureOctober 7, 1999
DateAtty. Docket No.: 1096.57674

/08/1999 DNGUYEN 00000206 5764276

Total number of pages including cover sheet, attachments and document: 37

FC:581

40.00 DP

PATENT
REEL: 010288 FRAME: 0255

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**SECOND AMENDED AND RESTATED CHARTER
OF
INTERACTIVE PICTURES CORPORATION**

SECRETARY OF STATE

Pursuant to the provisions of Section 48-20-107 of the Tennessee Business Corporation Act, the undersigned corporation hereby amends and restates its Charter to supersede the original Charter and any and all prior amendments thereto as follows:

I. The name of the corporation is: Interactive Pictures Corporation.

II. The text of the Amended and Restated Charter is as follows:

1. The name of the corporation is Interactive Pictures Corporation.

2. The corporation is for profit.

3. The duration of the corporation is perpetual.

4. The street address and zip code of the corporation's principal office in Tennessee shall be:

1009 Commerce Park Drive
Oak Ridge, Tennessee 37830
County of Anderson

5. (a) The name of the corporation's registered agent is Matthew S. Heiter.

(b) The street address, zip code, and county of the corporation's registered office and registered agent in Tennessee shall be:

165 Madison Avenue
Suite 2000
Memphis, Tennessee 38103
County of Shelby

6. The corporation is organized to do any and all things and to exercise any and all powers, rights, and privileges that a corporation may now or hereafter be organized to do, or to exercise, under the Tennessee Business Corporation Act, as amended.

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7. The corporation is authorized to issue one class of stock in the following number of shares: 50,000,000 shares of common stock, par value \$.001 per share (the "Common Stock"). Each share of Common Stock shall be entitled to one vote. Upon dissolution of the corporation, each share of Common Stock shall be entitled to receive a pro-rata share of the net assets of the corporation.

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8. The shareholders of the corporation shall not have preemptive rights.

9. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, a Board of Directors consisting of not less than three nor more than nine directors, the exact number of directors to be determined in the manner provided in the Bylaws of the corporation. Each director shall be elected at the annual meeting of shareholders and shall hold office until the next annual meeting and until his or her successor shall be elected and qualified, subject, however, to prior death, resignation, retirement, disqualification, or removal from office.

Any director may be removed from office but only for cause by (a) the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote for the election of directors, considered for this purpose as one class, unless a vote of a special voting group is otherwise required by law, or (b) by the affirmative vote of a majority of the entire Board of Directors then in office.

10. To the fullest extent permitted by the Tennessee Business Corporation Act as in effect on the date hereof and as hereafter amended from time to time, a director of the corporation shall not be liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. If the Tennessee Business Corporation Act or any successor statute is amended after adoption of this provision to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Tennessee Business Corporation Act, as so amended from time to time, or such successor statute. Any repeal or modification of this Article 10 by the shareholders of the corporation shall not affect adversely any right or protection of a director of the corporation existing at the time of such repeal or modification or with respect to events occurring prior to such time.

11. The corporation shall indemnify every person who is or was a party or is or was threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a director or officer or is or was serving at the request of the corporation as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, employee benefit plan, or other enterprise, including service on a committee formed for any purpose (and, in each case, his or her heirs, executors, and administrators), against all expense, liability, and loss (including counsel fees, judgments, fines, ERISA excise taxes, penalties, and amounts paid in settlement) actually and

reasonably incurred or suffered in connection with such action, suit, or proceeding, to the fullest extent permitted by applicable law, as in effect on the date hereof and as hereafter amended. Such indemnification may include payment of expenses upon final disposition of such action, suit, or proceeding, subject to the provision of any applicable statute.

The indemnification provisions of this Article 11 shall not be exclusive of any other right that any person (and his or her heirs, executors, and administrators) may have or hereafter acquire under any statute, this Charter, the corporation's Bylaws, resolution adopted by the shareholders, resolution adopted by the Board of Directors, agreement, or insurance, purchased by the corporation or otherwise, both as to action in his or her official capacity and as to action in another capacity. The corporation is hereby authorized to provide for indemnification through its Bylaws, resolution of shareholders, resolution of the Board of Directors, or agreement, in addition to that provided by this Charter.

12. Bylaws of this corporation may be amended, altered, modified, or repealed by resolution adopted by the Board of Directors or proposed by a shareholder with approval by the affirmative vote of the majority of the shareholders at a regular or specially called meeting for that purpose, subject to any provisions of law then applicable.

13. The corporation shall hold a special meeting of shareholders with ten (10) days written notice in the event of (a) a call of the Board of Directors of the corporation or the officers authorized to do so by the Bylaws of the corporation, or (b) a call by the shareholders of record owning greater than 10% of the issued and outstanding shares of Common Stock.

III. The Seconded Amended and Restated Charter as set forth above was duly adopted on November 21, 1997 by the Board of Directors and on December 8, 1997 by the shareholders of the corporation.

INTERACTIVE PICTURES CORPORATION

By 

James M. Phillips, President

CERTIFICATE OF AMENDED AND RESTATED CHARTER

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Pursuant to the provisions of *Tennessee Code Annotated* § 48-20-107, the undersigned does hereby submit the attached Second Amended and Restated Charter of Interactive Pictures Corporation (the "Corporation") for filing on behalf of the Corporation and does hereby certify as follows:

1. The name of the corporation is: Interactive Pictures Corporation.
2. The Seconded Amended and Restated Charter contains amendments to the Charter which were approved by the shareholders of the Corporation at a duly called meeting on December 8, 1997. The Second Amended and Restated Charter amends the Charter by deleting the existing provisions in their entirety and substituting in lieu thereof the following:

1. The name of the corporation is Interactive Pictures Corporation.

2. The corporation is for profit.

3. The duration of the corporation is perpetual.

4. The street address and zip code of the corporation's principal office in Tennessee shall be:

1009 Commerce Park Drive
Oak Ridge, Tennessee 37830
County of Anderson

5. (a) The name of the corporation's registered agent is Matthew S. Heiter.

- (b) The street address, zip code, and county of the corporation's registered office and registered agent in Tennessee shall be:

165 Madison Avenue
Suite 2000
Memphis, Tennessee 38103
County of Shelby

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6. The corporation is organized to do any and all things and to exercise any and all powers, rights, and privileges that a corporation may now or hereafter be organized to do, or to exercise, under the Tennessee Business Corporation Act, as amended.

7. The corporation is authorized to issue one class of stock in the following number of shares: 50,000,000 shares of common stock, par value \$.001 per share (the "Common Stock"). Each share of Common Stock shall be entitled to one vote. Upon dissolution of the corporation, each share of Common Stock shall be entitled to receive a pro-rata share of the net assets of the corporation.

8. The shareholders of the corporation shall not have preemptive rights.

9. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, a Board of Directors consisting of not less than three nor more than nine directors, the exact number of directors to be determined in the manner provided in the Bylaws of the corporation. Each director shall be elected at the annual meeting of shareholders and shall hold office until the next annual meeting and until his or her successor shall be elected and qualified, subject, however, to prior death, resignation, retirement, disqualification, or removal from office.

Any director may be removed from office but only for cause by (a) the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote for the election of directors, considered for this purpose as one class, unless a vote of a special voting group is otherwise required by law, or (b) by the affirmative vote of a majority of the entire Board of Directors then in office.

10. To the fullest extent permitted by the Tennessee Business Corporation Act as in effect on the date hereof and as hereafter amended from time to time, a director of the corporation shall not be liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. If the Tennessee Business Corporation Act or any successor statute is amended after adoption of this provision to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a

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director of the corporation shall be eliminated or limited to the fullest extent permitted by the Tennessee Business Corporation Act, as so amended from time to time, or such successor statute. Any repeal or modification of this Article 10 by the shareholders of the corporation shall not affect adversely any right or protection of a director of the corporation existing at the time of such repeal or modification or with respect to events occurring prior to such time.

11. The corporation shall indemnify every person who is or was a party or is or was threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a director or officer or is or was serving at the request of the corporation as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, employee benefit plan, or other enterprise, including service on a committee formed for any purpose (and, in each case, his or her heirs, executors, and administrators), against all expense, liability, and loss (including counsel fees, judgments, fines, ERISA excise taxes, penalties, and amounts paid in settlement) actually and reasonably incurred or suffered in connection with such action, suit, or proceeding, to the fullest extent permitted by applicable law, as in effect on the date hereof and as hereafter amended. Such indemnification may include payment of expenses upon final disposition of such action, suit, or proceeding, subject to the provision of any applicable statute.

The indemnification provisions of this Article 11 shall not be exclusive of any other right that any person (and his or her heirs, executors, and administrators) may have or hereafter acquire under any statute, this Charter, the corporation's Bylaws, resolution adopted by the shareholders, resolution adopted by the Board of Directors, agreement, or insurance, purchased by the corporation or otherwise, both as to action in his or her official capacity and as to action in another capacity. The corporation is hereby authorized to provide for indemnification through its Bylaws, resolution of shareholders, resolution of the Board of Directors, or agreement, in addition to that provided by this Charter.

12. Bylaws of this corporation may be amended, altered, modified, or repealed by resolution adopted by the Board of Directors or proposed by a shareholder with approval by the affirmative vote of

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the majority of the shareholders at a regular or specially called meeting for that purpose, subject to any provisions of law then applicable.

13. The corporation shall hold a special meeting of shareholders with ten (10) days written notice in the event of (a) a call of the Board of Directors of the corporation or the officers authorized to do so by the Bylaws of the corporation, or (b) a call by the shareholders of record owning greater than 10% of the issued and outstanding shares of Common Stock.

3. The Amendments were duly adopted by the Board of Directors of the Corporation at a duly called meeting held on November 21, 1997 and by the shareholders at a duly called meeting on December 8, 1997.

INTERACTIVE PICTURES CORPORATION

By James M. Phillips
James M. Phillips
President

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**ARTICLES OF AMENDMENT
TO THE CHARTER
OF
INTERACTIVE PICTURES CORPORATION**

Pursuant to the provisions of Section 48-20-106 of the Tennessee Business Corporation Act, the undersigned corporation adopts the following articles of amendment to its Charter.

1. The name of the corporation is INTERACTIVE PICTURES CORPORATION.
2. The text of each amendment is as follows:
 - A. Paragraph 7 of the Charter is hereby deleted in its entirety and the following paragraph shall be inserted in lieu thereof:

7. The corporation is authorized to issue two classes of stock in the following number of shares: (i) 50,000,000 shares of common stock, par value \$.001 per share (the "Common Stock"), and (ii) 20,000,000 shares of preferred stock, \$.001 par value (the "Preferred Stock").

The preferences, limitations, and relative rights of the above classes of stock shall be as follows:

(a) Preferred Stock. Shares of Preferred Stock may be issued in one or more classes or series at such time or times for such consideration as the Board of Directors may determine. Each such class or series shall be given a distinguishing designation. All shares of any one class or series shall have preferences, limitations, and relative rights identical with those of other shares of the same class or series and, except to the extent otherwise provided in the description of such class or series, with those of other shares of Preferred Stock. Authority is hereby expressly granted to the Board of Directors to fix from time to time, by resolution or resolutions providing for the establishment and issuance of any class or series of Preferred Stock, the designation of such class or series, and the relative rights, preferences, qualifications, and limitations of the shares of such class or series. Before issuing any shares of Preferred Stock, the corporation shall deliver to the Secretary of State for filing Articles of Amendment, which shall be effective without shareholder action, that set forth (a) the name of the corporation, (b) the text of the amendment determining the terms of the class or series, (c) the date the amendment was adopted, and (d) a statement that the amendment was duly adopted by the Board of Directors.

(b) Common Stock. Each share shall be entitled to one vote. Upon dissolution of the corporation, each share of Common Stock shall be entitled to receive a pro-rata share of the net assets of the corporation.

3. The corporation is a for-profit corporation.

4. The amendment was duly adopted on February 20, 1998 by the Board of Directors and on March 3, 1998 by the Shareholders of the Corporation.

6. These Articles of Amendment are to be effective when these articles are filed by the Secretary of State.

Dated: March 3, 1998.

INTERACTIVE PICTURES CORPORATION

By: James M. Phillips

James M. Phillips, President

**ARTICLES OF AMENDMENT
TO THE CHARTER
OF
INTERACTIVE PICTURES CORPORATION**

Pursuant to the provisions of Section 48-20-106 of the Tennessee Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Charter:

- 1 The name of the corporation is INTERACTIVE PICTURES CORPORATION.
- 2 The Charter is amended by establishing three series of authorized preferred stock, which series shall be designated as "Series A Preferred Stock", "Series B Preferred Stock", and "Series C Preferred Stock", each such series consisting of the number of shares set forth herein and having the following voting powers, preferences and relative participating, optional and other special rights, and the qualifications, limitations and restrictions thereof as follows:

(a) Series A Preferred Stock Four Million Eight Hundred Thirty-Six Thousand Four Hundred Sixteen (4,836,416) shares of preferred stock with a par value of one-tenth of one cent (\$.001) per share ("Series A Preferred Stock" and within this paragraph (a), sometimes referred to as "this Series"), which shares shall have the following designations, preferences, limitations and relative rights:

(i) Priority of Series A Preferred Stock

(A) The shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be preferred over the shares of the Common Stock (including in all cases where such shares are referred to herein, any other shares of the capital stock of the Corporation into which they may be reclassified or changed) and any other capital stock of the Corporation ranking junior to the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock upon liquidation, dissolution or winding up of the Corporation (such Common Stock and any other such capital stock being referred to as the "Junior Stock") as to assets so that in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holder of each share of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any distribution is made to holders of

shares of the Junior Stock, an amount equal to \$1.36 per share of Series A Preferred Stock, \$2.02 per share of Series B Preferred Stock, and \$2.02 per share of Series C Preferred Stock. If, upon any liquidation, dissolution or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, or any capital stock ranking on a par with the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock upon liquidation, dissolution or winding up of the Corporation, shall be insufficient to pay in full the preferential amounts to which such stock would be entitled, then the holders of shares of this Series and of such other shares will share ratably in any such distribution of assets of the Corporation in proportion to the full respective preferential amounts to which they are entitled. With respect to the liquidation preference of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, a liquidation or dissolution or winding up of this Corporation shall be deemed to be occasioned by, or to include any of the following (a "Change of Control"): (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (ii) a sale of all or substantially all of the assets of the Corporation; unless the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise), hold at least a majority of the voting power of the surviving or acquiring entity.

(B) In the event of any liquidation, dissolution or winding up of the Corporation, the Corporation shall, within ten (10) days after the date the Board of Directors approves such action, or twenty (20) days prior to any stockholders' meeting called to approve such action, or twenty (20) days after the

commencement of an involuntary proceeding, whichever is earlier, give each holder of shares of Preferred Stock initial written notice of the proposed action. Such initial written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Preferred Stock upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each holder of shares of Preferred Stock of such material change.

(C) The Corporation shall not consummate any liquidation, dissolution or winding up of the Corporation before the expiration of twenty (20) days after the mailing of the initial notice or ten (10) days after the mailing of any subsequent written notice, whichever is later, provided that any such 20-day or 10-day period may be shortened upon the written consent of the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock voting together as a single class.

(II) Conversion Rights. Each share of the Series A Preferred Stock shall be convertible into that number of fully paid and nonassessable shares of Common Stock thereafter in this paragraph sometimes referred to as "Common Stock"), determined by dividing \$1.36 by the Conversion Price (as defined in clause (B) below). Such conversion shall be subject to the following terms and conditions:

(A) A holder of the shares of Series A Preferred Stock shall have the right, at its option, to convert such shares, in whole or in part, at any time by giving notice of intent to exercise the conversion right, which notice shall be in writing delivered to the Corporation at its principal office.

(B) The price at which shares of Common Stock shall be deliverable upon conversion of shares of Preferred Stock (the "Conversion Price") shall initially be, in the case of the Series A Preferred

Stock, \$1.36 per share of Common Stock, and, in the case of the Series B Preferred Stock, \$2.02 per share of Common Stock, and, in the case of the Series C Preferred Stock, \$2.02 per share of Common Stock. Each such initial Conversion Price shall be adjusted as hereinafter provided.

(C) Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective Conversion Price immediately upon the closing of the sale of the Corporation's Common Stock in a "Qualified Public Offering", which for all purposes in this Charter shall mean an underwritten public offering registered under the Securities Act of 1933, as amended (other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Corporation), (i) at a public offering price (prior to underwriter commissions and expenses) equal to or exceeding \$5.00 per share of Common Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares occurring after the date of filing of these Articles of Amendment), and the aggregate proceeds to the Corporation (before deduction for underwriter commissions and expenses relating to the issuance, including without limitation fees of the Corporation's counsel) of which equal or exceed \$15,000,000, or (ii) if such public offering is at a price less than \$5.00 per share of Common Stock or results in aggregate proceeds of less than \$15,000,000, then upon the written consent of the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock voting together as a single class to approve the conversion of all such shares into shares of Common Stock.

(D) Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at its principal office that he elects to convert the same and

shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(E) If the Corporation shall make any stock dividend or stock split or reverse stock dividend or reverse stock split that results in a change in the number of shares of Common Stock outstanding, the Corporation shall adjust the number of shares of Series A Preferred Stock outstanding in the same manner by issuing additional shares or by exchanging shares of Series A Preferred Stock, provided, however, the liquidation preference of the Series A Preferred Stock shall not be increased or decreased as a result of such issuance or exchange. The number of shares of Series A Preferred Stock outstanding as a result of such adjustment shall equal the product of the number of shares of Series A Preferred Stock then outstanding multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding after such action and the denominator shall be the number of shares of Common Stock outstanding prior to such action.

(F) Upon any conversion of shares of Series A Preferred Stock, the shares of Series A Preferred Stock so converted shall be canceled and the number of shares of Series A Preferred Stock which the Corporation shall have authority to issue shall be decreased by the conversion of shares of Series A Preferred Stock. The Corporation shall at all times reserve and keep available, out of its authorized and unissued stock, solely for the purpose of effecting the

conversion of the Series A Preferred Stock, such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all shares of Series A Preferred Stock from time to time outstanding. The Corporation shall from time to time, in accordance with the laws of the State of Tennessee, increase the authorized number of shares of its Common Stock if at any time the number of shares of its Common Stock remaining unissued shall not be sufficient to permit the conversion of all the then outstanding Series A Preferred Stock.

(III) Voting Rights. So long as any shares of Series A Preferred Stock are outstanding and in addition to any other vote or consent of stockholders required by law or by this Charter, the shares of Series A Preferred Stock shall have the following voting rights:

(A) The Corporation will not, either directly or indirectly or through merger or consolidation with any other corporation, without the affirmative vote at a meeting or the written consent with or without a meeting of the holders of 70% of the outstanding Series A Preferred Stock, amend, alter or repeal any of the provisions of the Charter of the Corporation, or authorize any reclassification of the Series A Preferred Stock, so as in any such case to affect adversely the preferences, special rights or powers of the Series A Preferred Stock, or authorize any capital stock or any security convertible into any capital stock of the Corporation ranking, upon liquidation, dissolution or winding up of the Corporation, on parity with or prior to the Series A Preferred Stock.

(B) The Corporation will not, either directly or indirectly or through merger or consolidation with any other corporation, without the affirmative vote at a meeting or the written consent with or without a meeting of the holders of 70% of the outstanding Series A Preferred Stock (1) increase or decrease the aggregate number of authorized shares of Series A Preferred Stock; (2) decrease the stated value of the shares of Series A Preferred Stock; (3) effect an exchange, reclassification, or cancellation of all or part of the shares of Series A Preferred Stock; (4)

effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of Series A Preferred Stock; (5) change the designations, preferences, limitations, or relative rights of the shares of Series A Preferred Stock; (6) change the shares of Series A Preferred Stock into the same or a different number of shares, either with or without par value, of a class of shares having rights and preferences equal, prior, or superior to the shares of Series A Preferred Stock or increase the rights and preferences of any class having rights and preferences equal, prior, or superior to the shares of Series A Preferred Stock, or increase the rights and preferences of any class having rights or preferences later or inferior to the shares of Series A Preferred Stock; or (7) declare or pay any dividend on shares other than Series A Preferred Stock.

(C) The holders of Series A Preferred Stock shall be entitled to vote on all matters submitted to a vote of holders of Common Stock of the Corporation as if such holders of Series A Preferred Stock held that number of shares of Common Stock into which such shares of Series A Preferred Stock are then convertible. The holders of Series A Preferred Stock shall be entitled to receive all notices of regular and special meetings of shareholders at which corporate action is to be taken and to notice of corporate action to be taken by written consent, and to inspect and copy the Corporation's stock books, as if such holders were holders of Common Stock of the Corporation.

(IV) Except as otherwise agreed herein, no consent of holders of the Series A Preferred Stock shall be required for (i) the creation of any indebtedness of any kind of the Corporation, (ii) the authorization or issuance of any class of stock of the Corporation subordinate to the Series A Preferred Stock upon liquidation, dissolution or winding up of the Corporation, or (iii) the issuance of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, or Common Stock.

(b) Series B Preferred Stock One Million Nine Hundred Eighty Two Thousand Six Hundred Forty Eight (1,982,648) shares of preferred stock with a par value of one-tenth of one cent (\$.001) per share ("Series B Preferred Stock" and within this paragraph (b), sometimes referred

to as "this Series"), which shares shall have the following designations, preferences, limitations and relative rights:

(1) Priority of Series B Preferred Stock.

(A) The shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be preferred over the shares of the Common Stock (including in all cases where such shares are referred to herein, and other shares of the capital stock of the Corporation into which they may be reclassified or changed) and any other capital stock of the Corporation ranking junior to the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock upon liquidation, dissolution or winding up of the Corporation (such Common Stock and any other such capital stock being referred to as the "Junior Stock") as to assets so that in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holder of each share of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus, or earnings, before any distribution is made to holders of shares of the Junior Stock, an amount equal to \$1.36 per share of Series A Preferred Stock, \$2.02 per share of Series B Preferred Stock, and \$2.02 per share of Series C Preferred Stock. If, upon any liquidation, dissolution or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, or any capital stock ranking on a par with the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock upon liquidation, dissolution or winding up of the Corporation, shall be insufficient to pay in full the preferential amounts to which such stock would be entitled, then the holders of shares of this Series and of such other shares will share ratably in any such distribution of assets of the Corporation in proportion to the full respective preferential amounts to which they are entitled. With respect to the liquidation

preference of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, a liquidation, or dissolution or winding up of this Corporation shall be deemed to be occasioned by or to include a Change of Control.

(B) In the event of any liquidation, dissolution or winding up of the Corporation, the Corporation shall, within ten (10) days after the date the Board of Directors approves such action, or twenty (20) days prior to any stockholder meeting called to approve such action, or twenty (20) days after the commencement of an involuntary proceeding, whichever is earlier, give each holder of shares of Preferred Stock initial written notice of the proposed action. Such initial written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Preferred Stock upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each holder of shares of Preferred Stock of such material change.

(C) The Corporation shall not consummate any liquidation, dissolution or winding up of the Corporation before the expiration of twenty (20) days after the mailing of the initial notice or ten (10) days after the mailing of any subsequent written notice, whichever is later; provided that any such 20-day or 10-day period may be shortened upon the written consent of the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock voting together as a single class.

(II) Conversion Rights. Each share of the Series B Preferred Stock shall be convertible into that number of fully paid and nonassessable shares of Common Stock (hereinafter in this paragraph sometimes referred to as "Common Stock"), determined by dividing \$2.02 by the Conversion Price (as defined in clause (B) below). Such conversion shall be subject to the following terms and conditions:

(A) A holder of the shares of Series B Preferred Stock shall have the right, at its option, to convert such shares, in whole or in part, at any time by giving notice of intent to exercise the conversion right, which notice shall be in writing delivered to the Corporation at its principal office.

(B) The price at which shares of Common Stock shall be deliverable upon conversion of shares of Preferred Stock (the "Conversion Price") shall initially be, in the case of the Series A Preferred Stock, \$1.36 per share of Common Stock, and, in the case of the Series B Preferred Stock, \$2.02 per share of Common Stock, and, in the case of the Series C Preferred Stock, \$2.02 per share of Common Stock. Each such initial Conversion Price shall be adjusted as hereinafter provided.

(C) Each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective Conversion Price immediately upon the closing of the sale of the Corporation's Common Stock in a Qualified Public Offering of the type described in clause 2(a)(1)(C)(ii) above, or if such public offering is at a price less than \$5.00 per share of Common Stock or results in aggregate proceeds of less than \$15,000,000, then upon the written consent of the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock voting together as a single class to approve the conversion of all such shares into shares of Common Stock.

(D) Before any holder of Series B Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at its principal office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at

such office to such holder of Series B Preferred Stock a certificate or certificates of the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of maturity of the shares of Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be deemed for all purposes as the record holder or holders of such shares of Common Stock on such date.

(D) If the Corporation shall make any stock dividend or stock split or reverse stock dividend or reverse stock split that results in a change in the number of shares of Common Stock outstanding, the Corporation shall adjust the number of shares of Series B Preferred Stock outstanding in the same manner by issuing additional shares or by exchanging shares of Series B Preferred Stock; provided, however, the liquidation preference of the Series B Preferred Stock shall not be increased or decreased as a result of such issuance or exchange. The number of shares of Series B Preferred Stock outstanding as a result of such adjustment shall equal the product of the number of shares of Series B Preferred Stock then outstanding multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding after such action and the denominator shall be the number of shares of Common Stock outstanding prior to such action.

(E) Upon any conversion of shares of Series B Preferred Stock, the shares of Series B Preferred Stock so converted shall be canceled and the number of shares of Series B Preferred Stock which the Corporation shall have authority to issue shall be decreased by the conversion of shares of Series B Preferred Stock. The Corporation shall at all times reserve and keep available, out of its authorized and unissued stock, solely for the purpose of effecting the conversion of the Series B Preferred Stock, such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all shares of Series B Preferred Stock from time to

time outstanding. The Corporation shall from time to time, in accordance with the laws of the State of Tennessee, increase the authorized number of shares of its Common Stock if at any time the number of shares of its Common Stock remaining unissued shall not be sufficient to permit the conversion of all the then outstanding Series B Preferred Stock.

(III) Voting Rights—As long as any shares of Series B Preferred Stock are outstanding and in addition to any other vote or consent of stockholders required by law or by this Charter, the shares of Series B Preferred Stock shall have the following voting rights:

(A) The Corporation will not, either directly or indirectly or through merger or consolidation with any other corporation, without the affirmative vote at a meeting or the written consent with or without a meeting of the holders of 70% of the outstanding Series B Preferred Stock, amend, alter or repeal any of the provisions of the Charter of the Corporation or authorize any reclassification of the Series B Preferred Stock, so as in any such case to affect adversely the preferences, special rights or powers of the Series B Preferred Stock, or authorize any capital stock or any security convertible into any capital stock of the Corporation ranking, upon liquidation, dissolution or winding up of the Corporation, on parity with or prior to the Series B Preferred Stock.

(B) The Corporation will not, either directly or indirectly or through merger or consolidation with any other corporation, without the affirmative vote at a meeting or the written consent with or without a meeting of the holders of 70% of the outstanding Series B Preferred Stock (1) increase or decrease the aggregate number of authorized shares of Series B Preferred Stock; (2) decrease the stated value of the shares of Series B Preferred Stock; (3) effect an exchange, reclassification, or cancellation of all or part of the shares of Series B Preferred Stock; (4) effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of Series B Preferred Stock; (5) change the designations, preferences, limitations, or relative

rights of the shares of Series B Preferred Stock; (6) change the shares of Series B Preferred Stock into the same or a different number of shares, either with or without par value, of a class of shares having rights and preferences equal, prior, or superior to the shares of Series B Preferred Stock, or increase the rights and preferences of any class having rights and preferences equal, prior, or superior to the shares of Series B Preferred Stock, or increase the rights and preferences of any class having rights or preferences later or inferior to the shares of Series B Preferred Stock, or (7) declare or pay any dividend on shares other than the Series B Preferred Stock.

(C) The holders of Series B Preferred Stock shall be entitled to vote on all matters submitted to a vote of holders of Common Stock of the Corporation as if such holders of Series B Preferred Stock held that number of shares of Common Stock into which such shares of Series B Preferred Stock are then convertible. The holders of Series B Preferred Stock shall be entitled to receive all notices of regular and special meetings of shareholders at which corporate action is to be taken and to notice of corporate action to be taken by written consent, and to inspect and copy the Corporation's stock books, as if such holders were holders of Common Stock of the Corporation.

(IV) Except as otherwise agreed herein, no consent of holders of the Series B Preferred Stock shall be required for (i) the creation of any indebtedness of any kind of the Corporation, (ii) the authorization or issuance of any class of stock of the Corporation subordinate to the Series B Preferred Stock upon liquidation, dissolution or winding up of the Corporation, or (iii) the issuance of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, or Common Stock.

(c) Series C Preferred Stock Ten Million Two Hundred Seventy-Five Thousand Five Hundred Thirty-Three (10,275,533) shares of preferred stock with a par value of one-tenth of one cent (\$.001) per share ("Series C Preferred Stock" and within this paragraph (c), sometimes referred to as "this Series"), which shares shall have the following designations, preferences, limitations and relative rights:

(1) Priority of Series C Preferred Stock

(A) The shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be preferred over the shares of the Common Stock (including in all cases where such shares are referred to herein, any other shares of the capital stock of the Corporation into which they may be reclassified or changed) and any other capital stock of the Corporation ranking junior to the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock upon liquidation, dissolution or winding up of the Corporation (such Common Stock and any other such capital stock being referred to as the "Junior Stock") as to assets so that in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holder of each share of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any distribution is made to holders of shares of the Junior Stock, an amount equal to \$1.36 per share of Series A Preferred Stock, \$2.02 per share of Series B Preferred Stock, and \$2.02 per share of Series C Preferred Stock. If, upon any liquidation, dissolution or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, or any capital stock ranking on a par with the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock upon liquidation, dissolution or winding up of the Corporation, shall be insufficient to pay in full the preferential amounts to which such stock would be entitled, then the holders of shares of this Series and of such other shares will share ratably in any such distribution of assets of the Corporation in proportion to the full respective preferential amounts to which they are entitled. With respect to the liquidation preference of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, a liquidation or dissolution or winding up of this Corporation shall be deemed to be occasioned by, or to include a Change of Control.

(B) In the event of any liquidation, dissolution or winding up of the Corporation, the Corporation shall, within ten (10) days after the date the Board of Directors approves such action, or twenty (20) days prior to any stockholders' meeting called to approve such action, or twenty (20) days after the commencement of an involuntary proceeding, whichever is earlier, give each holder of shares of Preferred Stock initial written notice of the proposed action. Such initial written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Preferred Stock upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each holder of shares of Preferred Stock of such material change.

(C) The Corporation shall not consummate any liquidation, dissolution or winding up of the Corporation before the expiration of twenty (20) days after the mailing of the initial notice or ten (10) days after the mailing of any subsequent written notice, whichever is later, provided that any such 20-day or 10-day period may be shortened upon the written consent of the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock voting together as a single class.

(D) Conversion Rights. Each share of the Series C Preferred Stock shall be convertible into that number of fully paid and nonassessable shares of Common Stock (hereinafter in this paragraph sometimes referred to as "Common Stock"), determined by dividing \$2.02 by the Conversion Price (as defined in clause (B) below). Such conversion shall be subject to the following terms and conditions:

(A) A holder of the shares of Series C Preferred Stock shall have the right, at its option, to convert such shares, in whole or in part, at any time by giving notice of intent to exercise the conversion

right, which notice shall be in writing delivered to the Corporation at its principal office.

(B) The price at which shares of Common Stock shall be deliverable upon conversion of shares of Preferred Stock (the "Conversion Price") shall initially be, in the case of the Series A Preferred Stock, \$1.50 per share of Common Stock, and, in the case of the Series B Preferred Stock, \$2.02 per share of Common Stock, and, in the case of the Series C Preferred Stock, \$2.02 per share of Common Stock. Each such initial Conversion Price shall be adjusted as hereinafter provided.

(C) Each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price immediately upon the closing of the sale of the Corporation's Common Stock in a Qualified Public Offering of the type described in clause 2(a)(1)(C)(i) above, or if such public offering is at a price less than \$5.00 per share of Common Stock or results in aggregate proceeds of less than \$15,000,000, then upon the written consent of the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock voting together as a single class to approve the conversion of all such shares into shares of Common Stock.

(D) Before any holder of Series C Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at its principal office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series C Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have

been made immediately prior to the close of business on the date of surrender of the shares of Series C Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(E) If the Corporation fail make any stock dividend or stock split or reverse stock dividend or reverse stock split that results in a change in the number of shares of Common Stock outstanding, the Corporation shall adjust the number of shares of Series C Preferred Stock outstanding in the same manner by issuing additional shares or by exchanging shares of Series C Preferred Stock, provided, however, the liquidation preference of the Series C Preferred Stock shall not be increased or decreased as a result of such issuance or exchange. The number of shares of Series C Preferred Stock outstanding as a result of such adjustment shall equal the product of the number of shares of Series C Preferred Stock then outstanding multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding after such action and the denominator shall be the number of shares of Common Stock outstanding prior to such action.

(F) Upon any conversion of shares of Series C Preferred Stock, the shares of Series C Preferred Stock so converted shall be canceled and the number of shares of Series C Preferred Stock which the Corporation shall have authority to issue shall be decreased by the conversion of shares of Series C Preferred Stock. The Corporation shall at all times reserve and keep available, out of its authorized and unissued stock, solely for the purpose of effecting the conversion of the Series C Preferred Stock, such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all shares of Series C Preferred Stock from time to time outstanding. The Corporation shall from time to time, in accordance with the laws of the State of Tennessee, increase the authorized number of shares of its Common Stock if at any time the number of

shares of its Common Stock remaining unissued shall not be sufficient to permit the conversion of all the then outstanding Series C Preferred Stock.

(III) Voting Rights. So long as any shares of Series C Preferred Stock are outstanding and in addition to any other vote or consent of stockholders required by law or by this Charter, the shares of Series C Preferred Stock shall have the following voting rights:

(A) The Corporation will not, either directly or indirectly or through merger or consolidation with any other corporation, without the affirmative vote at a meeting or the written consent with or without a meeting of the holders of 70% of the outstanding Series C Preferred Stock, amend, alter or repeal any of the provisions of the Charter of the Corporation, or authorize any reclassification of the Series C Preferred Stock, so as in any such case to affect adversely the preferences, special rights or powers of the Series C Preferred Stock, or authorize any capital stock or any security convertible into any capital stock of the Corporation ranking, upon liquidation, dissolution or winding up of the Corporation, on parity with or prior to the Series C Preferred Stock.

(B) The Corporation will not, either directly or indirectly or through merger or consolidation with any other corporation, without the affirmative vote at a meeting or the written consent with or without a meeting of the holders of 70% of the outstanding Series C Preferred Stock (1) increase or decrease the aggregate number of authorized shares of Series C Preferred Stock; (2) decrease the stated value of the shares of Series C Preferred Stock; (3) effect an exchange, reclassification, or cancellation of all or part of the shares of Series C Preferred Stock; (4) effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of Series C Preferred Stock; (5) change the designations, preferences, limitations, or relative rights of the shares of Series C Preferred Stock; (6) change the shares of Series C Preferred Stock, into the same or a different number of shares, either with or without par value, of a class of shares having rights

and preferences equal, prior, or superior to the shares of Series C Preferred Stock or increase the rights and preferences of any class having rights and preferences equal, prior, or superior to the shares of Series C Preferred Stock, or increase the rights and preferences of any class having rights or preferences later or inferior to the shares of Series C Preferred Stock; or (7) declare or pay any dividend on shares other than the Series C Preferred Stock.

(C) The holders of Series C Preferred Stock shall be entitled to vote on all matters submitted to a vote of holders of Common Stock of the Corporation as if such holders of Series C Preferred Stock held that number of shares of Common Stock into which such shares of Series C Preferred Stock are then convertible. The holders of Series C Preferred Stock shall be entitled to receive all notices of regular and special meetings of shareholders at which corporate action is to be taken and to notice of corporate action to be taken by written consent, and to inspect and copy the Corporation's stock books, as if such holders were holders of Common Stock of the Corporation.

(IV) Except as otherwise agreed herein, no consent of holders of the Series C Preferred Stock shall be required for (i) the creation of any indebtedness of any kind of the Corporation, (ii) the authorization or issuance of any class of stock of the Corporation subordinate to the Series C Preferred Stock upon liquidation, dissolution or winding up of the Corporation, or (iii) the issuance of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, or Common Stock.

(d) So long as any shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock voting together as a single class except as otherwise required by law: (i) effect a merger or consolidation with any other entity where the stockholders of the Corporation before such merger or consolidation would hold less than a majority of the surviving entity, or (ii) sell, convey or otherwise dispose of all or substantially all the property or business of the Corporation.

(e) If the Corporation shall issue, after the date upon which any shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below), without consideration or for a consideration per share less than the applicable Conversion Price for the Series A Preferred Stock, the Series B Preferred Stock or the Series C Preferred Stock (the "Applicable Conversion Price") in effect immediately prior to the issuance of such Additional Stock, then such Applicable Conversion Price shall be adjusted by multiplying such Applicable Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at the Applicable Conversion Price in effect immediately prior to the issuance of such Additional Stock and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of such Additional Stock so issued, provided, however, that if the Corporation shall issue, within eighteen (18) months of the Purchase Date, any Additional Stock, the aggregate proceeds of which are at least \$5,000,000, without consideration or for a consideration per share less than the Applicable Conversion Price in effect immediately prior to the issuance of such Additional Stock, then such Applicable Conversion Price shall be adjusted to equal the purchase price for such Additional Stock. For purposes of this paragraph 2(e), the shares of issued or issuable Common Stock that are excluded from the definition of Additional Stock will be deemed outstanding.

(i) No adjustment of the Applicable Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock shall be made in an amount less than one cent per share, and any adjustments which are not required to be made by reason of this sentence shall not be carried forward nor taken into account in any subsequent adjustment. Except to the limited extent provided for in paragraphs 2(e)(iv)(3) and 2(e)(iv)(4), no adjustment of such Applicable Conversion Price pursuant to this paragraph 2(e) shall have the effect of increasing the Applicable Conversion Price above the Applicable Conversion Price in effect immediately prior to such adjustment.

(ii) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(iii) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(iv) In the case of the issuance, whether before, on or after the Purchase Date, of options to purchase or rights to subscribe for Additional Stock, securities by their terms convertible into or exchangeable for Additional Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities (which are not excluded from the definition of Additional Stock), the following provisions shall apply:

1) The aggregate maximum number of shares of Additional Stock deliverable upon exercise of such options to purchase or rights to subscribe for Additional Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in paragraphs 2(c)(ii) and 2(c)(iii)), if any, received by the Corporation upon the issuance of such options or rights plus the purchase price provided in such options or rights for the Additional Stock covered thereby.

2) The aggregate maximum number of shares of Additional Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in paragraphs 2(c)(ii) and 2(c)(iii)).

3) In the event of any change in the number of shares of Additional Stock deliverable or any increase in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Applicable Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock obtained with respect to the adjustment which was made upon the issuance of such options, rights or securities, and any subsequent adjustments based thereon, shall be recomputed to reflect such change, but no farther adjustment shall be made for the actual issuance of Additional Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Applicable Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock obtained with respect to the adjustment which was made upon the issuance of such options, rights or securities or options or rights related to such securities, and any subsequent adjustments based thereon, shall be recomputed to reflect the issuance of only the number of shares of Additional Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities. Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, only the number of shares of Additional Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities shall continue to be deemed to be issued.

5) All Additional Stock deemed issued pursuant to this paragraph 2(e)(iv) shall be considered issued only at the time of its deemed issuance and any actual issuance of such stock shall not be an actual issuance or a deemed issuance of the corporation's Additional Stock under the provisions of this paragraph 2(e).

(f) "Additional Stock" shall mean any shares of Preferred Stock or Common Stock issued by this Corporation on or after the Purchase Date other than:

(i) Shares issued or issuable pursuant to a transaction described in paragraphs 2(a)(I)(A) through (F), 2(b)(I)(A) through (F) or 2(c)(I)(A) through (F) hereof;

(ii) shares of Common Stock, as adjusted for stock splits, reclassifications and the like, reserved for issuance to officers, directors, employees and consultants of this Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the shareholders and directors of the Corporation;

(iii) capital stock, or options or warrants to purchase capital stock issued in connection with bona fide equipment lease financings or similar transactions, provided that any such transaction has been approved by the Corporation's Board of Directors;

(iv) capital stock or warrants or options to purchase capital stock issued to vendors or issued in connection with bona fide acquisitions, strategic licensing transactions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation;

(v) capital stock or options or warrants to purchase capital stock the issuance of which is determined to be excluded from the definition of "Additional Stock" upon the written consent of the holders of at least 70% of the then outstanding Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock voting together as a

single class (without any requirement of an amendment to this Charter);

(vi) shares issued or issuable upon conversion of any series of Preferred Stock; and

(vii) shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock issued on or before the Purchase Date.

(g) Board of Directors. The holders of the shares of Series A Preferred Stock and Series B Preferred Stock shall each have the right to elect one (1) director to the Board of Directors. The holders of the shares of Series C Preferred Stock shall have the right to elect two (2) directors to the Board of Directors, such directors to be elected by the vote of a majority of the issued and outstanding shares of such Series. In the case of any vacancy in the office of a director elected by the Series A Preferred Stock, the Series B Preferred Stock, or the Series C Preferred Stock (a "Series"), such vacancy shall be filled by the affirmative vote of a majority of the issued and outstanding shares of such Series that elected such director. Any director elected by a Series may be removed, either with or without cause, by and only by the affirmative vote of a majority of the issued and outstanding shares of such Series that elected such director, and any vacancy thereby created may be filled by the vote of a majority of the issued and outstanding shares of such Series that elected such director. The right of a Series to elect a director to the Board of Directors pursuant to this paragraph 2(c) shall terminate upon the consummation by the Corporation of a sale of its Common Stock in a Qualified Public Offering.

3. Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

4. Severability of Provisions. If any voting powers, preferences and relative, participating, optional and other special rights of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and qualifications, limitations and restrictions thereof set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and qualifications, limitations and restrictions thereof set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional and other special rights of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect, and no voting powers, preferences and relative, participating, optional or other special rights of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and qualifications,

limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special rights of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and qualifications, limitations and restrictions thereof unless so expressed herein.

5. Notices in Writing. All notices given hereunder shall be in writing and, if to the Corporation, shall be delivered to it at its principal executive offices, and, if to any holder of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, shall be delivered to it at its address as it appears on the stock books of the Corporation.


6. The corporation is a for-profit corporation.

7. The amendment was duly adopted on April 8, 1998 by the Board of Directors of the Corporation.

8. These Articles of Amendment are to be effective when these articles are filed by the Tennessee Secretary of State.

Dated: April 8, 1998.

INTERACTIVE PICTURES CORPORATION

By 
James M. Phillips, President