

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **1999-09-10** | Period of Report: **1999-09-09**
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FILER

GENERAL MAGIC INC

CIK: **933524** | IRS No.: **770250147** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **000-25374** | Film No.: **99709915**
SIC: **7372** Prepackaged software

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SUNNYVALE CA 94086

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SUNNYVALE CA 94086
4087744000

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): SEPTEMBER 9, 1999
-----GENERAL MAGIC, INC.

(Exact name of registrant as specified in its charter)

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DELAWARE

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77-0250147

(State or other jurisdiction
of incorporation)-----
(Commission File Number)-----
(I.R.S. Employer
Identification Number)

</TABLE>

420 NORTH MARY AVENUE SUNNYVALE, CALIFORNIA 94086

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (408) 774-4000
-----Not applicable

(Former name or former address, if changed since last report)

ITEM 5. OTHER EVENTS

On September 9, 1999, General Magic, Inc. entered into an Exchange Agreement with the holders of our Series D Convertible Preferred Stock. Pursuant to the Exchange Agreement, the holders of the Series D preferred stock exchanged an aggregate of \$10,000,000 of the \$20,000,000 of Series D preferred stock originally issued by us for \$10,000,000 of a newly created Series F Convertible Preferred Stock. As further described below, the Series F preferred stock provides for redemption provisions which will allow us to treat it as "equity" for accounting purposes.

On April 15, 1999, we received a letter from The Nasdaq National Market advising us that we had failed to meet the "net tangible assets" requirement for continued listing on that market. The letter required us to demonstrate compliance with this requirement by July 13, 1999. In response to the April 15th letter, we submitted a letter demonstrating our compliance as of May 7, 1999, and providing our plan for continued compliance through December 31, 1999. Our plan was accepted by The Nasdaq National Market on July 1, 1999, contingent on our ability to complete a financing transaction by July 30, 1999, and to demonstrate compliance with the "net tangible assets" requirement through the remainder of the year. As of July 30, 1999, we entered into an agreement providing for an equity line of credit arrangement. See the Current Report on Form 8-K filed by us on August 3, 1999 for a discussion of the terms of the equity line of credit and circumstances under which it may not be available to us. The reclassification of \$10,000,000 of the Series D preferred stock as "equity" for accounting purposes through the exchange of such stock for the Series F preferred stock will further our ability to meet the "net tangible assets" requirements for continued listing on the Nasdaq National Market through the balance of the year. However, in the event that we are not able to maintain continued compliance with The Nasdaq National Market "net tangible assets" requirement or any other of its listing requirements through December 31, 1999, and thereafter, we would be subject to a delisting process. In the event that we are delisted, we will seek to list our common stock on other markets, including The Nasdaq Small Cap Market and The American Stock Exchange, Inc. We cannot guarantee that we will be able to meet the listing requirements of these or any other markets. In the event that we are delisted from The Nasdaq National Market or are not able to list on any other market, the ability to sell shares of our common stock will be adversely affected.

Except as described below, the terms of the Series F preferred stock are substantially the same as the terms of the Series D preferred stock as described in our Amendment #4 to Registration Statement on Form S-3, filed on August 18, 1999.

The changes in the redemption provisions are as follows:

Redemption Rights upon Covenant Breaches. With respect to the Series D shares, unless we elect to redeem the Series D shares at a price per share equal to the greater of 130% of the liquidation value and the market price, upon the occurrence of any of the following covenant breaches or events:

- o our failure to maintain the registration statement for the resale of the common stock issuable upon conversion or exercise of the Series D shares and warrants;
- o our failure to maintain listing of the common stock on Nasdaq, AMEX or NYSE; or

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- o a purchase, tender or exchange offer accepted by holders of more than 50% of our common stock which is not approved or recommended by the board of directors,

the Series D holders are entitled to require us to either:

- o redeem some or all of their shares at a per share price equal to the liquidation value; or
- o pay 1% of the liquidation value for each day that any of such breaches or events continues for up to 20 days in any 365 day period and/or have the Series D conversion price substantially reduced.

With respect to the Series F shares, unless we elect to redeem the Series F shares at a price per share equal to the greater of 130% of the liquidation value and the market price, upon the occurrence of the covenant breaches or events specified above, the Series F holders are entitled to require us to:

- o pay 1% of the liquidation value for each day that any of such breaches or events continues for up to 20 days in any 365 day period and have the Series F conversion price substantially reduced (on the same terms as the Series D conversion price is reduced).

As consideration for the new redemption provisions, the following provisions were changed for the Series F preferred stock:

Initial Conversion Price. Each Series D share and Series F share is convertible, at the option of a Series D holder or Series F holder, as the case may be, into that number of shares of common stock obtained by dividing the liquidation preference by the conversion price. The liquidation preference of a Series D share and a Series F share equals \$10,000 plus any accrued and unpaid dividends and any unpaid default interest on cash dividends. The initial conversion price of a Series D share is \$3.93. The initial conversion price of a Series F share is \$2.0531.

Resets of Conversion Price. The conversion price of each Series D share will be reset following the last day of each September and March and on December 31, 1999 and June 30, 2000. The conversion price of each Series F share will be reset following the last day of each September, December, March and June.

The reset price of a Series D share is equal to 110% of the average of the closing bid prices of the common stock during the ten trading days immediately after each reset date. The reset price of a Series F share will be equal to 90% of the average of the closing bid prices of the common stock during the ten trading days immediately after each reset date.

The conversion price of each Series D share and Series F share will only be reset if the reset price is less than the then-effective conversion price.

The foregoing description is qualified in its entirety by the Exchange Agreement, dated as of September 9, 1999, and the other agreements and instruments executed in connection therewith, copies of which are attached as exhibits to this Current Report on Form 8-K and the Securities Purchase Agreement, dated as of March 30, 1999, and the other agreements and instruments executed in connection therewith, copies of which are attached as exhibits to this Current Report on Form 8-K and were attached as exhibits to the Current Report on Form 8-K filed on April 2, 1999.

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS.

(a) FINANCIAL STATEMENTS OF BUSINESS ACQUIRED. Not applicable.

(b) PRO FORMA FINANCIAL INFORMATION. Not applicable.

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(c) EXHIBITS.

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Exhibit No.	Description
3.1	Certificate of Designations, Preferences and Rights of Series F Convertible Preferred Stock of the Registrant, filed with the Secretary of State of Delaware on September 9, 1999.
3.2	Certificate of Designations, Preferences and Rights of Series D Convertible Preferred Stock of the Registrant, filed with the Secretary of State of Delaware on March 30, 1999 is incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 2, 1999.
4.1	Exchange Agreement, dated as of September 9, 1999, by and among Registrant and the investors listed on the Schedule of Investors thereto.
4.2	Securities Purchase Agreement, dated as of March 30, 1999, by and among Registrant and the buyers listed on the Schedule of Buyers thereto is incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 2, 1999.
4.3	Registration Rights Agreement, dated as of September 9, 1999, by and among Registrant and holders listed on the Schedule of Holders thereto.
4.4	Registration Rights Agreement, dated as of March 30, 1999, by and among Registrant and holders of the Series D Convertible Preferred Stock is incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 2, 1999.
4.5	Amendment #1 to Registration Rights Agreement, dated as of June 25, 1999, by and among Registrant and holders of the Series D Convertible Preferred Stock.
4.6	Amendment #2 to Registration Rights Agreement, dated as of July 9, 1999, by and among Registrant and holders of the

Series D Convertible Preferred Stock.

4.7 Amendment #3 to Registration Rights Agreement, dated as of July 23, 1999, by and among Registrant and holders of the Series D Convertible Preferred Stock.

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Exhibit No.	Description
4.8	Amendment #4 to Registration Rights Agreement, dated as of August 6, 1999, by and among Registrant and holders of the Series D Convertible Preferred Stock.
4.9	Waiver Agreement, dated as of September 9, 1999, by and among Registrant and the stockholders listed on the Schedule of Stockholders thereto.

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SIGNATURES

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

General Magic, Inc.

By: /s/ Mary E. Doyle

September 10, 1999

Mary E. Doyle
General Counsel and Secretary

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EXHIBIT INDEX

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CERTIFICATE OF DESIGNATIONS, PREFERENCES
AND RIGHTS OF SERIES F CONVERTIBLE PREFERRED STOCK
OF
GENERAL MAGIC, INC.

General Magic, Inc. (the "COMPANY"), a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify that, pursuant to authority conferred upon the Board of Directors of the Company by the Certificate of Incorporation, as amended, of the Company, and pursuant to Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Company at a meeting duly held adopted resolutions (i) authorizing a series of the Company's previously authorized preferred stock, par value \$.001 per share, and (ii) providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of One Thousand (1,000) shares of Series F Convertible Preferred Stock of the Company, as follows:

RESOLVED, that the Company is authorized to issue 1,000 shares of Series F Convertible Preferred Stock (the "PREFERRED SHARES"), par value \$.001 per share, which shall have the following powers, designations, preferences and other special rights:

(1) Dividends. The Preferred Shares shall bear dividends ("DIVIDENDS") at a rate of 5.0% of the Stated Value (as defined below) per annum, which shall be cumulative and accrue daily from the Effective Date (as defined below). Dividends shall be payable in cash on the last day of each Calendar Quarter (as defined below) beginning on the last day of the Calendar Quarter on September 30, 1999 (each a "DIVIDEND DATE"), provided that the Company provides written notice ("DIVIDEND ELECTION NOTICE") to each holder of Preferred Shares at least 30 calendar days prior to the Dividend Date. If the Company timely gives a Dividend Election Notice, then all accrued and unpaid Dividends shall be payable on the applicable Dividend Date. If a Dividend Date is not a Business Day (as defined below), then the Dividend shall be due and payable on the Business Day immediately following the Dividend Date. Dividends which are not paid on a Dividend Date shall be payable upon the earlier of conversion or redemption by the inclusion thereof in the Additional Amount (as defined below). Any accrued and unpaid dividends with respect to which a Dividend Election Notice was given and which are not paid within five (5) Business Days of such accrued and unpaid Dividends' Dividend Date shall bear interest at the rate of 1.5% per month (pro rated for partial months) from such Dividend Date until the same is paid (the "DEFAULT INTEREST").

(2) Holder's Conversion of Preferred Shares. A holder of Preferred Shares shall have the right, at such holder's option, to convert the Preferred Shares into shares of the Company's common stock, par value \$.001 per share, including any related purchase rights (the "COMMON STOCK"), on the following terms and conditions:

(a) Conversion Right. At any time or times on or after the Issuance Date, any holder of Preferred Shares shall be entitled to convert any whole number of Preferred Shares into fully paid and nonassessable shares (rounded to the nearest number of whole shares in accordance with Section 2(h)) of Common Stock, at the Conversion Rate (as defined below); provided, however, that in no event shall any holder be entitled to convert Preferred Shares in excess of that number of Preferred Shares which, upon giving effect to such conversion, would cause the aggregate number of shares of Common Stock beneficially owned by the holder and its affiliates to exceed 4.99% of the outstanding shares of Common Stock following such conversion. For purposes of the foregoing proviso, the aggregate number of shares of Common Stock beneficially owned by the holder and its affiliates shall include the number of shares of Common Stock issuable upon conversion of the Preferred Shares with respect to which the determination of such proviso is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) conversion of the remaining, nonconverted Preferred Shares beneficially owned by the holder and its affiliates, and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the holder and its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 2(a), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For the purposes of this Section 2(a), in determining the number of outstanding shares of Common Stock a holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Form 10-Q or Form 10-K, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or its transfer agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of any holder, the Company shall within one (1) Business Day confirm orally and in writing to any such holder the number of shares of Common Stock outstanding as of the date of such request. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to conversions of Preferred Shares by such holder since the date as of which such number of outstanding shares of Common Stock was reported.

(b) Conversion Rate and Other Definitions. The number of shares of Common Stock issuable upon conversion of each of the Preferred Shares pursuant to Sections (2) (a) and 2(g) and Section 5 shall be determined according to the following formula (the "CONVERSION RATE"):

$$\frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

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For purposes of this Certificate of Designations, the following terms shall have the following meanings:

(i) "CALENDAR QUARTER" means each of the period beginning on and including January 1 and ending on and including March 31, the period beginning on and including April 1 and ending on and including June 30, the period beginning on and including July 1 and ending on and including September 30, and the period beginning on and including October 1 and ending on and including December 31;

(ii) "CONVERSION PRICE" means, (A) as of any Conversion Date (as defined below) or other date of determination (other than the Maturity Date (as defined in Section 2(g)), the Fixed Conversion Price, subject to adjustment as provided herein (including, without limitation, pursuant to Section 2(c)), and (B) on the Maturity Date, the Closing Bid Price as of such date;

(iii) "FIXED CONVERSION PRICE" means 90% of the product of (A) the Conversion Percentage and (B) the lesser of (I) the average of the Closing Bid Prices of the Common Stock for the five (5) consecutive trading days ending on and including the Issuance Date (as defined below) and (II) the average of the Closing Bid Prices of the Common Stock for the five (5) consecutive trading days ending on and including September 2, 1999, subject to adjustment as provided herein (including, without limitation, pursuant to Section 2(c));

(iv) "CONVERSION PERCENTAGE" means 100%, subject to adjustment as provided herein;

(v) "CONVERSION AMOUNT" means the sum of (A) the Additional Amount and (B) \$10,000;

(vi) "ADDITIONAL AMOUNT" means, on a per share basis, the sum of (A) unpaid Default Interest through the date of determination plus

(B) the result of the following formula: $(.050) (N/365) (\$10,000)$;

(vii) "CLOSING BID PRICE" means, for any security as of any date, the last closing bid price for such security on The Nasdaq National Market as reported by Bloomberg Financial Markets ("BLOOMBERG"), or, if The Nasdaq National Market is not the principal trading market for such security, the last closing bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price is reported for such security by Bloomberg, the last closing trade price of such security as reported by Bloomberg, or, if no last closing trade price is reported for such security by Bloomberg, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by the National Quotation Bureau, Inc. If the Closing Bid Price cannot be calculated for such security on such date on any of the foregoing bases, the Closing Bid Price of such security on such date shall be the fair market value as mutually determined by the Company and the holders of a majority of the outstanding Preferred Shares (including for purposes of this determination any Preferred Shares with respect to which the Closing Bid Price is being determined). If the Company

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and the holders of Preferred Shares are unable to agree upon the fair market value of the Common Stock, then such dispute shall be resolved pursuant to Section 2(f)(iii). All such determinations shall be appropriately adjusted for any stock dividend, stock split or other similar transaction during any period for which the Closing Bid Price is being determined.

(viii) "N" means the number of days from, but excluding, the last Dividend Date with respect to which dividends, along with any Default Interest, has been paid by the Company on the applicable Preferred Share through and including the Conversion Date or the Maturity Date for the Preferred Shares for which conversion and/or redemption is being elected, as the case may be, or if the Company has not previously paid dividends, then the number of days from, but excluding, the Effective Date through and including the Conversion Date or the Maturity Date for the Preferred Shares for which conversion and/or redemption is being elected, as the case may be;

(ix) "ISSUANCE DATE" means, with respect to each Preferred Share, the date of issuance of the Preferred Shares;

(x) "BUSINESS DAY" means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed;

(xi) "EFFECTIVE DATE" means March 30, 1999;

(xi) "RESET DATE" means, during the period beginning on the Issuance Date and ending on the Maturity Date, the last day of each Calendar Quarter.

(xii) "EXCHANGE AGREEMENT" means that certain exchange agreement between the Company and the initial holders of the Preferred Shares;

(xiii) "STATED VALUE" means \$10,000;

(xiv) "REGISTRATION RIGHTS AGREEMENT" means that certain registration rights agreement between the Company and the initial holders of the Preferred Shares;

(xv) "CONVERSION SHARES" means shares of Common Stock issuable upon conversion of Preferred Shares and any shares of Common Stock issuable as payment of Dividends or Registration Delay Payments (as defined in the Registration Rights Agreement).

(c) Adjustment to Fixed Conversion Price -- Market Price of Common Stock. In addition to any other adjustment to the Fixed Conversion Price provided for in this Certificate of Designations, in the event that 90% of the average of the Closing Bid Prices of the Common Stock on the ten (10) consecutive trading days immediately following a Reset Date (a "PRICING PERIOD") is less than the Fixed Conversion Price in effect immediately prior to such 10th trading day following such Reset Date, then after such 10th trading day following such Reset Date the Fixed Conversion Price shall be equal to the product of (A) the Conversion Percentage and (B) 90% of the average of the Closing Bid Prices of the Common Stock on each trading day during such

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Pricing Period; subject to further adjustment as provided in this Section 2(c) and elsewhere in this Certificate of Designations.

(d) Adjustment to Conversion Price -- Dilution and Other Events. In order to prevent dilution of the rights granted under this Certificate of Designations, the Conversion Price will be subject to adjustment from time to time as provided in this Section 2(d).

(i) Adjustment of Fixed Conversion Price upon Issuance of Common Stock. If and whenever on or after the Effective Date, the Company issues

or sells, or is deemed to have issued or sold, any shares of Common Stock (other than the Conversion Shares, the shares of Common Stock issuable upon conversion or exercise, as the case may be, of the Series D Convertible Preferred Stock of the Company or the related warrants, the Discretionary Shares (as defined below) and shares of Common Stock deemed to have been issued by the Company in connection with (1) an Approved Stock Plan (as defined below) or (2) options, warrants or convertible securities outstanding as of the Effective Date), except to the extent that the terms of such instruments are amended or changed on or after the Effective Date, for a consideration per share less than a price (the "APPLICABLE PRICE") equal to the Fixed Conversion Price in effect immediately prior to such issuance or sale, then immediately after such issue or sale, the Fixed Conversion Price, if any, then in effect shall be reduced to an amount (A) in the event such issue or sale occurs on or prior to the date (the "RATCHET DATE") which is the earlier of (I) the date on which an aggregate of at least 600 Preferred Shares have been converted pursuant to Section 2 and (II) the date which is one year after the date the Registration Statement (as defined in the Registration Rights Agreement) is declared effective by the SEC, then equal to the consideration per share which the Company issued or sold, or was deemed to have issued or sold, for one share of Common Stock pursuant to such issuance or sale or (B) in the event such issue or sale occurs after the Ratchet Date, then equal to the product of (x) the Fixed Conversion Price in effect immediately prior to such issue or sale and (y) the quotient determined by dividing (1) the sum of (I) the product of the Applicable Price and the number of shares of Common Stock Deemed Outstanding (as defined below) immediately prior to such issue or sale, and (II) the consideration, if any, received by the Company upon such issue or sale, by (2) the product of (I) the Applicable Price and (II) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale. For purposes of determining the adjusted Fixed Conversion Price under this Section 2(d)(i), the following shall be applicable:

(A) Issuance of Options. If on or after the Effective Date the Company in any manner grants any rights or options to subscribe for or to purchase Common Stock (other than pursuant to an Approved Stock Plan or upon conversion of the Preferred Shares) or any stock or other securities convertible into or exchangeable for Common Stock (such rights or options being herein called "OPTIONS" and such convertible or exchangeable stock or securities being herein called "CONVERTIBLE SECURITIES") and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities is less than the Applicable Price, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For

purposes of this Section 2(d)(i)(A), the "price per share for which Common Stock is issuable upon exercise of such Options or upon conversion or exchange of such Convertible Securities" is determined by dividing (I) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Company upon the issuance or sale of such Convertible Securities and the conversion or exchange thereof, by (II) the total maximum number of shares of Common Stock issuable upon exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options. No further adjustment of the Fixed Conversion Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities. Upon the expiration of any such Options which shall not have been exercised, the Fixed Conversion Price computed upon the original issue thereof, and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if: (i) in the case Options for Common Stock, the only shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options and the consideration received therefor was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Company upon such exercise, and (ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Company for the shares of Common Stock deemed to have been then issued was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Company upon the issue of the Convertible Securities with respect to which such Options were actually exercised.

(B) Issuance of Convertible Securities. If on or after the Effective Date the Company in any manner issues or sells any Convertible Securities and the price per share for which Common Stock is issuable upon such conversion or exchange of such Convertible Securities is less than the Applicable Price, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Company for such price per share. For the purposes of this Section 2(d)(i)(B), the "price per share for which Common Stock is issuable upon such conversion or exchange" is determined by dividing (I) the total amount received or receivable by the Company as consideration

for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (II) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Fixed Conversion Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of

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the Fixed Conversion Price had been or are to be made pursuant to other provisions of this Section 2(d)(i), no further adjustment of the Conversion Price shall be made by reason of such issuance or sale. Upon the expiration of any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Fixed Conversion Price computed upon the original issue thereof, and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if the only shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange.

(C) Change in Option Price or Rate of Conversion. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the issuance, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock changes at any time, the Fixed Conversion Price in effect at the time of such change shall be readjusted to the Fixed Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold; provided that no adjustment shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(D) Certain Definitions. For purposes of determining the adjusted Conversion Price under this Section 2(d)(i), the following terms have the meanings set forth below:

(I) "APPROVED STOCK PLAN" shall mean any contract,

plan or agreement which has been approved by the Board of Directors of the Company, pursuant to which (a) the Company's securities may be issued to any employee, officer, director, consultant or other service provider, or (b) Purchase Rights (as defined below) are or may be issued.

(II) "DISCRETIONARY SHARES" means shares of Common Stock (A) which have been issued or sold, or deemed to have been issued or sold, by the Company (i) in connection with a merger or consolidation, (ii) in connection with any strategic partnership or joint venture (the primary purpose of which is not to raise equity capital) or (iii) in connection with the acquisition of a business, product, license or other assets by the Company, for a consideration per share (based on the Closing Bid Price of such Common Stock on the date of the issuance or sale, or deemed issuance or sale) less than the Applicable Price (as defined above) ("ACQUISITION SHARES") and (B) the issuance or sale, or deemed issuance or sale, of which was not in violation of the applicable Discretionary Share Cap (as defined below). For the purposes hereof, "DISCRETIONARY SHARE CAP" shall mean that amount with respect to a Discretionary Share Measurement Period (as defined below) as calculated from time to time as of the date ("MEASUREMENT DATE") of a given issuance or sale, or deemed issuance or sale, of Acquisition Shares which is equal to (A) the product of

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(x) the number of shares of Common Stock actually outstanding on the last day of the Discretionary Share Measurement Period, multiplied by the Closing Bid Price of the Common Stock on the Measurement Date and (y) .05, less (B) the number of Acquisition Shares issued or sold, or deemed to have been issued or sold, by the Company during the Discretionary Share Measurement Period, multiplied by the Closing Bid Price of the Common Stock on each applicable Measurement Date with respect to such Acquisition Shares. A given issuance or sale, or deemed issuance or sale, of Acquisition Shares shall be deemed to violate the Discretionary Share Cap if the product of (x) the number of such Acquisition Shares, multiplied by (y) the Closing Bid Price of the Common Stock on the Measurement Date exceeds the Discretionary Share Cap. The "DISCRETIONARY SHARE MEASUREMENT PERIOD" shall mean with respect to a given issuance or sale, or deemed issuance or sale, of Acquisition Shares, that 364-day period ending on and including the date immediately prior to the date of the issuance or sale, or deemed issuance or sale, of such Acquisition Shares.

(III) "COMMON STOCK DEEMED OUTSTANDING" means, at

any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock deemed to be outstanding pursuant to Sections 2(d)(i)(A) and 2(d)(i)(B) hereof regardless of whether the Options or Convertible Securities are actually exercisable at such time.

(E) Effect on Fixed Conversion Price of Certain Events. For purposes of determining the adjusted Fixed Conversion Price under this Section 2(d)(i), the following shall be applicable:

(I) Calculation of Consideration Received. If any Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the amount received by the Company therefor, before deduction of commissions, underwriting discounts or allowances or placement agent or finder fees (but only to the extent that such commissions, discounts, allowances and fees do not exceed, in the aggregate, 6% of the gross proceeds to the Company) and other reasonable expenses paid or incurred by the Company in connection with such issuance or sale, provided that any amounts paid to the purchasers of such Common Stock, Options or Convertible Securities or to any affiliates of such purchasers in connection with such issuance or sale shall be deducted from the amount of consideration received by the Company. In case any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Company will be the average of the Closing Bid Prices of such securities for the five consecutive trading days immediately preceding the date of receipt. The fair value of any consideration other than cash or securities will be determined jointly by the Company and the holders of a majority of the Preferred Shares then outstanding. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "VALUATION EVENT"), the fair value of such

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consideration will be determined within five (5) Business Days of the tenth (10th) day following the Valuation Event by an independent, reputable appraiser selected by the Company. The determination of such appraiser shall be binding upon all parties absent manifest error.

(II) Integrated Transactions. In case any Option is issued in connection with the issue or sale of other securities of the

Company, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options will be deemed to have been issued for a consideration of \$.01.

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

(IV) Record Date. If the Company takes a record of the holders of Common Stock for the purpose of entitling them (1) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities, or (2) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

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

(iii) Holder's Right of Alternative Floating Conversion Price Following Issuance of Convertible Securities. If on or after the Effective Date the Company in any manner issues or sells Convertible Securities (other than the Preferred Shares) that are convertible into or exchangeable for Common Stock at a price which may vary (including by way of periodic adjustments to a fixed conversion price) with the market price of the Common Stock (the formulation for such variable price being herein referred to as, the "VARIABLE PRICE") and such Variable Price is not calculated using the same formula used to calculate any adjustment to the Fixed Conversion Price in effect immediately prior to the time of such issue or sale, the Company shall provide written notice thereof via facsimile and overnight courier to each holder of the Preferred Shares ("VARIABLE NOTICE") on the date of

issuance of such Convertible Securities. From and after the date the Company issues any such Convertible Securities with a Variable Price, a holder of Preferred Shares shall have the right, but not the obligation, in its sole discretion to substitute the Variable Price for the Conversion Price upon conversion of any Preferred Shares by designating in the Conversion Notice delivered upon conversion of such Preferred Shares that solely for purposes of such conversion the holder is relying on the Variable Price rather than the Conversion Price then in effect. A holder's election to rely on a Variable Price for a particular conversion of Preferred Shares shall not obligate the holder to rely on a Variable Price for any future conversions of Preferred Shares.

(iv) Reorganization, Reclassification, Consolidation, Merger or Sale. Any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Company's assets to another Person (as defined below) or other transaction which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as "ORGANIC CHANGE." Prior to the consummation of any Organic Change, the Company will make appropriate provision (in form and substance satisfactory to the holders of a majority of the Preferred Shares then outstanding) to insure that each of the holders of the Preferred Shares will thereafter have the right to acquire and receive in lieu of or in addition to (as the case may be) the shares of Common Stock otherwise acquirable and receivable upon the conversion of such holder's Preferred Shares, such shares of stock, securities or assets that would have been issued or payable in such Organic Change with respect to or in exchange for the number of shares of Common Stock which would have been acquirable and receivable upon the conversion of such holder's Preferred Shares had such Organic Change not taken place (without taking into account any limitations or restrictions on the timing or amount of conversions). In any such case, the Company will make appropriate provision (in form and substance satisfactory to the holders of a majority of the Preferred Shares then outstanding) with respect to such holders' rights and interests to insure that all of the provisions of this Certificate of Designations, including the provisions of this Section 2(d) and Section 2(e), will thereafter be applicable to the Preferred Shares. The Company will not effect any such consolidation, merger or sale, unless prior to the consummation thereof, the successor entity (if other than the Company) resulting from consolidation or merger or the entity purchasing such assets and, if an entity different from the successor entity, the entity whose capital stock or assets the holders of the Common Stock are entitled to receive as a result of such Organic Change, assumes, by written instrument (in form and substance reasonably satisfactory to the holders of a majority of the Preferred Shares then outstanding), all of the obligations of the Company under this Certificate of Designations including the obligations

to deliver to each holder of Preferred Shares such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire. "PERSON" shall mean an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(v) Certain Events. If any event occurs of the type contemplated by the provisions of this Section 2(d) but not expressly provided for by such provisions

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(including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of the Preferred Shares; provided, however, that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this Section 2(d).

(vi) Notices.

(A) Immediately upon any adjustment of the Conversion Price, the Company will give written notice thereof to each holder of the Preferred Shares, setting forth in reasonable detail and certifying the calculation of such adjustment.

(B) The Company will give written notice to each holder of the Preferred Shares at least ten (10) days prior to the date on which the Company closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock, or (III) for determining rights to vote with respect to any Organic Change, dissolution or liquidation and in no event shall such notice be provided to such holder prior to such information being made known to the public.

(C) The Company will also give written notice to each holder of the Preferred Shares at least ten (10) days prior to the date on which any Organic Change, dissolution or liquidation will take place and in no event shall such notice be provided to such holder prior to such information being made known to the public.

(e) Purchase Rights. In addition to any adjustments of the Conversion Price pursuant to Section 2(d), if at any time after the

Effective Date the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "PURCHASE RIGHTS"), then the holders of the Preferred Shares will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon complete conversion of the Preferred Shares (without taking into account any limitations or restrictions on the timing or amount of conversions) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of the Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(f) Mechanics of Conversion. Subject to the Company's inability to fully satisfy its obligations under a Conversion Notice (as defined below) as provided for in Section 4:

(i) Holder's Delivery Requirements. To convert Preferred Shares into full shares of Common Stock on any date (the "CONVERSION DATE"), the holder thereof shall (A) transmit by facsimile (or otherwise deliver), for receipt on or prior to 11:59 p.m.

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Eastern Time, on such date, a copy of a fully executed notice of conversion in the form attached hereto as Exhibit I (the "CONVERSION NOTICE") to the Company and its designated transfer agent (the "TRANSFER AGENT"), and (B) surrender to a common carrier, for delivery to the Company or the Transfer Agent as soon as practicable following such date, the original certificate(s) representing the Preferred Shares being converted (or an indemnification undertaking with respect to such shares in the case of their loss, theft or destruction) (the "PREFERRED STOCK CERTIFICATE(S)") and the originally executed Conversion Notice.

(ii) Company's Response. Upon receipt by the Company of a facsimile copy of a Conversion Notice, the Company shall as soon as practicable, but in any event not later than the next Business Day, send, via facsimile, a confirmation of receipt of such Conversion Notice to such holder. Upon receipt by the Company or the Transfer Agent of the Preferred Stock Certificate(s) to be converted pursuant to a Conversion Notice, together with the originally executed Conversion Notice, the Company or the Transfer Agent (as applicable) shall, subject to Section 2(f)(iii) below, on the next Business Day following the date of receipt

of such Preferred Stock Certificate(s), (I) issue and surrender to a common carrier for overnight delivery to the address specified in the Conversion Notice, a certificate, registered in the name of the holder or its designee, for the number of shares of Common Stock to which the holder shall be entitled, or (II) credit such aggregate number of shares of Common Stock to which the holder shall be entitled to the holder's or its designee's balance account with The Depository Trust Company. If the number of Preferred Shares represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of Preferred Shares being converted, then the Company or Transfer Agent, as the case may be, shall, subject to Section 2(f)(iii) below, as soon as practicable and in no event later than two (2) Business Days after receipt of the Preferred Stock Certificate(s) and at its own expense, issue and deliver to the holder a new Preferred Stock Certificate representing the number of Preferred Shares not converted.

(iii) Dispute Resolution. In the case of a dispute as to the determination of the fair market value of the Common Stock (pursuant to Section 2(b)(vii)) or the arithmetic calculation of the Conversion Rate, the Company shall promptly issue to the holder the number of shares of Common Stock that is not disputed and shall submit the disputed determinations or arithmetic calculations to the holder via facsimile within one (1) Business Day of receipt of such holder's Conversion Notice. If such holder and the Company are unable to agree upon the determination of the fair market value of the Common Stock (pursuant to Section 2(b)(vii)) or arithmetic calculation of the Conversion Rate within one (1) Business Day of such disputed determination or arithmetic calculation being submitted to the holder, then the Company shall within one (1) Business Day submit via facsimile (A) the disputed determination of the fair market value of the Common Stock to an independent, reputable investment bank, or (B) the disputed arithmetic calculation of the Conversion Rate to its independent, outside accountant. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the holder of the results no later than two (2) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's

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determination or calculation, as the case may be, shall be binding upon all parties absent manifest error.

(iv) Record Holder. The person or persons entitled to receive the shares of Common Stock issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder

or holders of such shares of Common Stock on the Conversion Date.

(v) Company's Failure to Timely Convert. If within five (5) Business Days after the Company's or the Transfer Agent's receipt of the Preferred Stock Certificate(s) to be converted and the Conversion Notice the Company shall fail (I) to issue a certificate for the number of shares of Common Stock to which a holder is entitled or to credit the holder's balance account with The Depository Trust Company for such number of shares of Common Stock to which the holder is entitled upon such holder's conversion of the Preferred Shares, pursuant to Section 2(f)(ii), or (II) to issue a new Preferred Stock Certificate representing the number of Preferred Shares to which such holder is entitled, pursuant to Section 2(f)(ii), in addition to all other available remedies which such holder may pursue hereunder and under the Exchange Agreement (including indemnification pursuant to Section 8 thereof), the Company shall pay additional damages to such holder on each date after such fifth (5th) Business Day that such conversion or delivery of such Preferred Stock Certificates, as the case may be, is not timely effected in an amount equal to 0.5% of the product of (A) the sum of the number of shares of Common Stock not issued to the holder on a timely basis pursuant to Section 2(f)(ii) and to which such holder is entitled and, in the event the Company has failed to deliver a Preferred Stock Certificate to the holder on a timely basis pursuant to Section 2(f)(ii), the number of shares of Common Stock issuable upon conversion of the Preferred Shares represented by such Preferred Stock Certificate as of the last possible date which the Company could have issued such Preferred Stock Certificate to such holder without violating Section 2(f)(ii); and (B) the average of the Closing Bid Prices of the Common Stock for the three (3) consecutive trading days immediately preceding the last possible date which the Company could have issued such Common Stock and the Preferred Stock Certificate, as the case may be, to such holder without violating Section 2(f)(ii).

(g) Mandatory Conversion or Redemption at Maturity. If any Preferred Shares remain outstanding on the Maturity Date (as defined below), then all such Preferred Shares, at the Company's option, either (i) shall be converted as of such date in accordance with this Section 2 as if the holders of such Preferred Shares had given the Conversion Notice on the Maturity Date (a "MATURITY DATE MANDATORY CONVERSION") or (ii) shall be redeemed as of such date for an amount in cash per Preferred Share (the "MATURITY DATE REDEMPTION PRICE") equal to the product of (A) the Conversion Rate on the Maturity Date and (B) the Closing Bid Price of the Common Stock on the date immediately preceding the Maturity Date (a "MATURITY DATE MANDATORY REDEMPTION"); provided, however, that if the Company has elected a Maturity Date Mandatory Conversion and a Triggering Event (other than a Triggering Event resulting from Section 3(d)(vi) due to the Company's breach of a representation) has occurred and is continuing on the Maturity Date, then the Company

shall, within five (5) Business Days following the Maturity Date (unless otherwise notified in writing by the holder of its request to have the Preferred Shares converted into Common Stock), pay to each holder of Preferred Shares then outstanding, in immediately available funds, an amount equal to the Maturity Date Redemption Price. The Company shall be deemed to have elected a Maturity Date Mandatory Conversion unless it delivers written notice to each holder of Preferred Shares at least fifteen (15) Business Days prior to the Maturity Date of its election to effect a Maturity Date Mandatory Redemption. If the Company elects a Maturity Date Mandatory Redemption, then on the Maturity Date the Company shall pay to each holder of Preferred Shares outstanding on the Maturity Date, by wire transfer of immediately available funds, an amount per Preferred Share equal to the Maturity Date Redemption Price. All holders of Preferred Shares shall thereupon surrender all Preferred Stock Certificates, duly endorsed for cancellation, to the Company or the Transfer Agent, provided that the Company has complied with its obligations under this Section 2(g). Notwithstanding the foregoing, if on the Maturity Date the Common Stock is not designated for quotation on The Nasdaq National Market or listed on The American Stock Exchange, Inc. or The New York Stock Exchange, Inc., then the Company shall be deemed to have elected a Maturity Date Mandatory Redemption. "MATURITY DATE" means the date which is three (3) years after the Effective Date, subject to extension pursuant to Section 3(f) of the Registration Rights Agreement, which extension shall be equal to one and one-half (1 1/2) days for each number of days in excess of the Allowable Grace Period (as defined in Section 3(f) of the Registration Rights Agreement).

(h) Fractional Shares. The Company shall not issue any fraction of a share of Common Stock upon any conversion. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one Preferred Share by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of a fraction of a share of Common Stock. If, after the aforementioned aggregation, the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock down to the nearest whole share.

(i) Taxes. The Company shall pay any and all taxes which may be imposed upon it other than income and franchise taxes of the holder of Preferred Shares, with respect to the issuance and delivery of shares of Common Stock upon the conversion of the Preferred Shares.

(3) Redemption at Option of Holders.

(a) Redemption Option Upon Major Transaction. In addition to all other rights of the holders of Preferred Shares contained herein, simultaneous with or after the occurrence of a Major Transaction (as defined below), each holder of Preferred Shares shall have the right, at such holder's option, to require the Company to redeem all or a portion of such holder's Preferred Shares at a price per Preferred Share equal to the greater of (i) 125% of the Liquidation Value (as defined in Section 11); and (ii) the product of (A) the Conversion Rate at such time, and (B) the Closing Bid Price on the date of the public

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announcement of such Major Transaction or the next date on which the exchange or market on which the Common Stock is traded is open if such public announcement is made (X) after 12:00 p.m. Eastern Time, on such date or (Y) on a date on which the exchange or market on which the Common Stock is traded is closed (the "MAJOR TRANSACTION REDEMPTION PRICE"). Notwithstanding anything to the contrary contained herein, none of the holders of Preferred Shares shall have the right to require the Company to redeem any Preferred Shares with respect to any particular Major Transaction if: (i) the Company shall have delivered a Notice of Redemption at Company's Election (as defined below), with respect to such Major Transaction; and (ii) the Company has satisfied the Conditions to Redemption at the Company's Election, with respect to such Major Transaction.

(b) Redemption Option Upon Triggering Event. In addition to all other rights of the holders of Preferred Shares contained herein, simultaneous with or after the occurrence of a Triggering Event (as defined below), each holder of Preferred Shares shall have the right, at such holder's option, to require the Company to redeem all or a portion of such holder's Preferred Shares at a price per Preferred Share equal to (I) in the case of a Triggering Event under subparagraphs (i), (ii), (iii), (iv) or (v) of Section 3(d), the greater of (i) 130% of the Liquidation Value; and (ii) the product of (A) the Conversion Rate on the date of such holder's delivery of a Notice of Redemption at Option of Holder Upon Triggering Event (as defined in Section 3(f)), and (B) the greater of (x) the Closing Bid Price on the trading day immediately preceding such Triggering Event or (y) the Closing Bid Price on the date of the holder's delivery to the Company of a Notice of Redemption at Option of Buyer Upon Triggering Event (as defined below) or, if such date of delivery is not a trading day, the next date on which the exchange or market on which the Common Stock is traded is open, or (II) in the case of a Triggering Event under subparagraph (vi) of Section

3(d), 130% of the Liquidation Value (collectively, the "TRIGGERING EVENT REDEMPTION PRICE" and, collectively with the Major Transaction Redemption Price, the "REDEMPTION PRICE").

(c) "Major Transaction". Subject to the Excluded Redemption Events (as defined below) pursuant to Section 3(h), a "MAJOR TRANSACTION" shall be deemed to have occurred at such time as any of the following events:

(i) the consolidation, merger or other business combination of the Company with or into another Person (other than (A) a consolidation, merger or other business combination in which holders of the Company's voting power immediately prior to the transaction continue after the transaction to hold, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (B) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company) (a "CHANGE OF CONTROL TRANSACTION");

(ii) the sale or transfer of all or substantially all of the Company's assets; or

(iii) a purchase, tender or exchange offer made to and accepted by the holders of more than 50% of the outstanding shares of Common Stock.

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(d) "Triggering Event". Subject to the Excluded Redemption Events (as defined below) pursuant to Section 3(h), a "TRIGGERING EVENT" shall be deemed to have occurred at such time as any of the following events:

(i) the failure of the Registration Statement to be filed by the Company pursuant to the Registration Rights Agreement on or before the date which is 60 days after the Issuance Date or the failure of the Registration Statement to be declared effective by the SEC on or prior to the date which is 60 days after the Scheduled Effective Date (as defined in the Registration Rights Agreement) with respect to a particular holder of Preferred Shares;

(ii) while the Registration Statement is required to be maintained effective pursuant to the terms of the Registration Rights

Agreement, the effectiveness of the Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or is unavailable (other than on days during an Allowable Grace Period (as defined in Section 3(f) of the Registration Rights Agreement)) to the holder of the Preferred Shares for sale of the Registrable Securities (as defined in the Registration Rights Agreement) in accordance with the terms of the Registration Rights Agreement, and such lapse or unavailability continues for a period of at least five (5) consecutive days (other than on any days during any Allowable Grace Period) or for an aggregate of at least 10 days (other than on any days during any Allowable Grace Period);

(iii) suspension from listing or delisting of the Common Stock from The Nasdaq National Market, The American Stock Exchange, Inc. or The New York Stock Exchange, Inc. for a period of 15 consecutive days or for an aggregate of at least 45 days in any 365-day period;

(iv) the Company's notice to any holder of Preferred Shares, including by way of public announcement, at any time, of its intention not to comply with proper requests for conversion of any Preferred Shares into shares of Common Stock, including due to any of the reasons set forth in Section 4(a) below (other than clause (y) of Section 4(a)), or, subject to Section 2(f)(iii), the Company's failure to deliver Conversion Shares within five (5) days of the Conversion Date;

(v) the Company shall have failed to make any Excluded Redemption Event Daily Payment (as defined below) in a timely manner in accordance with Section 3(i) or the Company shall have failed to give an Excluded Redemption Option Election Notice (as defined below) within one (1) day of receipt of the Holders' Excluded Redemption Event Notice (as defined below); or

(vi) any representation or warranty by the Company contained in the Exchange Agreement was not true and correct at the time made (including the Issuance Date) or the Company breaches any covenant or other term or condition of the Exchange Agreement, the Registration Rights Agreement, this Certificate of Designations, the

Irrevocable Transfer Agent Instructions (as defined in the Exchange Agreement), or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated thereby or hereby, except (i) to the extent that such breach would not

have a Material Adverse Effect (as defined in Section 3(a) of the Exchange Agreement), (ii) in the case of a breach of a covenant which is curable, such breach continues for a period of less than ten days, and (iii) any breach regarding any action or inaction described in Section 3(d) (i)-(v) above.

(e) Mechanics of Redemption at Option of Buyer Upon Major Transaction. No sooner than 15 days nor later than 10 days prior to the consummation of a Major Transaction, but not prior to the public announcement of such Major Transaction, the Company shall deliver written notice thereof via facsimile and overnight courier (a "NOTICE OF MAJOR TRANSACTION") to each holder of Preferred Shares. At any time after receipt of a Notice of Major Transaction (or, in the event a Notice of Major Transaction is not delivered at least 10 days prior to a Major Transaction, at any time on or after the date which is 10 days prior to a Major Transaction), any holder of the Preferred Shares then outstanding may require the Company to redeem all or a portion of the holder's Preferred Shares, which redemption shall be effective concurrent with the consummation of the Major Transaction, then outstanding by delivering written notice thereof via facsimile and overnight courier (a "NOTICE OF REDEMPTION AT OPTION OF BUYER UPON MAJOR TRANSACTION") to the Company, which Notice of Redemption at Option of Buyer Upon Major Transaction shall indicate (i) the number of Preferred Shares that such holder is submitting for redemption, and (ii) the applicable Major Transaction Redemption Price, as calculated pursuant to Section 3(a).

(f) Mechanics of Redemption at Option of Buyer Upon Triggering Event. Within one (1) Business Day after the occurrence of a Triggering Event, the Company shall deliver written notice thereof via facsimile and overnight courier (a "NOTICE OF TRIGGERING EVENT") to each holder of Preferred Shares. At any time after the earlier of a holder's receipt of a Notice of Triggering Event and such holder becoming aware of a Triggering Event, any holder of Preferred Shares then outstanding may require the Company to redeem all or a portion of the holder's Preferred Shares then outstanding by delivering written notice thereof via facsimile and overnight courier (a "NOTICE OF REDEMPTION AT OPTION OF HOLDER UPON TRIGGERING EVENT") to the Company, which Notice of Redemption at Option of Holder Upon Triggering Event shall indicate (i) the number of Preferred Shares that such holder is submitting for redemption, and (ii) the applicable Triggering Event Redemption Price, as calculated pursuant to Section 3(b).

(g) Payment of Redemption Price. Upon the Company's receipt of a Notice(s) of Redemption at Option of Holder Upon Triggering Event or a Notice(s) of Redemption at Option of Holder Upon Major Transaction from any holder of Preferred Shares, the Company shall immediately notify each holder of Preferred Shares by facsimile of the Company's receipt of such Notice(s) of Redemption at Option of Holder Upon Triggering Event or Notice(s) of Redemption at Option of Holder Upon Major Transaction and each holder which has sent such a notice

shall promptly submit to the Company or its Transfer Agent such holder's Preferred Stock Certificates which such holder has elected to have redeemed. The Company shall deliver the applicable Triggering Event Redemption

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Price, in the case of a redemption pursuant to Section 3(f), to such holder within five (5) Business Days after the Company's receipt of a Notice of Redemption at Option of Holder Upon Triggering Event and, in the case of a redemption pursuant to Section 3(e), the Company shall deliver the applicable Major Transaction Redemption Price concurrent with the consummation of the Major Transaction; provided that a holder's Preferred Stock Certificates shall have been so delivered to the Company; and provided further that if the Company is unable to redeem all of the Preferred Shares to be redeemed, the Company shall redeem an amount from each holder of Preferred Shares being redeemed equal to such holder's pro-rata amount (based on the number of Preferred Shares held by such holder relative to the number of Preferred Shares outstanding) of all Preferred Shares being redeemed. If the Company shall fail to redeem all of the Preferred Shares submitted for redemption, in addition to any remedy such holder of Preferred Shares may have under this Certificate of Designations, the Exchange Agreement and the Registration Rights Agreement, the applicable Redemption Price payable in respect of such unredeemed Preferred Shares shall bear interest at the rate of 1.5% per month (pro rated for partial months) until paid in full. Until the Company pays such unpaid applicable Redemption Price in full to a holder of Preferred Shares submitted for redemption, such holder shall have the option (the "VOID OPTIONAL REDEMPTION OPTION") to, in lieu of redemption, require the Company to promptly return to such holder(s) all of the Preferred Shares that were submitted for redemption by such holder(s) under this Section 3 and for which the applicable Redemption Price has not been paid, by sending written notice thereof to the Company via facsimile (the "VOID OPTIONAL REDEMPTION NOTICE"). Upon the Company's receipt of such Void Optional Redemption Notice(s) and prior to payment of the full applicable Redemption Price to such holder, (i) the Notice(s) of Redemption at Option of Holder Upon Triggering Event or the Notice(s) of Redemption at Option of Holder Upon Major Transaction, as the case may be, shall be null and void with respect to those Preferred Shares submitted for redemption and for which the applicable Redemption Price has not been paid and (ii) the Company shall immediately return any Preferred Shares submitted to the Company by each holder for redemption under this Section 3(g) and for which the applicable Redemption Price has not been paid. Notwithstanding the foregoing, in the event of a dispute as to the determination of the

Closing Bid Price or the arithmetic calculation of the Redemption Price, such dispute shall be resolved pursuant to Section 2(f)(iii) above with the term "Closing Bid Price" being substituted for the term "fair market value" and the term "Redemption Price" being substituted for the term "Conversion Rate". A holder's delivery of a Void Optional Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments (other than payments of the Redemption Price with respect to such redemption) which have accrued prior to the date of such notice. Payments provided for in this Section 3 shall have priority to payments to other stockholders in connection with a Major Transaction.

(h) Events Excluded from Redemption Provisions.

Notwithstanding anything to the contrary set forth in Section 3 or Section 4(a), the following events shall be excluded from the definitions of Major Transaction and Triggering Event (individually, an "EXCLUDED REDEMPTION EVENT" and, collectively, the "EXCLUDED REDEMPTION EVENTS"):

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(i) the failure of the Registration Statement to be declared effective by the SEC on or prior to the date which is 60 days after the Scheduled Effective Date with respect to a particular holder of Preferred Shares, provided that the Company has used its reasonable best efforts to have such Registration Statement declared effective by the SEC;

(ii) while the Registration Statement is required to be maintained effective pursuant to the terms of the Registration Rights Agreement, the effectiveness of the Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or is unavailable (other than on days during an Allowable Grace Period) to the holder of the Preferred Shares for sale of the Registrable Securities in accordance with the terms of the Registration Rights Agreement, and such lapse or unavailability continues for a period of at least five (5) consecutive days (other than on any days during any Allowable Grace Period) or for an aggregate of at least 10 days (other than on any days during any Allowable Grace Period), provided that the Company has used its best efforts to maintain the effectiveness of such Registration Statement and has not taken voluntary action or voluntarily failed to take any action which has directly or indirectly caused the Registration Statement to lapse or become unavailable for the sale of all the Registrable Securities pursuant to the terms of the Registration Rights Agreement;

(iii) suspension from listing or delisting of the Common Stock from The Nasdaq National Market, The American Stock Exchange, Inc., or The New York Stock Exchange, Inc. for a period of 15 consecutive days or for an aggregate of at least 45 days in any 365-day period, provided that the Company has used its reasonable best efforts to maintain the listing of the Common Stock on such exchange and has not taken any voluntary action or has voluntarily failed to take any action which the Company knew or should have known would result in the delisting of the Common Stock or the suspension of the Common Stock from trading; and

(iv) a purchase, tender or exchange offer made to and accepted by the holders of more than 50% of the outstanding shares of Common Stock which is not approved or recommended by the Company's Board of Directors.

As soon as practicable but in no event later than one (1) day after the occurrence of an Excluded Redemption Event, the Company shall deliver written notice thereof via facsimile and overnight courier (a "COMPANY'S EXCLUDED REDEMPTION EVENT NOTICE") to each holder of Preferred Shares. At any time during the period beginning after the earlier of the holders' receipt of a Company's Excluded Redemption Event Notice and such holders becoming aware of an Excluded Redemption Event and ending on the date which is thirty (30) days after the holders' receipt of a Company's Excluded Redemption Event Notice, the holders of at least two-thirds (2/3) of the Preferred Shares then outstanding may require the Company to satisfy its obligations under Section 3(i) by delivering written notice thereof via facsimile and overnight courier (a "HOLDERS' EXCLUDED REDEMPTION EVENT NOTICE") to the Company, which notice shall specify the option which such holders have elected pursuant to and in accordance with Section 3(i), if applicable. The Company shall within one (1) day of its receipt of the Holders' Excluded Redemption Event Notice provide each holder with written notice via facsimile and overnight courier (a "EXCLUDED REDEMPTION OPTION ELECTION NOTICE") which notice shall specify the option which the Company has elected to exercise pursuant to and in accordance with Section 3(i).

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(i) Rights of the Holders of the Preferred Shares upon the Occurrence of an Excluded Redemption Event. In addition to any other remedies the holders of the Preferred Shares may have at law or in equity, if an Excluded Redemption Event occurs and the holders of the Preferred Shares have provided the Company with a Holders' Excluded Redemption Event Notice, then the Company, at its option, shall either (A) pay to each holder of Preferred Shares the Redemption Price for each

outstanding share of Preferred Stock held by such holder pursuant to and in accordance with Section 3(g) or (B) if:

(i) the Excluded Redemption Event is pursuant to Section 3(h)(i), then immediately upon the occurrence of such an Excluded Redemption Event (and from time to time as applicable), the Fixed Conversion Price of the Preferred Shares shall be adjusted to either, at the option of the holders' of at least two-thirds (2/3) of the Preferred Shares then outstanding, as set forth in the Holders' Excluded Redemption Event Notice, (I) 90% of the lowest Closing Bid Price on any trading day during the period beginning on and including the date which is ten (10) trading days prior to the Effective Date and ending on and including the earlier of (a) the date the Registration Statement is declared effective by the SEC and (b) the Conversion Date with respect to the Preferred Share for which this determination is being made, or (II) the Conversion Percentage in effect immediately prior to such Excluded Redemption Event shall be reduced by 25 percentage points;

(ii) the Excluded Redemption Event is pursuant to Section 3(h)(ii), then (A) beginning on and including the first day following the receipt by the Company of a Holders' Excluded Redemption Event Notice, the Company shall pay to each holder of Preferred Shares an Excluded Redemption Event Daily Payment (as defined below) on each day that such Excluded Redemption Event continues, provided, however, that the Company shall not be obligated to make an Excluded Redemption Event Daily Payment pursuant to this Section 3(i) for more than 20 days in any 365 day period and (B) immediately upon the occurrence of such an Excluded Redemption Event (and from time to time as applicable), the Fixed Conversion Price of the Preferred Shares shall be adjusted to either, at the option of the holders of at least two-thirds (2/3) of the Preferred Shares as set forth in the Holders' Excluded Redemption Event Notice, (I) 90% of the lowest Closing Bid Price on any trading day following the occurrence of such Excluded Redemption Event (excluding any days during an Allowable Grace Period) that the Registration Statement lapses or is unavailable for sale of all Registrable Securities, or (II) the Conversion Percentage in effect immediately prior to such Excluded Redemption Event shall be reduced by 25 percentage points; or

(iii) the Excluded Redemption Event is other than pursuant to Section 3(h)(i) or 3(h)(ii), then (A) beginning on and including the first day following the receipt by the Company of a Holders' Excluded Redemption Event Notice, the Company shall pay to each holder of Preferred Shares an Excluded Redemption Event Daily Payment on each day that such Excluded Redemption Event continues, provided, however, that the Company shall not be obligated to make an Excluded Redemption Event Daily Payment pursuant to this Section 3(i) for more than 20 days in any 365 day period, and (B) immediately upon the occurrence of such Excluded Redemption Event (and from time to time as applicable) the Conversion Percentage in effect immediately prior to

such Excluded Redemption Event shall be reduced by 25 percentage points. "EXCLUDED REDEMPTION EVENT DAILY PAYMENT" shall mean the payment to each holder of Preferred

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Shares, by the Company, of an amount in cash per Preferred Share equal to one percent (1%) of the Liquidation Value.

(4) Inability to Fully Convert.

(a) Holder's Option if Company Cannot Fully Convert. If, upon the Company's receipt of a Conversion Notice or on the Maturity Date, the Company can not issue shares of Common Stock registered for resale under the Registration Statement (or which are exempt from the registration requirements under the 1933 Act pursuant to Rule 144(k) under the 1933 Act) for any reason, including, without limitation, because the Company (x) does not have a sufficient number of shares of Common Stock authorized and available, (y) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Company or its Securities from issuing all of the Common Stock which is to be issued to a holder of Preferred Shares pursuant to a Conversion Notice or (z) fails to have a sufficient number of shares of Common Stock registered for resale under the Registration Statement, then the Company shall issue as many shares of Common Stock as it is able to issue in accordance with such holder's Conversion Notice and pursuant to Section 2(f) and, with respect to the unconverted Preferred Shares, the holder, solely at such holder's option, can elect to:

(i) if the Company's inability to fully convert Preferred Shares is pursuant to Section 4(a)(z), require the Company to issue restricted shares of Common Stock in accordance with such holder's Conversion Notice and pursuant to Section 2(f); or

(ii) void its Conversion Notice and retain or have returned, as the case may be, the nonconverted Preferred Shares that were to be converted pursuant to such holder's Conversion Notice (provided that a holder's voiding its Conversion Notice shall not effect the Company's obligations to make any payments which have accrued prior to the date of such notice); or

(b) Mechanics of Fulfilling Holder's Election. The Company shall immediately send via facsimile to a holder of Preferred Shares, upon receipt of a facsimile copy of a Conversion Notice from

such holder which cannot be fully satisfied as described in Section 4(a), a notice of the Company's inability to fully satisfy such holder's Conversion Notice (the "INABILITY TO FULLY CONVERT NOTICE"). Such Inability to Fully Convert Notice shall indicate (i) the reason why the Company is unable to fully satisfy such holder's Conversion Notice, and (ii) the number of Preferred Shares which cannot be converted. Such holder shall notify the Company of its election pursuant to Section 4(a) above by delivering written notice via facsimile to the Company.

(c) Pro Rata Conversion and Redemption. In the event the Company receives a Conversion Notice, Notice of Redemption at Option of Buyer Upon Major Transaction or Notice of Redemption at Option of Buyer Upon Triggering Event from more than one holder of Preferred Shares on the same day and the Company can convert and/or

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redeem some, but not all, of the Preferred Shares pursuant to this Section 4, the Company shall convert and/or redeem from each holder of Preferred Shares electing to have Preferred Shares converted and/or redeemed at such time an amount equal to such holder's pro-rata amount (based on the number of Preferred Shares held by such holder relative to the number of Preferred Shares outstanding) of all Preferred Shares being converted and redeemed at such time.

(5) Conversion at the Company's Election. At any time or times during the period beginning on the Issuance Date and ending on and including the date which is two (2) years after the Effective Date, the Company shall have the right, in its sole discretion, to require that any or all of such outstanding Preferred Shares be converted ("CONVERSION AT COMPANY'S ELECTION") at the Conversion Rate; provided that the Conditions to Conversion at the Company's Election (as set forth below) are satisfied. The Company shall exercise its right to Conversion at Company's Election by providing each holder of Preferred Shares written notice (by facsimile and overnight courier) ("NOTICE OF CONVERSION AT COMPANY'S ELECTION") at least ten trading days prior to the date selected by the Company for conversion ("COMPANY'S ELECTION CONVERSION DATE"). If the Company elects to require conversion of some, but not all, of such Preferred Shares, the Company shall convert an amount from each holder of Preferred Shares equal to such holder's pro rata amount (based on the number of such Preferred Shares held by such holder relative to the number of such Preferred Shares outstanding on the date of the Company's delivery of the Notice of Conversion at Company's Election) of all Preferred Shares the Company is requiring to be converted. The Notice of Conversion at Company's Election shall indicate (x) the number of Preferred Shares the Company has selected for conversion, (y) the Company's Election Conversion Date, which date shall be not less than ten or more than 30 trading days after each holder's receipt of such

notice, and (z) each holder's pro rata share of outstanding Preferred Shares which the Company is requiring to be converted. All Preferred Shares selected for conversion in accordance with the provision of this Section 5 shall be converted as of the Company's Election Conversion Date in accordance with Section 2 as if the holders of such Preferred Shares selected by the Company to be converted had given the Conversion Notice on the Company's Election Conversion Date. All holders of Preferred Shares shall thereupon and within two (2) Business Days after the Company's Election Conversion Date surrender all Preferred Stock Certificates selected for conversion, duly endorsed for cancellation, to the Company. "CONDITIONS TO CONVERSION AT THE COMPANY'S ELECTION" means the following conditions: (i) on each day during the period beginning 60 trading days prior to the Company's Election Conversion Date and ending on and including the Company's Election Conversion Date, no Grace Period (as defined in Section 3(f) of the Registration Rights Agreement) shall be in effect and the Registration Statement shall have been effective and available for the sale of no less than 125% of the Registrable Securities; (ii) on each day during the period beginning 60 trading days prior to the date of the Company's Election Conversion Date and ending on and including the Company's Election Conversion Date, the Common Stock is designated for quotation on The Nasdaq National Market or listed on The New York Stock Exchange, Inc. or the American Stock Exchange, Inc. and is not suspended from trading; (iii) on each day during the 20 consecutive trading days immediately preceding the Company's Election Conversion Date, the Closing Bid Price of the Common Stock is at least \$5.89875 (subject to adjustment for stock splits, stock dividends, stock combinations and other similar transactions); (iv) during the period beginning on the Issuance Date of any Preferred Shares and ending on and including the Company's Election Conversion Date,

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the Company shall have delivered Conversion Shares upon conversion of the Preferred Shares to the Buyers on a timely basis as set forth in Section 2(f) (ii) of this Certificate of Designations; and (v) the Company otherwise has satisfied its obligations and is not in default under this Certificate of Designations, the Exchange Agreement and the Registration Rights Agreement. Notwithstanding the above, any holder of Preferred Shares may convert such shares (including Preferred Shares selected for conversion) into Common Stock pursuant to Section 2(a) on or prior to the date immediately preceding the Company's Election Conversion Date.

(6) Redemption at the Company's Election Upon Change of Control. At any time or times on or after the date the Company publicly discloses a Change of Control Transaction, the Company shall have the right, in its sole discretion, to require that all of the outstanding Preferred Shares be redeemed ("REDEMPTION AT COMPANY'S ELECTION") at a price per Preferred Share equal to (1) 115% of the

Liquidation Value (as defined in Section 11), provided that the Registration Statement shall have been effective and available for sale of all the Registrable Securities at all times during the 60 consecutive trading days immediately preceding the Company's Election Redemption Date (as defined below), or (2) if the Registration Statement is not effective and available for sale of all the Registrable Securities at all times during the 60 consecutive trading days immediately preceding the Company's Election Redemption Date, then the greater of (a) 115% of the Liquidation Value and (b) the product of (I) the Conversion Rate at such time, and (II) the Closing Bid Price on the date of the public announcement of such Change of Control Transaction or the next date on which the exchange or market on which the Common Stock is traded is open if such public announcement is made (x) after 12:00 p.m. Eastern Time, on such date or (y) on a date on which the exchange or market on which the Common Stock is traded is closed (the "CHANGE OF CONTROL REDEMPTION PRICE"); provided that the Conditions to Redemption at the Company's Election (as set forth below) are satisfied. The Company shall exercise its right to Redemption at Company's Election by providing each holder of Preferred Shares written notice ("NOTICE OF REDEMPTION AT COMPANY'S ELECTION") after the public disclosure of a Change of Control Transaction and at least 10 trading days ("REDEMPTION AT COMPANY'S ELECTION NOTICE PERIOD") prior to the date of consummation of the Change of Control Transaction ("COMPANY'S ELECTION REDEMPTION DATE"). The Notice of Redemption at Company's Election shall indicate the anticipated Company's Election Redemption Date. If the Company has exercised its right of Redemption at Company's Election and the conditions to such Redemption at Company's Election have been satisfied, then all Preferred Shares outstanding at the time of the consummation of the Change of Control Transaction shall be redeemed as of the Company's Election Redemption Date by payment by the Company to each holder of Preferred Shares of the Change of Control Redemption Price concurrent with the closing of the Change of Control Transaction. All holders of Preferred Shares shall thereupon and within two (2) Business Days after the Company's Election Redemption Date, or such earlier date as the Company and each holder of Preferred Shares mutually agree, surrender all outstanding Preferred Stock Certificates, duly endorsed for cancellation, to the Company. If the Company fails to pay the full Change of Control Redemption Price with respect to any Preferred Shares concurrently with the closing of the Change of Control Transaction, then the Redemption at Company's Election shall be null and void with respect to such Preferred Shares and the holder of such Preferred Shares shall be entitled to all the rights of a holder of outstanding Preferred Shares set forth in this Certificate of Designations. "CONDITIONS TO REDEMPTION AT THE COMPANY'S ELECTION" means the following conditions: (i) on each day during the period beginning 60 trading days prior to the date of the

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Election Redemption Date, the Common Stock is designated for quotation on The Nasdaq National Market or listed on The New York Stock Exchange, Inc. and is not suspended from trading; (ii) during the period beginning on the Issuance Date and ending on and including the Company's Election Redemption Date, the Company shall have delivered Conversion Shares upon conversion of the Preferred Shares to the Buyers on a timely basis as set forth in Section 2(f)(ii) of this Certificate of Designations; and (iii) the Company otherwise has satisfied its obligations and is not in default under this Certificate of Designations, the Exchange Agreement and the Registration Rights Agreement. Notwithstanding the above, any holder of Preferred Shares may convert such shares (including Preferred Shares selected for redemption) into Common Stock pursuant to Section 2(a) on or prior to the date immediately preceding the Company's Election Redemption Date.

(7) Redemption at the Company's Election Upon Decrease in Stock Price. In the event that at any time the Fixed Conversion Price immediately following a Pricing Period is less than \$1.96625 (subject to adjustment for stock splits, stock dividends, stock combinations and other similar transactions) the Company shall have the right, in its sole discretion, to require that all, but not less than all, of the outstanding Preferred Shares be redeemed ("COMPANY'S RESET REDEMPTION ELECTION") at the Liquidation Value ("COMPANY'S RESET REDEMPTION PRICE"); provided that the Conditions to the Company's Reset Redemption Election (as set forth below) are satisfied. The Company shall exercise the Company's Reset Redemption Election by providing each holder of Preferred Shares written notice ("NOTICE OF COMPANY'S RESET REDEMPTION ELECTION") on any date during the period beginning on and including the last day of a Pricing Period and ending on and including the date which is 20 days after the last day of such Pricing Period. The Notice of Company's Reset Redemption Election shall set forth the date on which the Company's Reset Redemption Election shall be consummated, which date shall be not less than 20 trading days and not more than 30 trading days after the date each holder of Preferred Shares receives the Company's Notice of Company's Reset Redemption Election (the "COMPANY'S RESET REDEMPTION DATE"). If the Company has exercised the Company's Reset Redemption Election and the Conditions to Redemption at the Company's Reset Redemption Election have been satisfied, then all Preferred Shares outstanding at the time of the Company's Reset Redemption Election shall be redeemed as of the Company's Reset Redemption Election Date by payment by the Company to each holder of Preferred Shares of the Company's Reset Redemption Price. All holders of Preferred Shares shall thereupon and within two (2) Business Days after the Company's Reset Redemption Election Date, or such earlier date as the Company and each holder of Preferred Shares mutually agree, surrender all outstanding Preferred Stock Certificates, duly endorsed for cancellation, to the Company. If the Company fails to pay the full Company's Reset Redemption Price with respect to any Preferred Shares, then the Company's Reset Redemption Election shall be null and void with respect to such Preferred Shares and the holder of such Preferred Shares shall be entitled to all the rights of a holder of outstanding Preferred Shares set forth in this Certificate of Designations. "CONDITIONS TO REDEMPTION AT THE COMPANY'S RESET REDEMPTION ELECTION" means the following conditions: (i) on each day during the period beginning 20 trading days prior to the Company's Election Redemption Date and ending on and including the Company's Election Redemption Date, no Grace Period

(as defined in Section 3(f) of the Registration Rights Agreement) shall be in effect and the Registration Statement shall have been effective and available for the sale of no less than 125% of the Registrable Securities; (ii) on each day during the period beginning 20 trading days prior to the

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date of the Company's Election Redemption Date and ending on and including the Company's Election Redemption Date, the Common Stock is designated for quotation on The Nasdaq National Market or listed on The New York Stock Exchange, Inc. or the American Stock Exchange, Inc. and is not suspended from trading; (iii) during the period beginning on the first Issuance Date of any Preferred Shares and ending on and including the Company's Election Redemption Date, the Company shall have delivered Conversion Shares upon conversion of the Preferred Shares to the Buyers on a timely basis as set forth in Section 2(f)(ii) of this Certificate of Designations; (iv) the Company otherwise has satisfied its obligations and is not in default under this Certificate of Designations, the Exchange Agreement and the Registration Rights Agreement; and (vi) during the period beginning on the Effective Date and ending on and including the Company Election Redemption Date, there shall not have occurred a Major Transaction or the announcement of a pending or proposed Major Transaction. Notwithstanding the above, any holder of Preferred Shares may convert such shares (including Preferred Shares selected for conversion) into Common Stock pursuant to Section 2(a) on or prior to the date immediately preceding the Company's Election Redemption Date.

(8) Reissuance of Certificates. In the event of a conversion or redemption pursuant to this Certificate of Designations of less than all of the Preferred Shares represented by a particular Preferred Stock Certificate, the Company shall promptly cause to be issued and delivered to the holder of such Preferred Shares a preferred stock certificate representing the remaining Preferred Shares which have not been so converted or redeemed.

(9) Reservation of Shares. The Company shall, so long as any of the Preferred Shares are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Preferred Shares, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Preferred Shares then outstanding (without regard to any limitations on conversions); provided that the number of shares of Common Stock so reserved shall at no time be less than 200% of the number of shares of Common Stock for which the Preferred Shares are at any time convertible. The initial number of shares of Common Stock reserved for conversion of the Preferred Shares and each increase in the number of shares so reserved shall be allocated pro rata among the holders of the Preferred Shares based on the number of Preferred Shares held

by each holder at the time of issuance of the Preferred Shares or increase in the number of reserved shares, as the case may be. In the event a holder shall sell or otherwise transfer any of such holder's Preferred Shares, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and which remain allocated to any person or entity which does not hold any Preferred Shares shall be allocated to the remaining holders of Preferred Shares, pro rata based on the number of Preferred Shares then held by such holder.

(10) Voting Rights. Holders of Preferred Shares shall have no voting rights, except as required by law, including but not limited to the General Corporation Law of the State of Delaware, and as expressly provided in this Certificate of Designations.

(11) Liquidation, Dissolution, Winding-Up. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of the Preferred

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Shares shall be entitled to receive in cash out of the assets of the Company, whether from capital or from earnings available for distribution to its stockholders (the "PREFERRED FUNDS"), before any amount shall be paid to the holders of any of the capital stock of the Company of any class junior in rank to the Preferred Shares in respect of the preferences as to the distributions and payments on the liquidation, dissolution and winding up of the Company, an amount per Preferred Share equal to the sum of (i) \$10,000 and (ii) the Additional Amount (such sum being referred to as the "LIQUIDATION VALUE"); provided that, if the Preferred Funds are insufficient to pay the full amount due to the holders of Preferred Shares and holders of shares of other classes or series of preferred stock of the Company that are of equal rank with the Preferred Shares as to payments of Preferred Funds (the "PARI PASSU SHARES"), then each holder of Preferred Shares and Pari Passu Shares shall receive a percentage of the Preferred Funds equal to the full amount of Preferred Funds payable to such holder as a liquidation preference, in accordance with their respective Certificate of Designations, Preferences and Rights, as a percentage of the full amount of Preferred Funds payable to all holders of Preferred Shares and Pari Passu Shares. The purchase or redemption by the Company of stock of any class, in any manner permitted by law, shall not, for the purposes hereof, be regarded as a liquidation, dissolution or winding up of the Company. Neither the consolidation or merger of the Company with or into any other Person, nor the sale or transfer by the Company of less than substantially all of its assets, shall, for the purposes hereof, be deemed to be a liquidation, dissolution or winding up of the Company. No holder of Preferred Shares shall be entitled to

receive any amounts with respect thereto upon any liquidation, dissolution or winding up of the Company other than the amounts provided for herein; provided that a holder of Preferred Shares shall be entitled to all amounts previously accrued with respect to amounts owed hereunder.

(12 Preferred Rank; Participation.

(i) All shares of Common Stock shall be of junior rank to all Preferred Shares in respect to the preferences as to distributions and payments upon the liquidation, dissolution and winding up of the Company. The rights of the shares of Common Stock shall be subject to the preferences and relative rights of the Preferred Shares. The shares of the Series A Convertible Preferred Stock, the Series D Convertible Preferred Stock and the Series E Preferred Stock shall rank pari passu with the Preferred Shares. Without the prior express written consent of the holders of not less than two-thirds (2/3) of the then outstanding Preferred Shares, the Company shall not hereafter authorize or issue additional or other capital stock that is senior to the Preferred Shares in respect of the preferences as to distributions and payments upon the liquidation, dissolution and winding up of the Company. Without the prior express written consent of the holders of not less than two-thirds (2/3) of the then outstanding Preferred Shares, the Company shall not hereafter authorize or make any amendment to the Company's Certificate of Incorporation or bylaws, or file any resolution of the board of directors of the Company with the Secretary of State of the State of Delaware containing any provisions that would adversely affect or otherwise impair the rights or relative priority of the holders of the Preferred Shares relative to the holders of the Common Stock or the holders of any other class of capital stock. In the event of the merger or consolidation of the Company with or into another corporation, the Preferred Shares shall maintain their relative powers, designations and preferences provided for herein and no merger shall result inconsistent therewith.

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(ii) Subject to the rights of the holders, if any, of the Pari Passu Shares, the holders of the Preferred Shares shall, as holders of Preferred Stock, be entitled to such dividends paid and distributions made to the holders of Common Stock to the same extent as if such holders of Preferred Shares had converted the Preferred Shares into Common Stock (without regard to any limitations on conversion herein or elsewhere) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding

sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

(13 Restriction on Redemption and Cash Dividends with respect to Other Capital Stock. Until all of the Preferred Shares have been converted or redeemed as provided herein, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, its Common Stock without the prior express written consent of the holders of not less than two-thirds (2/3) of the then outstanding Preferred Shares.

(14 Vote to Change the Terms of or Issue Preferred Shares. The affirmative vote at a meeting duly called for such purpose, or the written consent without a meeting, of the holders of not less than two-thirds (2/3) of the then outstanding Preferred Shares shall be required for (a) any change to this Certificate of Designations or the Company's Certificate of Incorporation that would amend, alter, change or repeal any of the powers, designations, preferences and rights of the Preferred Shares, or (b) any issuance of Preferred Shares other than pursuant to the Exchange Agreement.

(15 Lost or Stolen Certificates. Upon receipt by the Company of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing the Preferred Shares, and, in the case of loss, theft or destruction, of an indemnification undertaking by the holder to the Company and, in the case of mutilation, upon surrender and cancellation of the Preferred Stock Certificate(s), the Company shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Company shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Company to convert such Preferred Shares into Common Stock.

(16 Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit a holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate of Designations. The Company covenants to each holder of Preferred Shares that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations

hereunder will cause irreparable harm to the holders of the Preferred Shares and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holders of the Preferred Shares shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

(17) Specific Shall Not Limit General; Construction. No specific provision contained in this Certificate of Designations shall limit or modify any more general provision contained herein. This Certificate of Designations shall be deemed to be jointly drafted by the Company and the initial holders of the Preferred Shares and shall not be construed against any person as the drafter hereof.

(18) Failure or Indulgence Not Waiver. No failure or delay on the part of a holder of Preferred Shares in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof (except to the extent that such power, right or privilege must, in accordance with the terms of this Certificate of Designations, be exercised within a specified period of time and such period of time has lapsed without such power, right or privilege being exercised), nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

(19) Notices. Any notice required to be delivered pursuant to the terms of this Certificate of Designations shall be delivered, unless otherwise provided in this Certificate of Designations, in accordance with the terms, and subject to the notice provisions of, the Exchange Agreement.

* * * * *

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be signed by Steven Markman, its Chief Executive Officer and President, as of September __, 1999.

GENERAL MAGIC, INC.

By:

Name: Steven Markman

Its: Chief Executive Officer and
President

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EXHIBIT I

GENERAL MAGIC, INC.
CONVERSION NOTICE

Reference is made to the Certificate of Designations, Preferences and Rights of Series D Convertible Preferred Stock (the "CERTIFICATE OF DESIGNATIONS"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series D Convertible Preferred Stock, par value \$.001 per share (the "PREFERRED SHARES"), of General Magic, Inc., a DELAWARE corporation (the "COMPANY"), indicated below into shares of Common Stock, par value \$.001 per share (the "COMMON STOCK"), of the Company, by tendering the stock certificate(s) representing the Preferred Shares specified below as of the date specified below.

Date of Conversion:

Number of Preferred Shares to be converted:

Stock certificate no(s). of Preferred Shares to be converted:

Please confirm the following information:

Conversion Price:

Number of shares of Common Stock
to be issued:

Is the alternative Conversion Price being relied on pursuant to Section 2(d)(iii) of the Certificate of Designations? (check one) YES _____ NO

Please issue the Common Stock into which the Preferred Shares are being converted and, if applicable, any check drawn on an account of the Company in the following name and to the following address:

Issue to:

Facsimile Number:

Authorization:

By:

Title:

Dated:

Account Number:

(if electronic book entry transfer):

Transaction Code Number

(if electronic book entry transfer):

THIS NOTICE MUST BE DELIVERED TO COMPANY AND TRANSFER AGENT.

EXCHANGE AGREEMENT

EXCHANGE AGREEMENT (the "AGREEMENT"), dated as of September 9, 1999, by and among General Magic, Inc., a Delaware corporation, with headquarters located at 420 N. Mary Avenue, Sunnyvale, California 94086 (the "COMPANY"), and the investors listed on the Schedule of Investors attached hereto (individually, an "INVESTOR" and collectively, the "INVESTORS").

WHEREAS:

A. Each of the Investors owns shares of Series D Convertible Preferred Stock, par value \$.001 per share (the "SERIES D PREFERRED STOCK"), of the Company;

B. The Company has agreed and each of the Investors, severally and not jointly, has agreed that, subject to the terms and conditions of this Agreement, each Investor will tender to the Company that number of shares of Series D Preferred Stock set forth opposite such Investor's name on the Schedule of Investors and the Company will exchange the Series D Preferred Stock for an equal number of shares of a newly created series of preferred stock, par value \$.001 per share, designated Series F Convertible Preferred Stock (the "PREFERRED SHARES"), which shall be convertible into shares of the Company's Common Stock, par value \$.001 per share (the "COMMON STOCK") (as converted, the "CONVERSION SHARES"), in accordance with the terms of the Company's Certificate of Designations, Preferences and Rights of the Series F Convertible Preferred Stock (the "CERTIFICATE OF DESIGNATIONS"), substantially in the form attached hereto as Exhibit A.

C. The execution and delivery of this Agreement by the Company and the Investors and the offer and issuance by the Company of Preferred Shares is being made in reliance upon the provisions of Section 3(a)(9) of the Securities Act of 1933, as amended (the "1933 Act"). The Preferred Shares and the Conversion Shares issuable upon conversion thereof are sometimes collectively referred to in this Agreement as the "SECURITIES"; and

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

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NOW THEREFORE, the Company and the Investors hereby agree as follows:

1 AGREEMENT TO EXCHANGE.

(a) Exchange. Each Investor, severally and not jointly, hereby agrees that at the Closing (as defined below) it will exchange shares of Series D Preferred Stock for shares of Series F Convertible Preferred Stock in the amounts set forth in the Schedule of Investors and on the terms and conditions set forth herein. At the Closing, the Company shall issue to each Investor one Preferred Share for each share of Series D Preferred Stock being exchanged by such Investor, in the denominations as such Investor shall request and in the name of such Investor or its designee.

(b) The Closing Date. The date and time of the Closing (the "CLOSING Date") shall be 10:00 a.m. Central Time within three (3) business days following the date hereof, subject to satisfaction (or waiver) of the conditions to the Closing set forth in Sections 6 and 7 (or such later date as is mutually agreed to by the Company and the Investors). The Closing shall occur on the Closing Date at the offices of Katten Muchin & Zavis, 525 West Monroe Street, Suite 1600, Chicago, Illinois 60661-3693 or at such other place as the Company and the Investors may mutually agree.

2 INVESTOR'S REPRESENTATIONS AND WARRANTIES.

Each Investor represents and warrants with respect to only itself that:

(a) Reliance on Exemptions. Such Investor understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and

such Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Investor set forth herein in order to determine the availability of such exemptions and the eligibility of such Investor to acquire the Securities.

(b) No Governmental Review. Such Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(c) Transfer or Resale. Such Investor understands that, except as provided in the Registration Rights Agreement: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Investor shall have delivered to the Company an opinion of counsel, in form and substance reasonably satisfactory to the Company, to the effect that the Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Investor provides the Company with reasonable assurance that the Securities can be sold, assigned or transferred pursuant to Rule 144 promulgated under the 1933 Act (or a successor rule thereto) ("RULE 144"); (ii) any sale of the

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Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other person is under any obligation to register such Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account.

(d) Legends. Such Investor understands that the certificates or other instruments representing the Preferred Shares and, until such time as the sale of the Conversion Shares have been registered under the 1933 Act as contemplated by the Registration Rights Agreement, the stock certificates representing the Conversion Shares, except as set forth below, shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL, IN FORM AND SUBSTANCE REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT.

The legend set forth above shall be removed and the Company shall issue a certificate or other instrument without such legend to the holder of the Securities upon which it is stamped, if (i) such Securities are registered for sale under the 1933 Act, (ii) in connection with a sale transaction, such holder provides the Company with an opinion of counsel, in form and substance reasonably acceptable to the Company, to the effect that a public sale, assignment or transfer of such Securities may be made without registration under the 1933 Act, or (iii) such holder provides the Company with reasonable assurances that such Securities can be sold without restriction pursuant to Rule 144(k). Each Investor acknowledges, covenants and agrees to sell the Securities represented by a certificate(s) or other instruments from which the legend has been removed, only pursuant to (i) a registration statement effective under the 1933 Act, or (ii) advice of counsel that such sale is exempt from registration required by Section 5 of the 1933 Act. Notwithstanding anything to the contrary contained herein, if the legend is removed from any certificate representing any of the Securities due to the availability of an effective registration statement relating to the resale thereof, and such registration statement is no longer effective, upon the reasonable request of the Company, each Investor who is a holder of such Securities agrees to return certificates representing the affected Securities, provided such Securities have not been sold pursuant to

the Company's transfer agent in order that the legend set forth above may be re-imposed on such Securities.

(e) Authorization; Enforcement. This Agreement, the Registration Rights Agreement and the Waiver Agreement, which is attached hereto as Exhibit E (the "Waiver Agreement") have been duly and validly authorized, executed and delivered on behalf of such Investor and constitute valid and binding agreements of such Investor enforceable against such Investor in accordance with their terms, subject as to enforceability to general principles of equity and to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(f) Residency. Such Investor is a resident of that country or jurisdiction specified on the Schedule of Investors.

(g) No Conflicts. The execution, delivery and performance of this Agreement, the Registration Rights Agreement and the Waiver Agreement by such Investor and the consummation by such Investor of the transactions contemplated hereby and thereby will not result in a violation of the certificate of incorporation, by-laws or other documents of organization of such Investor.

3 REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Investors that:

(a) Organization and Qualification. Set forth in Schedule 3(a) is a complete list of each entity in which the Company, directly or indirectly, owns any capital stock or holds an equity or similar interest. The Company and its "Subsidiaries" (which for purposes of this Agreement means any entity in which the Company, directly or indirectly, owns more than 50% of the outstanding capital stock or holds an equity or similar interest representing at least 50% of the outstanding equity or similar interests of such entity) (a complete list of which is set forth in Schedule 3(a)) are corporations duly organized and validly existing in good standing under the laws of the jurisdiction in which they are incorporated, and have the requisite corporate power and authorization to own their properties and to carry on their business as now being conducted. Each of the Company and its Subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect. As used in this Agreement, "MATERIAL ADVERSE EFFECT" means any material adverse effect on the business, properties, assets, operations, results of operations, financial condition or prospects of the Company and its Subsidiaries, if any, taken as a whole, or on the transactions contemplated hereby or by the agreements and instruments to be entered into in connection herewith, or on the authority or ability of the Company to perform its obligations under the Transaction Documents (as defined below) or the Certificate of Designations.

(b) Authorization; Enforcement; Compliance with Other Instruments.
(i) The Company has the requisite corporate power and authority to enter into and perform its obligations

under this Agreement, the Registration Rights Agreement, the Waiver Agreement and the Irrevocable Transfer Agent Instructions (as defined in Section 5) and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by this Agreement (collectively, the "TRANSACTION DOCUMENTS"), and to issue the Securities in accordance with the terms hereof and thereof; (ii) the execution and delivery of the Transaction Documents and the Certificate of Designations by the Company and the consummation by it of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Preferred Shares and the reservation for issuance and the issuance of the Conversion Shares issuable upon conversion) have been duly authorized by the Company's Board of Directors and no further consent or authorization is required by the Company, its Board of Directors or its stockholders; (iii) the Transaction Documents have been duly executed and delivered by the Company; (iv) the Transaction Documents constitute

the valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors' rights and remedies; and (v) prior to the Closing Date, the Certificate of Designations will have been filed with the Secretary of State of the State of Delaware and will be in full force and effect, enforceable against the Company in accordance with its terms.

(c) Capitalization. As of the date hereof, the authorized capital stock of the Company consists of (i) 100,000,000 shares of Common Stock, of which as of the date hereof, 41,219,797 shares were issued and outstanding, 9,953,234 shares are issuable and reserved for issuance pursuant to the Company's stock option and purchase plans and 805,000 shares are issuable and reserved for issuance pursuant to securities (other than the Preferred Shares) exercisable or exchangeable for, or convertible into, shares of Common Stock; and (ii) 500,000 shares of Preferred Stock, of which as of the date hereof, (A) 50,000 shares were designated as Series A Preferred Stock and 50,000 shares of Series A Preferred Stock were issued and outstanding, (B) 12,000 shares were designated as Series B Preferred Stock and no shares of Series B Preferred Stock were issued and outstanding, (C) 3,000 shares were designated as Series C Preferred Stock and no shares of Series C Preferred Stock were issued and outstanding, (D) 2,000 shares were designated as the Series D Preferred Stock and 2,000 shares of Series D Preferred Stock were issued and outstanding, and (E) 699 shares were designated as the Series E Preferred Stock and 599 shares of Series E Preferred Stock were issued and outstanding and 100 shares are issuable and reserved for issuance pursuant to securities exercisable for shares of Series E Preferred Stock. All of such outstanding shares have been, or upon issuance will be, validly issued and fully paid and nonassessable. Except as disclosed in Schedule 3(c), (i) no shares of the Company's capital stock are subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) there are no outstanding debt securities; (iii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its Subsidiaries; (iv) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under

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the 1933 Act (except the Registration Rights Agreement); (v) there are no outstanding securities of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (vi) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities as described in this Agreement; and (vii) the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. The Company has furnished to the Investors true and correct copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "CERTIFICATE OF INCORPORATION"), and the Company's By-laws, as in effect on the date hereof (the "BY-LAWS"), and the terms of all securities convertible into or exercisable for Common Stock and the material rights of the holders thereof in respect thereto.

(d) Issuance of Securities. The Preferred Shares are duly authorized and, upon issuance in accordance with the terms hereof, shall be (i) validly issued, fully paid and non-assessable, (ii) free from all taxes, liens and charges with respect to the issue thereof and (iii) entitled to the rights and preferences set forth in the Certificate of Designations. At least that number of shares of Common Stock required to be reserved by the Company pursuant to Section 4(e) have been duly authorized and reserved for issuance upon conversion of the Preferred Shares. Upon conversion in accordance with the Certificate of Designations, the Conversion Shares, and upon issuance, the Registration Delay Payment Shares, will be validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock and, except as disclosed in Schedule 3(d), entitled to be traded on the Nasdaq National Market, The New York Stock Exchange, Inc. ("NYSE") or The American Stock Exchange, Inc. ("AMEX"). Based in part upon the representations of Investors in Section 2 hereof, the issuance by the Company of the Securities is

exempt from registration under the 1933 Act.

(e) No Conflicts. Except as disclosed in Schedule 3(e), the execution, delivery and performance of the Transaction Documents by the Company, the performance by the Company of its obligations under the Certificate of Designations and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the reservation for issuance and issuance of the Conversion Shares) will not (i) result in a violation of the Certificate of Incorporation, any Certificate of Designations, Preferences and Rights of any outstanding series of Preferred Stock of the Company or the By-laws; (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party; or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and the rules and regulations of the principal market or exchange on which the Common Stock is traded or listed) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected. Except as disclosed in Schedule 3(e), neither the Company nor its Subsidiaries is in violation of any term of or in default under (x) its Certificate of Incorporation, any Certificate of Designation, Preferences and Rights of any outstanding series of Preferred Stock or By-laws or their organizational charter or by-laws, respectively, or (y) any contract, agreement, mortgage,

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indebtedness, indenture, instrument, judgment, decree or order or any statute, rule or regulation applicable to the Company or its Subsidiaries, except for such violations which have not had and, to the knowledge of the Company, will not have a Material Adverse Effect. The business of the Company and its Subsidiaries is not being conducted, in violation of any law, ordinance or regulation of any governmental entity, except for any violations which individually or in the aggregate will not have a Material Adverse Effect. Except as specifically contemplated by this Agreement and as required under the 1933 Act, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self-regulatory agency in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents or the Certificate of Designations in accordance with the terms hereof or thereof. Except as disclosed in Schedule 3(e), all consents, authorizations, orders, filings and registrations which the Company is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the date hereof. The Company complies with and is not in violation of the listing requirements of the Nasdaq National Market as in effect on the date hereof and the Closing Date and is not aware of any facts which would reasonably lead to delisting or suspension of the Common Stock by the Nasdaq National Market in the foreseeable future.

(f) SEC Documents; Financial Statements. Since December 31, 1996, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "1934 ACT") (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "SEC DOCUMENTS"). The Company has delivered to or made available for review by the Investors or their respective representatives true and complete copies of the SEC Documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). No other written information provided by or on behalf of the

Company to the Investors which is not included in the SEC Documents, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstance under which they are or were made, not misleading. Neither the Company nor any of its Subsidiaries or any of their officers, directors, agents or employees have provided the Investors with any material, nonpublic information.

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(g) Absence of Certain Changes. Except as disclosed in Schedule 3(g) or the SEC Documents filed on EDGAR at least five (5) business days prior to the date hereof, since December 31, 1998, there has been no adverse change and no adverse development in the business, properties, operations, financial condition, prospects, liabilities or results of operations of the Company or its Subsidiaries which has had or, to the knowledge of the Company or its Subsidiaries, may have a Material Adverse Effect. The Company has not taken any steps, and does not currently expect to take any steps, to seek protection pursuant to any bankruptcy law nor does the Company or any of its Subsidiaries have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings.

(h) Absence of Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company or any of its Subsidiaries, threatened against or affecting the Company, the Common Stock or any of the Company's Subsidiaries or any of the Company's or the Company's Subsidiaries' officers or directors in their capacities as such, except as set forth in Schedule 3(h).

(i) Acknowledgment Regarding Investors' Purchase of Securities. The Company acknowledges and agrees that each of the Investors is acting solely in the capacity of arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that each Investor is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the Certificate of Designations and the transactions contemplated thereby, and any advice given by any of the Investors or any of their respective representatives or agents in connection with the Transaction Documents and the Certificate of Designations and the transactions contemplated thereby is merely incidental to such Investor's purchase of the Securities. The Company further represents to each Investor that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives.

(j) No Undisclosed Events, Liabilities, Developments or Circumstances. No event, liability, development or circumstance has occurred or exists with respect to the Company or its Subsidiaries or their respective business, properties, prospects, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws on a registration statement filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly disclosed.

(k) No Solicitation. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf, has been paid or given, either directly or indirectly, a commission or other remuneration for soliciting the exchange of the securities.

(l) No Integrated Offering. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of any of the Securities under the 1933 Act or cause this offering of Securities to be integrated with prior offerings by the Company for purposes of the 1933 Act or any applicable

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stockholder approval provisions, including, without limitation, under the rules and regulations of The Nasdaq Stock Market, Inc., nor will the Company or any of its Subsidiaries take any action or steps that would require registration of the Securities under the 1933 Act or cause the offering of the Securities to be

integrated with other offerings.

(m) Employee Relations. Neither the Company nor any of its Subsidiaries is involved in any material union labor dispute nor, to the knowledge of the Company or any of its Subsidiaries, is any such dispute threatened. Neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement. The Company and its Subsidiaries believe that relations between the Company and its Subsidiaries and their respective employees are good. No executive officer (as defined in Rule 501(f) of the 1933 Act) has notified the Company that such officer intends to leave the Company or otherwise terminate such officer's employment with the Company.

(n) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and rights necessary to conduct their respective businesses as now conducted. Except as set forth on Schedule 3(n), none of the Company's trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets or other intellectual property rights have expired or terminated, or are expected to expire or terminate within two (2) years from the date of this Agreement, where the result of such expiration or termination would have, individually or in the aggregate, a Material Adverse Effect. The Company and its Subsidiaries do not have any knowledge of any infringement by the Company or its Subsidiaries of trademarks, trade name rights, patents, patent rights, copyrights, inventions, licenses, service names, service marks, service mark registrations, trade secret or other similar rights of others, or of any such development of similar or identical trade secret or technical information by others which infringement could have a Material Adverse Effect, and, except as set forth on Schedule 3(n), there is no claim, action or proceeding being made or brought against, or to the Company's knowledge, being threatened against, the Company or its Subsidiaries regarding trademarks, trade name rights, patents, patent rights, inventions, copyrights, licenses, service names, service marks, service mark registrations, trade secrets or other infringement. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties.

(o) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("ENVIRONMENTAL LAWS"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, where such noncompliance or failure to receive permits, licenses or approvals referred to in clauses (i), (ii) and (iii) above could have, individually or in the aggregate, a Material Adverse Effect.

(p) Title. The Company and its Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them

which is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as are described in Schedule 3(p) or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its Subsidiaries. Any real property and facilities held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

(g) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for and neither the Company nor any such Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not materially and adversely affect the condition, financial or otherwise, or the earnings, business or operations of the Company and its Subsidiaries, taken as a whole.

(r) Regulatory Permits. The Company and its Subsidiaries possess all material certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or a modification of any such certificate, authorization or permit.

(s) Internal Accounting Controls. The Company and each of its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(t) Foreign Corrupt Practices Act. To the knowledge of the Company, neither the Company, nor any director, officer, agent, employee or other person acting on behalf of the Company or any Subsidiary has, in the course of acting for, or on behalf of, the Company, used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977; or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(u) Tax Status. Except as set forth on Schedule 3(u), the Company and each of its Subsidiaries has made or filed all federal and state income and all other tax returns, reports and

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declarations required by any jurisdiction to which it is subject (unless and only to the extent that the Company and each of its Subsidiaries has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the Company is not aware of any basis for any such claim.

(v) Certain Transactions. Except as set forth on Schedule 3(v) and in the SEC Documents filed on EDGAR at least five (5) business days prior to the date hereof and except for arm's length transactions pursuant to which the Company makes payments in the ordinary course of business upon terms no less favorable than the Company could obtain from third parties and other than the grant of stock options disclosed on Schedule 3(c), none of the officers, directors, or employees of the Company is presently a party to any transaction with the Company or any of its Subsidiaries (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any corporation, partnership, trust or other entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

(w) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares issuable upon conversion of the Preferred Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue Conversion Shares upon conversion of the Preferred Shares in accordance with this Agreement and the Certificate of Designations is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(x) Application of Takeover Protections. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable Section 203 of the Delaware General Corporation Law, or any other similar anti-takeover provision under applicable California law, contained in the Company's Certificate of Incorporation, or otherwise which is or could become applicable to the Investors as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the

Securities and the Investor's ownership of the Securities.

(y No Other Agreements. The Company has not, directly or indirectly, made any agreements with any Investors relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents.

(z Rights Plan. Neither the Company nor any of its Subsidiaries has adopted a shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

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(aa Stockholder Approval. At a meeting held on June 24, 1999, the Company held a special meeting of its stockholders, at which meeting the Company's stockholders approved the Company's issuance of all of the Common Stock issuable upon conversion of the Series D Preferred Stock and exercise of the warrants issued pursuant to the terms of the Securities Purchase Agreement dated March 30, 1999 by and between the Company and the purchasers listed on the execution pages thereof (the "WARRANTS"). The Company further represents that no further stockholder approval is required, pursuant to Nasdaq rule or otherwise, for the issuance of all of the Securities as described in this Agreement, including without limitation, the issuance of the Conversion Shares upon conversion of the Preferred Shares.

4. COVENANTS.

(a Best Efforts. Each party shall use its best efforts timely to satisfy each of the conditions to be satisfied by it as provided in Sections 6 and 7 of this Agreement.

(b Blue Sky. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary to qualify the Securities for, or obtain exemption for the Securities for, sale to the Investors at the Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of any such action so taken to the Investors on or prior to the Closing Date. The Company shall make all filings and reports relating to the offer and sale of the Securities required under applicable securities or "Blue Sky" laws of the states of the United States following the Closing Date.

(c Reporting Status. Until the earlier of (i) the date which is one (1) year after the date as of which the Investors (as that term is defined in the Registration Rights Agreement) may sell all of the Conversion Shares without restriction pursuant to Rule 144(k) promulgated under the 1933 Act (or successor thereto); or (ii) the date on which (A) the Investors shall have sold all the Conversion Shares, and (B) none of the Preferred Shares is outstanding (the "REPORTING PERIOD"); the Company (I) shall file all reports required to be filed with the SEC pursuant to the 1934 Act, and (II) except as a result of a Major Transaction (as defined in the Certificate of Designations) (provided that the Company has complied with Sections 2(d)(iv) and 3(g) of the Certificate of Designations), shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would otherwise permit such termination.

(d Financial Information. The Company agrees to send the following to each Investor (as that term is defined in the Registration Rights Agreement) during the Reporting Period: (i) within two (2) business days after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K, its Quarterly Reports on Form 10-Q, any Current Reports on Form 8-K and any registration statements or amendments (other than on Form S-8) filed pursuant to the 1933 Act; (ii) using the Company's reasonable best efforts, on the same day as the release thereof, facsimile copies of all press releases issued by the Company or any of its Subsidiaries, and (iii) copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders.

(e Reservation of Shares. The Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than the greater of (I) the

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sum of (A) 200% of the number of shares of Common Stock needed to provide for the issuance of the Conversion Shares (without regard to any limitations on conversions) as of the Closing Date (based on the Conversion Price (as defined in the Certificate of Designations) on the Closing Date) plus (B) 7,000,000 additional shares of Common Stock (as adjusted for stock dividends, stock splits, stock combinations and similar transactions) and (II) 200% of the number of shares of Common Stock needed to provide for the issuance of the Conversion Shares (without regard to any limitations on conversions) , based on the then current Conversion Price.

(f) No Discounted Convertible Offerings. Notwithstanding any other provision of the Transaction Documents or the Certificate of Designations, until March 30, 2000, the Company will not, without the consent of Investors holding at least two-thirds (2/3) of the Preferred Shares then outstanding, offer or sell any securities convertible into or exercisable or exchangeable for Common Stock where the conversion, exercise and/or exchange price of such security is a function of or varies or may vary with or as a result of (other than upon stock splits, stock dividends and the like) (i) the market price of the underlying security at or during some period of time prior to such conversion or (ii) the price at which any holder of the underlying security sells that security on or about the date of such conversion, exercise or exchange.

(g) Listing. The Company shall promptly secure the listing of all of the Registrable Securities (as defined in the Registration Rights Agreement) upon each national securities exchange and automated quotation system (including The Nasdaq SmallCap Market and the Nasdaq National Market), if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of all Registrable Securities from time to time issuable under the terms of the Transaction Documents and the Certificate of Designations. The Company shall use its best efforts to maintain the Common Stock's authorization for listing on the Nasdaq National Market, AMEX or NYSE. Neither the Company nor any of its Subsidiaries shall take any action which would reasonably be expected to result in the delisting or suspension of the Common Stock on the Nasdaq National Market, AMEX or NYSE (other than to switch listings from the Nasdaq National Market to AMEX or NYSE or from AMEX to the Nasdaq National Market or NYSE). The Company shall promptly offer to provide to each Investor copies of any notices it receives from the Nasdaq National Market, AMEX or NYSE regarding the continued eligibility of the Common Stock for listing on such automated quotation system or securities exchange. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(g).

(h) Expenses. Subject to Section 9(l) below, following the Closing, the Company shall reimburse the Investors for the Investors' expenses (including attorneys' fees and expenses) in connection with negotiating and preparing the Transaction Documents and consummating the transactions contemplated thereby up to an aggregate of \$25,000.

(i) Transactions With Affiliates. So long as any Preferred Shares are outstanding the Company shall not, and shall cause each of its Subsidiaries not to, enter into, amend, modify or supplement, or permit any Subsidiary to enter into, amend, modify or supplement, any agreement, transaction, commitment or arrangement with any of its or any Subsidiary's officers, directors, persons who were officers or directors at any time during the previous two (2) years, stockholders who beneficially own 5% or more of the Common Stock, or affiliates or with any individual related by blood, marriage or adoption to any such individual or with any entity in which any such entity or

individual owns a 5% or more beneficial interest (each a "RELATED PARTY"), except for (a) customary employment arrangements and benefit programs on reasonable terms, (b) any agreement, transaction, commitment or arrangement on an arms-length basis on terms no less favorable than terms which would have been obtainable from a person other than such Related Party, or (c) any agreement, transaction, commitment or arrangement which is approved by a majority of the disinterested directors of the Company. For purposes hereof, any director who is also an officer of the Company or any Subsidiary of the Company shall not be a disinterested director with respect to any such agreement, transaction, commitment or arrangement. "AFFILIATE" for purposes hereof means, with respect to any person or entity, another person or entity that, directly or indirectly, (i) has a 5% or more equity interest in that person or entity, (ii) has 5% or more common ownership with that person or entity, (iii) controls that person or entity, or (iv) shares common control with that person or entity. "CONTROL" or "CONTROLS" for purposes hereof means that a person or entity has the power, direct or indirect, to conduct or govern the policies of another person or entity.

(j) Filing of Form 8-K. On or before the second business day following the Closing Date, the Company shall file a Form 8-K with the SEC describing the terms of the transaction contemplated by the Transaction Documents and consummated at the Closing, in the form required by the 1934 Act.

(k) Intentionally Left Blank.

(l) Right of First Refusal. Subject to the exceptions described below, the Company and its Subsidiaries shall not contract with any party for any (i) convertible securities (other than the Preferred Shares) that are convertible into or exchangeable for Common Stock at a price which may vary (including by way of periodic adjustments to a fixed conversion price) with the market price of the Common Stock (the formulation for such variable price being herein referred to as, the "VARIABLE PRICE"), (ii) shares of Common Stock issued at a price which is less than 93% of the Closing Bid Price on the issuance date of such shares, or (iii) convertible securities (other than the Preferred Shares) that are convertible into or exchangeable for Common Stock at a price which is less than 93% of the Closing Bid Price on the issuance date ("FUTURE OFFERINGS") during the period (the "RIGHT OF FIRST REFUSAL Period") beginning on the Closing Date and ending on and including the date which is 365 days after the date the Registration Statement (as defined in the Registration Rights Agreement) is declared effective by the SEC, unless it shall have first delivered to each Investor or a designee appointed by such Investor written notice (the "FUTURE OFFERING NOTICE") describing the proposed Future Offering, including the terms and conditions thereof, and providing each Investor an option to purchase up to its Aggregate Percentage (as defined below), as of the date of delivery of the Future Offering Notice, of the Future Offering (the limitations referred to in this sentence are collectively referred to as the "CAPITAL RAISING Limitation"). For purposes of this Section 4(l), "AGGREGATE PERCENTAGE" at any time with respect to any Investor shall mean the percentage obtained by dividing (i) the aggregate number of Preferred Shares received by such Investor at the Closing by (ii) the aggregate number of Preferred Shares received by all Investors at the Closing, provided, however, that an Investor's Aggregate Percentage will be reduced by and to the extent that such Investor exercised its rights to participate in such Future Offering pursuant to Section 4(m) of the Securities Purchase Agreement between the Company and the holders of the Series D Preferred Stock dated March 31, 1999. An Investor can exercise its option to participate in a Future Offering by delivering written notice thereof to participate to the Company within 10

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business days of receipt of a Future Offering Notice, which notice shall state the quantity of securities being offered in the Future Offering that such Investor will purchase, up to its Aggregate Percentage of the Future Offering, and that number of securities it is willing to purchase in excess of its Aggregate Percentage of the Future Offering. In the event that one or more Investors fail to elect to purchase up to each such Investor's Aggregate Percentage of the Future Offering, then each Investor which has indicated that it is willing to purchase a number of securities in excess of its Aggregate Percentage of the Future Offering shall be entitled to purchase its pro rata portion (determined in the same manner as described in the preceding sentence) of the securities in the Future Offering which one or more Investors have not elected to purchase. In the event the Investors fail to elect to fully participate in the Future Offering within the periods described in this Section 4(l), the Company shall have 45 days thereafter to sell the securities of the Future Offering that the Investors did not elect to purchase, upon terms and conditions (including the amount thereof), no more favorable to the purchasers thereof than specified in the Future Offering Notice. In the event the Company has not sold such securities of the Future Offering within such 45 day period, the Company shall not thereafter issue or sell such securities during the Right of First Refusal Period without first offering such securities to the Investors in the manner provided in this Section 4(l). The Capital Raising Limitation shall not apply to (i) a loan from a bank or institutional lender which does not have any equity feature other than warrants exercisable at an exercise price greater than 50% of the market price of the Common Stock at the time of such loan and exercisable for a number of shares of Common Stock which does not exceed the quotient of (I) 10% of the proceeds to the Company from such loan, divided by (II) the market price of the Common Stock at the time of such loan, (ii) any transaction involving the Company's issuances of securities (A) as consideration in a merger or consolidation, (B) in connection with any strategic partnership or joint venture (the primary purpose of which is not to raise equity capital), or (C) as consideration for the acquisition of a business, product or license or other assets by the Company, (iii) the issuance of Common Stock in a firm commitment, underwritten public offering, (iv) the issuance of securities upon exercise or conversion of the Company's options, warrants or other convertible securities outstanding as of the date hereof, (v) the grant of additional options or warrants, or the issuance of additional securities, under any contract, plan or agreement which has been approved by the board of

directors of the Company pursuant to which the Company's securities may be issued to any employee, officer, director, consultant or other service providers or (vi) the issuance of securities pursuant to an offering by the Company in reliance upon Rule 144A under the 1933 Act with proceeds to the Company of at least \$75,000,000. The Investors shall not be required to participate or exercise their right of first refusal with respect to a particular Future Offering in order to exercise their right of first refusal with respect to later Future Offerings.

(m Corporate Existence. So long as a Investor beneficially owns any Preferred Shares, the Company shall maintain its corporate existence and shall not sell all or substantially all of the Company's assets, except in the event of a merger or consolidation or sale of all or substantially all of the Company's assets, where the surviving or successor entity in such transaction (i) assumes the Company's obligations hereunder and under the agreements and instruments entered into in connection herewith and (ii) is a publicly traded corporation whose common stock is listed for trading on the Nasdaq National Market, NYSE or AMEX.

(n Rule 144. The Company shall not, directly or indirectly, dispute or otherwise interfere with any claim by a holder of Preferred Shares that such holder's holding period of any

Security for purposes of Rule 144 promulgated under the 1933 Act (or a successor rule thereto) ("RULE 144") relates back (i.e., tacks) to the holding period for the Series D Preferred Stock. The Company acknowledges and agrees that under Rule 144 and no-action letters issued by the SEC, such tacking is permitted.

5. TRANSFER AGENT INSTRUCTIONS.

The Company shall issue irrevocable instructions to its transfer agent, and any subsequent transfer agent, to issue certificates, registered in the name of each Investor or its respective nominee(s), for the Conversion Shares in such amounts as specified from time to time by each Investor to the Company upon conversion of the Preferred Shares (the "IRREVOCABLE TRANSFER AGENT INSTRUCTIONS"). Prior to registration of the Conversion Shares under the 1933 Act, all such certificates shall bear the restrictive legend specified in Section 2(d) of this Agreement. The Company warrants that no instruction other than the Irrevocable Transfer Agent Instructions and stop transfer instructions permitted by the Irrevocable Transfer Agent Instructions or to give effect to Section 2(c) (in the case of the Conversion Shares, prior to registration of the Conversion Shares under the 1933 Act) will be given by the Company to its transfer agent and that the Securities shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement and the Registration Rights Agreement. Nothing in this Section 5 shall affect in any way each Investor's obligations and agreements set forth in Section 2(d) to comply with all applicable prospectus delivery requirements, if any, upon resale of the Securities. If an Investor provides the Company with an opinion of counsel, in form and substance generally acceptable to the Company, that registration of resale by such Investor of any Securities is not required under the 1933 Act, the Company shall permit the transfer, and, in the case of the Conversion Shares promptly instruct its transfer agent to issue one or more certificates in such name and in such denominations as specified by such Investor and without any restrictive legends. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Investors by vitiating the intent and purpose of the transaction contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5 will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5, that the Investors shall be entitled, in addition to all other available remedies, to an injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO EXCHANGE.

The obligation of the Company hereunder to consummate the exchange as contemplated hereby at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Investor with prior written notice thereof:

(i Each Investor shall have executed each of this Agreement and the Registration Rights Agreement and delivered the same to the Company.

(ii) The Certificate of Designations shall have been filed with the Secretary of State of the State of Delaware.

(iii) Each Investor shall have delivered to the Company certificates representing that number of shares of Series D Preferred Stock being tendered by such Investor as set forth on the Schedule of Investors.

(iv) The representations and warranties of each Investor shall be true and correct as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date), and such Investor shall have performed, satisfied and complied with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by such Investor at or prior to the Closing Date.

7. CONDITIONS TO EACH INVESTOR'S OBLIGATION TO EXCHANGE.

The obligation of each Investor hereunder to consummate the exchange as contemplated hereby at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Investor's sole benefit and may be waived by such Investor at any time in its sole discretion:

(i) The Company shall have executed each of the Transaction Documents, and delivered the same to such Investor.

(ii) The Certificate of Designations shall have been filed with the Secretary of State of the State of Delaware, and a copy thereof certified by such Secretary of State shall have been delivered to such Investor.

(iii) The Common Stock shall be authorized for quotation on the Nasdaq National Market or listing on AMEX or NYSE, trading in the Common Stock issuable upon conversion of the Preferred Shares to be traded on the Nasdaq National Market, AMEX or NYSE shall not have been suspended by the SEC, The Nasdaq Stock Market, Inc., AMEX or NYSE and all of the Conversion Shares issuable upon conversion of the Preferred Shares to be exchanged at the Closing shall be listed upon the Nasdaq National Market, AMEX or NYSE.

(iv) The representations and warranties of the Company shall be true and correct as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date) and the Company shall have performed, satisfied and complied with the covenants, agreements and conditions required by the Transaction Documents or Certificate of Designations to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Investor shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Investor including, without limitation, an update as of the Closing Date regarding the representation contained in Section 3(c) above.

(v) Such Investor shall have received the opinion of Cooley Godward LLP, dated as of the Closing Date, in form, scope and substance reasonably satisfactory to such Investor and in substantially the form of Exhibit C attached hereto.

(vi) The Company shall have executed and delivered to such Investor the Stock Certificates (in such denominations as such Investor shall request) for the Preferred Shares.

(vii) The Board of Directors of the Company shall have adopted resolutions consistent with Section 3(b) (ii) above and in a form reasonably acceptable to such Investor (the "RESOLUTIONS").

(viii) As of the Closing Date, the Company shall have reserved out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Preferred Shares, at least that number

of shares of Common Stock required to be reserved by the Company pursuant to Section 4(e).

(ix The Irrevocable Transfer Agent Instructions, in the form of Exhibit D attached hereto, shall have been delivered to and acknowledged in writing by the Company's transfer agent.

(x The Company shall have delivered to such Investor a certificate evidencing the incorporation and good standing of the Company and each Subsidiary in such corporation's state of incorporation issued by the Secretary of State of such state of incorporation as of a date within ten days of the Closing Date.

(xi The Company shall have delivered to such Investor a secretary's certificate certifying as to (A) the Resolutions, (B) certified copies of its Certificate of Incorporation and (C) By-laws, each as in effect at the Closing.

(xii The Company shall have delivered to such Investor a certified copy of its Certificate of Incorporation as certified by the Secretary of State of the State of Delaware within ten days of the Closing Date.

(xiii The Company shall have delivered to such Investor a letter from the Company's transfer agent certifying the number of shares of Common Stock outstanding as of a date within five (5) days of the Closing Date.

(xiv No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction which prohibits or adversely affects any of the transactions contemplated by this Agreement, nor shall any proceeding have been commenced which may have the effect of prohibiting or adversely affecting any of the transactions contemplated by this Agreement.

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(xv The Company shall have delivered to such Investor such other documents relating to the transactions contemplated by the Transaction Documents as such Investor or its counsel may reasonably request.

8. INDEMNIFICATION. In consideration of each Investor's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents and the Certificate of Designations, the Company shall defend, protect, indemnify and hold harmless each Investor and each other holder of the Securities and all of their stockholders, officers, directors, employees and direct or indirect investors and any of the foregoing person's agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "INDEMNITEES") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "INDEMNIFIED LIABILITIES"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents or the Certificate of Designations or any other certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or the Certificate of Designations or any other certificate, instrument or document contemplated hereby or thereby, (c) any cause of action, suit or claim brought or made against such Indemnitee (other than a cause of action, suit or claim by another Investor) and arising out of or resulting from (i) the execution, delivery, performance, breach by the Company or enforcement of the Transaction Documents or the Certificate of Designations, or any other certificate, instrument or document contemplated hereby or thereby, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, excluding losses resulting solely from a decline in the market value of the Company's securities, or (iii) the status of such Investor or holder of the Securities as an investor in the Company. Notwithstanding the foregoing, Indemnified Liabilities shall not include any liability of any Indemnitee arising solely out of such Indemnitee's willful misconduct or fraudulent action(s). To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 8 shall

be the same as those set forth in Sections 6(a) and (d) of the Registration Rights Agreement, including, without limitation, those procedures with respect to the settlement of claims and Company's right to assume the defense of claims.

9. GOVERNING LAW; MISCELLANEOUS.

(a Governing Law; Jurisdiction; Jury Trial. The corporate laws of the State of Delaware shall govern all issues concerning the relative rights of the Company and its stockholders. All other questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and interpreted in accordance with the laws of the State of New York without regard to the principles of conflict of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of (i) the state and federal courts sitting in the City of New York,

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borough of Manhattan and (ii) the state and federal courts sitting in the State of California, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HERewith OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(b Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

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

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

(e Entire Agreement; Amendments. This Agreement supersedes all other prior oral or written agreements between the Investors, the Company, their affiliates and persons acting on their behalf with respect to the matters discussed herein, and this Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Investor makes any representation, warranty, covenant or undertaking with respect to such matters. The Warrants and the Securities Purchase Agreement dated March 30, 1999, by and among the Company and the Investors and certain other investors, shall remain in full force and effect with respect to the securities and transactions contemplated thereby. The Registration Rights Agreement dated March 30, 1999, by and among the Company and RGC International Investors, LDC ("RGC") and certain other investors, as amended, shall remain in full force and effect between RGC and the Company with respect to the transactions contemplated thereby. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the holders of at least two-thirds (2/3) of the Preferred Shares and the Conversion Shares held by holders or former holders of the Preferred Shares (determined on an as converted to Common Stock basis at the time of such determination) then outstanding, and no provision hereof may be waived other than by an

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instrument in writing signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Preferred Shares then outstanding. No consideration shall be offered or paid to any person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents or the Certificate of Designations unless the same consideration also is offered to all of the parties to the Transaction Documents or holders of the Preferred Shares, as the case may be.

(f Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) upon receipt, when delivered by a delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

General Magic, Inc.
420 N. Mary Avenue
Sunnyvale, California 94086
Telephone: (408) 774-4000
Facsimile: (408) 774-4033
Attention: President

With a copy to:

Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306
Telephone: (650)843-5000
Facsimile: (650)857-0663

Attention: Timothy J. Moore, Esq.

If to the Transfer Agent:

EquiServe LP
150 Royall Street
Canton, Massachusetts 06321
Telephone: (781) 575-0044
Facsimile: (781) 575-2549
Attention: Sandra Burgess

If to an Investor, to its address and facsimile number on the Schedule of Investors, with copies to such Investor's representatives as set forth on the Schedule of Investors. Each party shall provide five (5) days' prior written notice to the other party of any change in address or facsimile

number. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, overnight or courier delivery or transmission by facsimile in accordance with clause (i), (ii) or (iii) above, respectively.

(g Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Preferred Shares. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the holders of two-thirds (2/3) of the Preferred Shares then outstanding, including by merger or consolidation, except pursuant to a Major Transaction with respect to which the Company is in compliance with Sections 2(d) (iv) and 3 of the Certificate of Designations. A Investor may assign some or all of its rights hereunder without the consent of the Company; provided, however, that any such assignment shall not release such Investor from its obligations hereunder unless such obligations are assumed by such assignee and the Company has consented to such assignment and assumption. Notwithstanding anything to the contrary contained in the Transaction Documents, each Investor

shall be entitled to pledge the Securities in connection with a bona fide margin account.

(h No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

(i Survival. Unless this Agreement is terminated under Section 9(l), the representations and warranties of the Company and the Investors contained in Sections 2 and 3, the agreements and covenants set forth in Sections 4, 5 and 9, and the indemnification provisions set forth in Section 8, shall survive the Closing. Each Investor shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j Publicity. The Company and each Investor shall have the right to approve before issuance any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of any Investor, to make any press release or other public disclosure with respect to such transactions as is required by applicable law and regulations (although each Investor shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release and shall be provided with a copy thereof).

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

(l Termination. In the event that the Closing shall not have occurred with respect to a Investor on or before three (3) business days from the date hereof due to the Company's

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or such Investor's failure to satisfy the conditions set forth in Sections 6 and 7 above (and the nonbreaching party's failure to waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party; provided, however, that if this Agreement is terminated pursuant to this Section 9(l), the Company shall remain obligated to reimburse the Investors for expenses up to the amount described in Section 4(h), provided that no Investor has failed to satisfy the conditions set forth in Section 7.

(m Placement Agent. The Company acknowledges that it has not engaged a placement agent in connection with the exchange. The Company shall be responsible for the payment of any placement agent's fees or broker's commissions relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Investor harmless against, any liability, loss or expense (including, without limitation, attorneys' fees and out of pocket expenses) arising in connection with any such claim.

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

(o Remedies. Each Investor and each holder of Preferred Shares or Conversion Shares shall have all rights and remedies set forth in the Transaction Documents and the Certificate of Designations and all rights and remedies which such holders have been granted at any time under any other agreement or contract relating to the subject matter hereof and all of the rights which such holders have under any law. Any person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

(p Payment Set Aside. To the extent that the Company makes a payment or payments to the Investors hereunder or pursuant to the Certificate of Designations or the Investors enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other person under any law (including, without limitation, any

bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

* * * * *

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

COMPANY: INVESTORS:
GENERAL MAGIC, INC. HFTP INVESTMENT LLC
By: Promethean Asset Management, L.L.C.
Its: Investment Manager

By: _____

Name: _____
Its: By: _____
Name: James F. O'Brien, Jr.
Its: President

RGC INTERNATIONAL INVESTORS, LDC
By: Rose Glen Capital Management, L.P.
Its: Investment Manager

By: RGC General Partner Corp.
Its: General Partner

By: _____
Name: Wayne Bloch
Its: Managing Director

HALIFAX FUND, L.P.
By: The Palladin Group, L.P.
Its: Attorney-in-Fact

By: _____
Name: Robert Chender
Title: Managing Director

[PAGE 2 OF 3 OF THE EXCHANGE AGREEMENT SIGNATURE PAGES]

PALLADIN PARTNERS I, L.P.
By: Palladin Asset Management,
L.L.C.
Its: General Partner

By: _____
Name: Robert Chender
Title: Managing Director

PALLADIN OVERSEAS FUND
LIMITED
By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: _____
Name: Robert Chender

Title: Managing Director

THE GLENEAGLES FUND COMPANY

By: The Palladin Group L.P
Its: Attorney-in-Fact

By: _____
Name: Robert Chender
Title: Managing Director

LANCER SECURITIES LTD.

By: The Palladin Group L.P
Its: Attorney-in-Fact

By: _____
Name: Robert Chender
Title: Managing Director

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[PAGE 3 OF 3 OF THE EXCHANGE AGREEMENT SIGNATURE PAGES]

FISHER CAPITAL LTD.

By: _____
Name: Daniel Hopkins
Its: Authorized Signatory

WINGATE CAPITAL LTD.

By: _____
Name: Daniel Hopkins
Its: Authorized Signatory

CONSECO DIRECT LIFE

By: _____
Name:
Its:

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<TABLE>
<CAPTION>

SCHEDULE OF INVESTORS

INVESTOR NAME	INVESTOR ADDRESS AND FACSIMILE NUMBER	NUMBER OF SERIES D PREFERRED SHARES EXCHANGED	INVESTOR'S REPRESENTATIVES' ADDRESS AND FACSIMILE NUMBER
<S> HFTP Investment LLC	<C> Promethean Asset Management, L.L.C. 750 Lexington Avenue, 22nd Floor New York, New York 10022 Attn: James F. O'Brien, Jr. Facsimile: 212-758-9334 Telephone: 212-702-5200 Residence: New York	<C> 350	<C> Katten Muchin & Zavis 525 West Monroe, Suite 1600 Chicago, Illinois 60661-3693 Attn: Robert J. Brantman, Esq. Facsimile: 312-902-1061 Telephone: 312-902-5200
RGC International Investors, LDC	c/o Rose Glen Capital Management, L.P. 3 Bala Plaza East, Suite 200 Bala Cynwyd, Pennsylvania	125	Rose Glen Capital Management, L.P. 3 Bala Plaza East, Suite 200 Bala Cynwyd, Pennsylvania

Attn: Gary Kaminsky
Facsimile: 610-617-0570
Telephone: 610-617-5900

Attn: Gary Kaminsky
Facsimile: 610-617-0570
Telephone: 610-617-5900

Residence: Cayman Islands

Palladin Partners I, L.P.	c/o The Palladin Group L.P. 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420	17	The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420
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Residence: New York

Halifax Fund, L.P.	c/o Citco Fund Services (Cayman Islands) Ltd. Corporate Centre, West Bay Road P.O. Box 31106 SMB Grand Cayman, Cayman Islands Facsimile: 345-949-3877 Telephone: 345-949-3977	285	The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420
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Residence: Cayman Islands

The Gleneagles Fund Company	c/o Citco Fund Services (Cayman Islands) Ltd. Corporate Centre, West Bay Road P.O. Box 31106 SMB Grand Cayman, Cayman Islands Facsimile: 345-949-3877 Telephone: 345-949-3977	30	The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420
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Residence: Cayman Islands

Palladin Overseas Fund Limited	c/o Citco Fund Services (Cayman Islands) Ltd. Corporate Centre, West Bay Road P.O. Box 31106 SMB Grand Cayman, Cayman Islands Facsimile: 345-949-3877 Telephone: 345-949-3977	10	The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420
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Residence: Cayman Islands

Lancer Securities Ltd.
</TABLE>

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<TABLE>

<S>	<C> 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420 Residence: New York	<C> 10	<C> The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420
-----	--	-----------	---

Fisher Capital Ltd.	_Citadel Investment Group, L.L.C. 225 West Washington Street Chicago, Illinois 60606 Attention: Daniel Hopkins Kenneth A. Simpler Facsimile: (312) 338-0780 Telephone: (312) 338-7800	90	Katten Muchin & Zavis 525 W. Monroe Street Chicago, Illinois 60661-3693 Attention: Robert J. Brantman, Esq. Facsimile: (312) 902-1061 Telephone: (312) 902-5200
---------------------	---	----	--

Residence: Illinois

Wingate Capital Ltd.	_Citadel Investment Group, L.L.C. 225 West Washington Street	60	Katten Muchin & Zavis 525 W. Monroe Street
----------------------	---	----	---

Chicago, Illinois 60606
Attention: Daniel Hopkins
Kenneth A. Simpler
Facsimile: (312) 338-0780
Telephone: (312) 338-7800

Chicago, Illinois 60661-3693
Attention: Robert J. Brantman, Esq.
Facsimile: (312) 902-1061
Telephone: (312) 902-5200

Residence: Illinois

Conseco Direct Life

c/o The Palladin Group L.P.
195 Maplewood Avenue
Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

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The Palladin Group L.P.
As Investment Advisor
195 Maplewood Avenue
Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

Residence: New York

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LIST OF SCHEDULES

SCHEDULE 3(a) Subsidiaries
SCHEDULE 3(c) Capitalization
SCHEDULE 3(e) Conflicts
SCHEDULE 3(g) Material Changes
SCHEDULE 3(h) Litigation
SCHEDULE 3(n) Intellectual Property
SCHEDULE 3(p) Liens
SCHEDULE 3(u) Tax Status
SCHEDULE 3(v) Certain Transactions

LIST OF EXHIBITS

EXHIBIT A Form of Certificate of Designations, Preferences and Rights of
the Series F Preferred Stock
EXHIBIT B Form of Registration Rights Agreement
EXHIBIT C Form of Company Counsel Opinion
EXHIBIT D Form of Irrevocable Transfer Agent Instructions

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "AGREEMENT"), dated as of September 9, 1999, by and among GENERAL MAGIC, INC., a Delaware corporation, with headquarters located at 420 N. Mary Avenue, Sunnyvale, California 94086 (the "COMPANY"), and the undersigned Holders (each, a "HOLDER" and collectively, the "HOLDERS").

WHEREAS:

A. In connection with the Exchange Agreement by and among the parties of even date herewith (the "EXCHANGE AGREEMENT"), the Company has agreed, upon the terms and subject to the conditions of the Exchange Agreement, to exchange shares of the Company's Series D Convertible Preferred Stock (the "SERIES D PREFERRED SHARES"), which are convertible into shares of the Company's Common Stock, par value \$.001 per share (the "COMMON STOCK") (as converted and held by the Investors, the "SERIES D CONVERSION SHARES"), for shares of a newly created series of preferred stock designated Series F Convertible Preferred Stock (the "SERIES F PREFERRED SHARES"), which will be convertible into shares of the Company's Common Stock (as converted and held by the Investors, the "SERIES F CONVERSION SHARES"), in accordance with the terms of the Company's Certificate of Designations, Preferences and Rights of Series F Convertible Preferred Stock (the "CERTIFICATE OF DESIGNATIONS"); and

B. In connection with the Securities Purchase Agreement by and among the Company, the Holders and certain other signatories thereto, dated March 30, 1999 (the "SECURITIES PURCHASE AGREEMENT"), the Company agreed, among other things, to issue to the Holders warrants to acquire shares of Common Stock (as issued to a Holder, the "WARRANTS") (the shares of Common Stock issuable upon exercise of the Warrants are referred to herein as the "WARRANT SHARES"); and

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

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

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1. DEFINITIONS.

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

a. "INVESTOR" means a Holder and any transferee or assignee thereof to whom a Holder assigns its rights under this Agreement in accordance with Section 9 and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

b. "PERSON" means a corporation, a limited liability company, an association, a partnership, an organization, a business, an individual, a governmental or political subdivision thereof or a governmental agency.

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

d. "REGISTRABLE SECURITIES" means the Series D Conversion Shares, the Series F Conversion Shares and the Warrant Shares issued or issuable upon conversion of the Series D Preferred Shares or the Series F Preferred Shares or the exercise of the Warrants, as the case may be, the Registration Delay Payment Shares (as defined in Section 2(h)) and any shares of capital stock issued or

issuable with respect to the Series D Conversion Shares, the Series F Conversion Shares, the Series D Preferred Shares, the Series F Preferred Shares, the Warrant Shares, the Warrants or the Registration Delay Payment Shares as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, regardless of any limitation on conversions of Series D Preferred Shares or the Series F Preferred Shares or on exercise of the Warrants; provided, however, that the term Registrable Securities, Series D Conversion Shares and Warrant Shares shall not include any security which has been included on a Registration Statement that has been declared effective by the SEC and which was not filed pursuant to this Agreement.

e. "REGISTRATION STATEMENT" means a registration statement of the Company filed under the 1933 Act.

2. REGISTRATION.

a. Mandatory Registration. The Company shall prepare, and, as soon as practicable but in no event later than 60 days after the Issuance Date (as defined in the Certificate of Designations), file with the SEC a Registration Statement or Registration Statements (as is necessary) on Form S-3 (or, if such form is unavailable for such a registration, on such other form as is available for such a registration, subject to the consent of the Holders holding a majority of the Registrable Securities and the provisions of Section 2(c), which consent will not be unreasonably

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withheld), covering the resale of all of the Registrable Securities. Such Registration Statement shall initially register for resale a number of shares of Common Stock equal to at least 200% of the sum of the number of Series D Conversion Shares and the Series F Conversion Shares issued and issuable and 150% of the number of Warrant Shares issued and issuable as of the business day immediately preceding the date the Company files the Registration Statement (without regard to any limitations on conversions or exercises), subject to adjustment as provided in Section 3(b). Such registered shares of Common Stock shall be allocated among the Investors pro rata based on the total number of Registrable Securities issued or issuable as of each date that a Registration Statement, as amended, relating to the resale of the Registrable Securities is declared effective by the SEC. The Company shall use its best efforts to have the Registration Statement(s) declared effective by the SEC as soon as practicable, but in no event later than the Scheduled Effective Date (as defined in Section 2(h)).

b. Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and each increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time of such establishment or increase, as the case may be. In the event an Investor shall sell or otherwise transfer any of such holder's Registrable Securities, each transferee shall be allocated a pro rata portion of the then remaining number of Registrable Securities included in such Registration Statement for such transferor. Any shares of Common Stock included in a Registration Statement and which remain allocated to any person or entity which does not hold any Registrable Securities shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors. For the avoidance of doubt, the number of Registrable Securities held by any Investor shall be determined as if all Series D Preferred Shares, Series F Preferred Shares and Warrants then outstanding were converted into or exercised for Registrable Securities, without regard to any limitations on conversions or exercises.

c. Counsel. Subject to Section 5 hereof, in connection with any offering pursuant to this Section 2, the Investors shall have the right to select one legal counsel, which counsel shall be selected by the Investors holding a majority of the Registrable Securities. The Company shall reasonably cooperate with any such counsel.

d. Piggy-Back Registrations. If at any time prior to the expiration of the Registration Period (as hereinafter defined) the number of shares of Common Stock available for sale under an effective Registration Statement is insufficient to cover all of the Registrable Securities (in accordance with Section 3(b)) and the Company proposes to file with the SEC a Registration Statement relating to an offering for its own account or the account of others under the 1933 Act of any shares of Common Stock (other than on Form S-4 or Form S-8 or their then equivalents relating to securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans), the

Company shall promptly send to each Investor who is entitled to registration rights under this Section 2(d) written notice of the Company's intention to file a Registration Statement and of such Investor's rights under this Section 2(d) and, if within twenty (20) days after receipt of such notice, such

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Investor shall so request in writing, the Company shall include in such Registration Statement all or any part of the Registrable Securities such Investor requests to be registered, subject to the priorities set forth in Section 2(e) below. No right to registration of Registrable Securities under this Section 2(d) shall be construed to limit any registration required under Section 2(a). The obligations of the Company under this Section 2(d) may be waived by Investors holding a majority of the Registrable Securities. If an offering in connection with which an Investor is entitled to registration under this Section 2(d) is an underwritten offering, then each Investor whose Registrable Securities are included in such Registration Statement shall, unless otherwise agreed by the Company, offer and sell such Registrable Securities in an underwritten offering using the same underwriter or underwriters and, subject to the provisions of this Agreement, on the same terms and conditions as other shares of Common Stock included in such underwritten offering.

e. Priority in Piggy-Back Registration Rights in connection with Registrations for Company Account. If the registration referred to in Section 2(d) is to be an underwritten public offering and the managing underwriter(s) advise the Company in writing that, in their reasonable good faith opinion, marketing or other factors dictate that a limitation on the number of shares of Common Stock which may be included in the Registration Statement is necessary to facilitate and not adversely affect the proposed offering, then the Company shall include in such registration: (1) first, all securities the Company proposes to sell for its own account, (2) second, up to the full number of securities proposed to be registered for the account of the holders of securities entitled to inclusion of their securities in the Registration Statement by reason of demand registration rights, and (3) third, the securities requested to be registered by the Investors and other holders of securities entitled to participate in the registration, as of the date hereof, drawn from them pro rata based on the number each has requested to be included in such registration.

f. Eligibility for Form S-3. The Company represents and warrants that on the date hereof it currently meets the requirements for the use of Form S-3 for registration of the sale by the Investors of the Registrable Securities and the Company has filed all reports required to be filed by the Company with the SEC in a timely manner so as to obtain and maintain such eligibility for the use of Form S-3. The Company covenants that on and after the date hereof it will use its best efforts to meet the requirements for the use of Form S-3 for registration of the sale by the Investors of the Registrable Securities and shall file all reports required to be filed by the Company with the SEC in a timely manner so as to maintain such eligibility for the use of Form S-3. In the event that Form S-3 is not available for sale by the Investors of the Registrable Securities, then the Company (i) with the consent of the Investors holding a majority of the Registrable Securities pursuant to Section 2(a), shall register the sale of the Registrable Securities on another appropriate form, and (ii) the Company shall undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the SEC.

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g. Intentionally omitted.

h. Effect of Failure to Obtain and Maintain Effectiveness of Registration Statement. If (i) the Registration Statement is not declared effective by the SEC on or before the Scheduled Effective Date (as defined below); or (ii) after the Registration Statement has been declared effective by the SEC, sales cannot be made (other than on any days during any Allowable Grace Period (as defined in Section 3(f))) pursuant to the Registration Statement (whether because of a failure to keep the Registration Statement effective, to disclose such information as is necessary for sales to be made pursuant to the Registration Statement, to register sufficient shares of Common Stock or otherwise); then, as partial relief for the damages to any holder by reason of

any such delay in or reduction of its ability to sell any of the Registrable Securities (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to each holder of Series D Preferred Shares or Series F Preferred Shares an amount in cash per Series D Preferred Share and Series F Preferred Share held equal to the product of (i) \$10,000 multiplied by (ii) the sum of (A) .00033, for each day, up to and including the 30th day, that the Registration Statement is not declared effective by the SEC after the Scheduled Effective Date, plus, (B) beginning on and including the 31st day after the Scheduled Effective Date, .0005, for each day that the Registration Statement is not declared effective by the SEC after the 30th day after the Scheduled Effective Date, plus (C) the product of (I) .0005 multiplied by (II) the number of days after the date the Registration Statement has been declared effective by the SEC that the Registration Statement is not available (other than on any days during any Allowable Grace Period) for sales of at least all of the Registrable Securities. The payments to which a holder shall be entitled pursuant to this Section 2(h) are referred to herein as "REGISTRATION DELAY PAYMENTS." Registration Delay Payments shall be paid within five (5) business days of the earlier of (A) the first day of the month following the occurrence of the event resulting in the requirement to make Registration Delay Payments, or (B) the date on which the event resulting in the requirement to make Registration Delay Payments is cured. In the event the Company fails to make Registration Delay Payments in a timely manner, such Registration Delay Payments shall bear interest at the rate of 1.5% per month (or the maximum rate permitted by law), prorated for partial months, until paid in full. Registration Delay Payments, and any interest thereon, shall be paid in cash, unless an Investor elects to have such amounts included in the Additional Amount (as defined in the Certificate of Designations) by providing the Company written notice of such election at any time prior to the Company's payment of such amounts. If the Company fails to pay the Registration Delay Payments, including any interest thereon, within 15 business days of the applicable payment date, then the holder entitled to such payments shall have the right at any time, so long as the Company continues to fail to make such payments, to require the Company, upon written notice, to immediately issue, in lieu of the Registration Delay Payments, including any interest thereon, the number of shares of Common Stock (the "REGISTRATION DELAY PAYMENT SHARES") equal to the quotient of (X) the sum of the Registration Delay Payments and all interest accrued thereon, divided by (Y) the lowest Closing Bid Price on any day during the period beginning on and including the date the Registration Delay Payments were due and payable and ending on and including the date the holder delivers written notice to the Company of its election to receive shares of Common Stock in lieu of the Registration Delay Payments. "SCHEDULED EFFECTIVE DATE" means 120 days after the Issuance Date; provided, however, that if the Registration Statement could be declared effective on or prior to the Scheduled Effective Date but for the written objection (an "INVESTOR OBJECTION NOTICE") of one or more Investors to either (i) the inclusion or exclusion of

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language or statements in such Registration Statement which the SEC, pursuant to a comment letter addressed to the Company, is requiring the Company to include or exclude in such Registration Statement or (ii) a comment by the SEC, pursuant to a comment letter addressed to the Company, which relates to such Investor or effects such Investors' rights in the Registration Statement, then the Scheduled Effective Date, subject to Section 3(e), shall be extended with respect to only such Investor or Investors who have delivered an Investor Objection Notice to the later of 120 days after the Issuance Date or 3 business days after the Cure Date (as defined below).

3. RELATED OBLIGATIONS.

Whenever an Investor has requested that any Registrable Securities be registered pursuant to Section 2(d) or at such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2(a), the Company will use its best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

a. The Company shall promptly prepare and file with the SEC a Registration Statement with respect to the Registrable Securities (on or prior to the sixtieth day after the Issuance Date for the registration of Registrable Securities pursuant to Section 2(a)) and use its best efforts to cause such Registration Statement relating to the Registrable Securities to become effective as soon as possible after such filing (but in no event later than the Scheduled Effective Date applicable to the registration of such Registrable Securities pursuant to Section 2(a)), and keep such Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) the date as of which the Investors may sell all of the Registrable Securities without

restriction pursuant to Rule 144(k) promulgated under the 1933 Act (or successor thereto), or (ii) the date on which (A) the Investors shall have sold all the Registrable Securities and (B) none of the Series D Preferred Shares, Series F Preferred Shares or Warrants is outstanding (the "REGISTRATION PERIOD"), which Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading. The Company shall submit to the SEC, within three business days after the Company learns that no review of the Registration Statement will be made by the staff of the SEC or that the staff of the SEC has no further comments on the Registration Statement, as the case may be, a request for acceleration of effectiveness of the Registration Statement to a time and date not later than 48 hours after the submission of such request.

b. The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement. In the event the number of shares available under all Registration Statements filed pursuant to this Agreement is insufficient to cover all of the

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Registrable Securities, the Company shall amend the appropriate Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover all of the Registrable Securities for all Investors, in each case, as soon as practicable, but in any event within 15 days after the necessity therefore arises. The Company shall use its best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. For purposes of the foregoing provision, the number of shares available under all Registration Statements shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of Registrable Securities issued upon conversion of the Series D Preferred Shares or the Series F Preferred Shares or upon exercise of the Warrants or issuable upon conversion of the then outstanding Series D Preferred Shares or Series F Preferred Shares or upon exercise of the then outstanding Warrants is greater than the quotient determined by dividing (i) the number of shares of Common Stock available for resale under such Registration Statements by (ii) 1.5. For purposes of the calculation set forth in the foregoing sentence, any restrictions on the convertibility of the Series D Preferred Shares or the Series F Preferred Shares or on the exercisability of the Warrants shall be disregarded and such calculation shall assume that the Series D Preferred Shares, the Series F Preferred Shares and Warrants are then convertible and exercisable, respectively, into shares of Common Stock at the then prevailing Conversion Rate (as defined in the Certificate of Designations) or Warrant Exercise Price (as defined in the Warrants), as the case may be.

c. The Company shall furnish to each Investor whose Registrable Securities are included in any Registration Statement and its legal counsel without charge (i) promptly after the same is prepared and filed with the SEC at least one copy of such Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits, the prospectus included in such Registration Statement (including each preliminary prospectus) and, with regards to such Registration Statement(s), any correspondence by or on behalf of the Company to the SEC or the staff of the SEC (other than unredacted versions of supplemental correspondence for which confidential treatment has been requested) and any correspondence from the SEC or the staff of the SEC to the Company or its representatives, (ii) promptly after the effectiveness of any Registration Statement, ten copies of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request), and (iii) such other documents, including copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

d. The Company shall use reasonable efforts to (i) register and qualify, to the extent required under applicable law, the Registrable Securities covered by a Registration Statement under such other securities or "blue sky" laws of such jurisdictions in the United States as any Investor reasonably requests, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and

qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times

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during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

e. In the event that a Registration Statement could be declared effective but for the Investor Objection Notice of one or more Investors, then any Investor that has either (A) not given an Investor Objection Notice or (B) given an Investor Objection Notice which has subsequently been revoked may, upon written notification to the Company (the "EFFECTIVENESS NOTICE"), require the Company to cause the Registration Statement registering such Investor's Registrable Securities to be declared effective within five (5) business days of the Company's receipt of such Effectiveness Notice. The Company shall provide written notice (an "OPT-OUT NOTICE"), within one (1) business day of its receipt of an Effectiveness Notice from an Investor pursuant to this Section 3(e), to all other Investors that it has received an Effectiveness Notice. Each Investor within two (2) business days of its receipt of the Opt-Out Notice will provide written notice to the Company if it elects to opt-out of the current Registration Statement. If an Investor provides an Effectiveness Notice pursuant to this Section 3(e), then (i) the Company shall be obligated to amend the Registration Statement to remove each Investor who (A) provided an Investor Objection Notice and has not provided a written notice of the revocation of such Investor Objection Notice within two (2) business days of such Investor's receipt of an Opt-Out Notice or (B) elected to opt-out of such Registration Statement and (ii) the Scheduled Effective Date, for purposes of Section 2(h), as it applies to any Investor who has elected to opt-out of such Registration Statement shall be extended until such time as such Investor provides written notice to the Company to register such Investor's Registrable Securities, whereupon, the Company shall register such Investor's Registrable Securities in accordance with the terms of this Agreement (with the exception that the Company shall have 15 days after the receipt of such request to file such new Registration Statement and the Scheduled Effective Date for such Registration Statement will be the later of (i) 120 days after the Issuance Date and (ii) 60 days after the receipt of such written request). In the event that the Company is required to remove from any Registration Statement the Registrable Securities of those Investors who provided an Investor Objection Notice in order to comply with this Section 3(e), then on such date as the SEC no longer requires such language, statements or comments which were objected to in the Investor Objection Notice or such Investors, by written notification, waive their prior objection to such language, statements or comments (the "CURE DATE") the Company shall register such Investor's or Investors' Registrable Securities in accordance with the terms of this Agreement (with the exception that the Company shall have 15 days after the Cure Date to file such new Registration Statement and the Scheduled Effective Date for such Registration Statement will be the later of (i) 120 days after the Issuance Date or (ii) 60 days after the Cure Date). Any Registration Statement

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required pursuant to Section 2(a), 3(b) or 3(e) shall be deemed to constitute a "Registration Statement" for purposes of the Certificate of Designations, the Exchange Agreement and this Agreement.

f. As promptly as practicable after becoming aware of such event, the Company shall notify each Investor in writing of the happening of any event as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the

statements therein, in light of the circumstances under which they were made, not misleading, and promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver ten copies of such supplement or amendment to each Investor (or such other number of copies as such Investor may reasonably request). The Company shall also promptly notify each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to each Investor by facsimile on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate. Notwithstanding anything to the contrary in this Section 3(f), at any time after the Registration Statement has been declared effective, the Company may delay the disclosure of material non-public information concerning the Company, the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company and its counsel, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "GRACE PERIOD"); provided, that the Company shall promptly (I) notify the Investors in writing of the existence of (but in no event, without the prior written consent of an Investor, shall the Company disclose to such Investor any of the facts or circumstances regarding) material non-public information giving rise to a Grace Period and the date on which the Grace Period will begin, and (II) notify the Investors in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed 15 consecutive calendar days and during any consecutive 365-day period, the Grace Period shall not exceed 45 calendar days in the aggregate (an "ALLOWABLE GRACE PERIOD"). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date which is the later of the date specified in the notice or the date the holders receive the notice referred to in clause (I) and shall end on and include the date which is the later of the date specified in the notice or the date the holders receive the notice referred to in clause (II). The provisions of Section 2(h) of this Agreement shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Allowable Grace Period, the Company shall again be bound by the first sentence of this Section 3(f) with respect to the information giving rise thereto. In the event a Grace Period exceeds the Allowable Grace Period, the Maturity Date (as defined in the Certificate of Designations) shall be delayed one and one-half (1 1/2) days for each day in excess of the Allowable Grace Period as provided in Section 2(g) of the Certificate of Designations.

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g. The Company shall use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify each Investor who holds Registrable Securities being sold (and, in the event of an underwritten offering, the managing underwriters) of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

h. The Company shall permit each Investor and a single counsel, initially Katten Muchin & Zavis or such other counsel as thereafter designated as selling stockholders' counsel by the Investors who hold a majority of the Registrable Securities being sold, to review and comment upon a Registration Statement and all amendments and supplements thereto at least five business days prior to their filing with the SEC, and shall not file any document in a form to which such counsel reasonably objects. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto without the prior approval of such counsel, which consent shall not be unreasonably withheld.

i. At the request of any Investor and at such Investor's expense, the Company shall use its best efforts to furnish to such Investor, on the date of the effectiveness of the Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and the Investors and (ii) an opinion, dated as of such date, of independent counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the underwriters, if any, and the

Investors.

j. The Company shall make available for inspection by (i) any Investor, (ii) any underwriter participating in any disposition pursuant to a Registration Statement, (iii) one firm of attorneys and one firm of accountants or other agents retained by the Investors, and (iv) one firm of attorneys retained by all such underwriters (collectively, the "INSPECTORS") all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "RECORDS"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall hold in strict confidence and shall not make any disclosure (except to an Investor) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally

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available to the public other than by disclosure in violation of this or any other agreement of which the Inspector has knowledge. Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential.

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

l. The Company shall use its best efforts either to (i) cause all the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) secure designation and quotation of all the Registrable Securities covered by the Registration Statement on the Nasdaq SmallCap Market, or the Nasdaq National Market, The American Stock Exchange, Inc. or The New York Stock Exchange, Inc., as the case may be, and, without limiting the generality of the foregoing, to arrange for at least two market makers to register with the National Association of Securities Dealers, Inc. ("NASD") as such with respect to such Registrable Securities. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(1).

m. The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, any managing underwriter or underwriters, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the managing underwriter or underwriters, if any, or, if there is no managing underwriter or underwriters, the Investors may reasonably request and registered in such names as the managing underwriter or underwriters, if any, or the Investors may request.

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

o. The Company shall provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such Registration Statement.

p. If reasonably requested by the managing underwriters or an Investor, the Company shall (i) immediately incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriters and the Investors agree should be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being sold to such underwriters, the purchase price being paid therefor by such underwriters and any other terms of the underwritten (or best efforts underwritten) offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment as soon as notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make any reasonable amendments to any Registration Statement or the related prospectus if requested by an Investor or any underwriter of such Registrable Securities.

q. The Company shall use its best efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities during the Registration Period.

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

s. The Company shall otherwise use its best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

t. Within two (2) business days after the Registration Statement which includes the Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that the Registration Statement has been declared effective by the SEC in the form attached hereto as Exhibit A.

4. OBLIGATIONS OF THE INVESTORS.

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

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

c. In the event any Investor elects to participate in an underwritten public offering pursuant to Section 2, each such Investor agrees to enter into and perform such Investor's obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary

indemnification and contribution obligations (only with respect to violations which occur in reliance upon and in conformity with information furnished in writing to the Company by such Investor expressly for use in the Registration Statement for such underwritten public offering), with the managing underwriter of such offering and take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities, unless such Investor notifies the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

d. Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of Section 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(g) or the first sentence of Section 3(f), or until, in the case of a Grace Period, after the date on which the Allowable Grace Period ended.

e. No Investor may participate in any underwritten registration hereunder unless such Investor (i) agrees to sell such Investor's Registrable Securities on the basis provided in any underwriting arrangements approved by the Investors entitled hereunder to approve such arrangements, (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such

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underwriting arrangements, and (iii) agrees to pay its pro rata share of all underwriting discounts and commissions.

5. EXPENSES OF REGISTRATION.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company and fees and disbursements of one counsel for the Investors selected by the Investors holding a majority of the Registrable Securities, shall be paid by the Company.

6. INDEMNIFICATION.

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

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a. To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor who holds such Registrable Securities, the directors, officers, partners, employees, agents of, and each Person, if any, who controls, any Investor within the meaning of the 1933 Act or the Securities Exchange Act of 1934, as amended (the "1934 ACT"), and any underwriter (as defined in the 1933 Act) for the Investors, and the directors and officers of, and each Person, if any, who controls, any such underwriter within the meaning of the 1933 Act or the 1934 Act (each, an "INDEMNIFIED PERSON"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, attorneys' fees, amounts paid in settlement or expenses, joint or several, (collectively, "CLAIMS") incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("INDEMNIFIED DAMAGES"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("BLUE SKY FILING"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the

effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, or (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement (the matters in the foregoing clauses (i) through (iii) being, collectively, "VIOLATIONS"). Subject to the restrictions set forth in Section 6(d) with respect to the number of legal counsel, the Company shall reimburse each Indemnified Person promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by any Indemnified Person or underwriter for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto if such prospectus was timely made available by the Company pursuant to Section 3(c); (ii) with respect to any prospectus, shall not inure to the benefit of any Indemnified Person or any such person from whom the person asserting any such Claim purchased the Registrable Securities that are the subject thereof (or to the benefit of any person controlling such person) if the untrue statement or omission of material fact contained in the prospectus was corrected in a subsequent prospectus that was delivered to the Indemnified Person prior to the pertinent sale or sales by the Indemnified

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Person, and the Indemnified Person was promptly advised in writing not to use the incorrect prospectus prior to the use giving rise to a violation and such Indemnified Person, notwithstanding such advice, used it, (iii) shall not be available to the extent such Claim is based on a failure of the Investor to deliver or to cause to be delivered the prospectus made available by the Company; and (iv) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer or disposition of the Registrable Securities by the Investors.

b. In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers, each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (collectively and together with an Indemnified Person, an "INDEMNIFIED PARTY"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(d), such Investor will reimburse any legal or other expenses reasonably incurred by them promptly as such expenses are incurred and are due and payable in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld; provided, further, however, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(b) with respect to any prospectus shall not inure to the benefit of any Indemnified Party if the untrue statement or omission of material fact contained in the prospectus was corrected in a subsequent prospectus that was delivered to the purchaser or purchasers prior to the pertinent sale or sales by such Investors.

c. The Company shall be entitled to receive indemnities from underwriters, selling brokers, dealer managers and similar securities industry professionals participating in any distribution, to the same extent as provided above, with respect to information such persons so furnished in writing expressly for inclusion in the Registration Statement.

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d. Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel selected by the indemnifying party and approved by the Indemnified Person or the Indemnified Party, as the case may be, which approval shall not be unreasonably withheld; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. The indemnifying party shall pay for only one separate legal counsel for the Indemnified Persons or the Indemnified Parties, as applicable, and such counsel shall be selected by Investors holding a majority-in-interest of the Registrable Securities included in the Registration Statement to which the Claim relates, if the Investors are entitled to indemnification hereunder, or the Company, if the Company is entitled to indemnification hereunder, as applicable. The Indemnified Party or Indemnified Person shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all nonprivileged information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall, without the consent of the Indemnified Party or Indemnified Person (as the case may be), consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such claim or litigation. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is materially prejudiced in its ability to defend such action.

e. The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

f. The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the

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indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. CONTRIBUTION.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum

contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6; (ii) no seller of Registrable Securities guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities pursuant to the Registration Statement.

8. REPORTS UNDER THE 1934 ACT.

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

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

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

c. furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the investors to sell such securities pursuant to Rule 144 without registration.

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9. ASSIGNMENT OF REGISTRATION RIGHTS.

The rights under this Agreement shall be automatically assignable by the Investors to any transferee of all or any portion of Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company promptly after such assignment; (ii) the Company is promptly furnished with written notice of (a) the name, address and fax number of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act and applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein; and (v) such transfer shall have been made in accordance with the applicable requirements of the Exchange Agreement.

10. AMENDMENT OF REGISTRATION RIGHTS.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and Investors who hold two-thirds (2/3) of the Registrable Securities. Notwithstanding the above, the provisions of Sections 2(h), 3(e) and 10 hereof may only be amended or the observance thereof waived (either generally or in a particular instance and either retroactively or prospectively), only with the consent of the Company and each of the Investors. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Registrable Securities. No consideration shall be offered or paid to any person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

11. MISCELLANEOUS.

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

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b. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) upon receipt, when delivered by a delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

General Magic, Inc.
420 N. Mary Avenue
Sunnyvale, California 94086
Telephone: (408) 774-4000
Facsimile: (408) 774-4033
Attention: President

With a copy to:

Cooley, Godward LLP
Five Palo Alto Square
Palo Alto, California 94306
Telephone: (650) 843-5000
Facsimile: (650) 857-0663

Attention: Timothy J. Moore, Esq.

If to a Holder, to its address and facsimile number on the Schedule of Holders attached hereto, with copies to such Holder's representatives as set forth on the Schedule of Holders. Each party shall provide five (5) days' prior written notice to the other party of any change in address or facsimile number. If to another Investor, to its address and facsimile number set forth on the Notice of Transfer. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, overnight or courier delivery or transmission by facsimile in accordance with clause (i), (ii) or (iii) above, respectively.

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

d. The corporate laws of the State of Delaware shall govern all issues concerning the relative rights of the Company and its stockholders. All other questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and

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interpreted in accordance with the laws of the State of New York without regard to the principles of conflict of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of (i) the state and federal courts sitting in the City of New York, borough of Manhattan and (ii) the state and federal courts sitting in the State of California, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of

process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

e. This Agreement, the Exchange Agreement, the Certificate of Designations and the Warrants constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the Exchange Agreement, the Certificate of Designations and the Warrants supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

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

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

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

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

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j. All consents and other determinations to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by Investors holding a majority of the Registrable Securities, determined as if all of the Series D Preferred Shares, the Series F Preferred Shares and Warrants then outstanding have been converted into or exercised for, as the case may be, Registrable Securities (without regard to any limitations on conversions or exercises).

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

l. The Holders (other than RGC International Investors, LDC) and the Company agree to waive all of each party's rights, title and claims and the other's obligations under the Registration Rights Agreement by and among the Company, the Holders and certain other signatories thereto, dated March 30, 1999, as amended.

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IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be duly executed as of day and year first above written.

COMPANY:
GENERAL MAGIC, INC.

HOLDERS:
HFTP INVESTMENT LLC

By: _____

Name:
Its:

By: Promethean Asset Management, L.L.C.
Its: Investment Manager

By: _____

Name: James F. O'Brien, Jr.
Its: President

RGC INTERNATIONAL INVESTORS, LDC

By: Rose Glen Capital Management, L.P.
Its: Investment Manager

By: RGC General Partner Corp.
Its: General Partner

By: _____

Name: Wayne Bloch
Its: Managing Director

HALIFAX FUND, L.P.

By: The Palladin Group, L.P.
Its: Attorney-in-Fact

By: _____

Name: Robert Chender
Title: Managing Director

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PALLADIN PARTNERS I, L.P.

By: Palladin Asset Management, L.L.C.
Its: General Partner

By: _____

Name: Robert Chender
Title: Managing Director

PALLADIN OVERSEAS FUND LIMITED

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: _____

Name: Robert Chender
Title: Managing Director

THE GLENEAGLES FUND COMPANY

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: _____

Name: Robert Chender

Title: Managing Director

LANCER SECURITIES LTD.

By: The Palladin Group L.P
Its: Attorney-in-Fact

By: _____
Name: Robert Chender
Title: Managing Director

[PAGE 2 OF 3 OF REGISTRATION RIGHTS AGREEMENT SIGNATURE PAGES]

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FISHER CAPITAL LTD.

By: _____
Name: Daniel Hopkins
Its: Authorized Signatory

WINGATE CAPITAL LTD.

By: _____
Name: Daniel Hopkins
Its: Authorized Signatory

CONSECO DIRECT LIFE

By: _____
Name:
Its:

[PAGE 3 OF 3 OF REGISTRATION RIGHTS AGREEMENT SIGNATURE PAGES]

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SCHEDULE OF HOLDERS

<TABLE>
<CAPTION>

INVESTOR NAME	INVESTOR ADDRESS AND FACSIMILE NUMBER	INVESTOR'S REPRESENTATIVES' ADDRESS AND FACSIMILE NUMBER
<S> HFTP Investment LLC	<C> Promethean Asset Management, L.L.C. 750 Lexington Avenue, 22nd Floor New York, New York 10022 Attn: James F. O'Brien, Jr. Facsimile: 212-758-9334 Facsimile: 212-702-5200 Residence: New York	<C> Katten Muchin & Zavis 525 West Monroe, Suite 1600 Chicago, Illinois 60661-3693 Attn: Robert J. Brantman, Esq. Facsimile: 312-902-1061 Telephone: 312-902-5200
RGC International Investors, LDC	c/o Rose Glen Capital Management, L.P. 3 Bala Plaza East, Suite 200 Bala Cynwyd, Pennsylvania Attn: Gary Kaminsky	Rose Glen Capital Management, L.P. 3 Bala Plaza East, Suite 200 Bala Cynwyd, Pennsylvania Attn: Gary Kaminsky

Facsimile: 610-617-0570
Telephone: 610-617-5900
Residence: Cayman Islands

Facsimile: 610-617-0570
Telephone: 610-617-5900

Palladin Partners I, L.P.

c/o The Palladin Group L.P.
195 Maplewood Avenue
Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420
Residence: New York

The Palladin Group L.P.
As Investment Advisor
195 Maplewood Avenue
Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

Halifax Fund, L.P.

c/o Citco Fund Services (Cayman Islands) Ltd.
Corporate Centre, West Bay Road
P.O. Box 31106 SMB
Grand Cayman, Cayman Islands
Facsimile: 345-949-3877
Telephone: 345-949-3977
Residence: Cayman Islands

The Palladin Group L.P.
As Investment Advisor
195 Maplewood Avenue
Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

The Gleneagles Fund Company

c/o Citco Fund Services (Cayman Islands) Ltd.
Corporate Centre, West Bay Road
P.O. Box 31106 SMB
Grand Cayman, Cayman Islands
Facsimile: 345-949-3877
Telephone: 345-949-3977
Residence: Cayman Islands

The Palladin Group L.P.
As Investment Advisor
195 Maplewood Avenue
Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

Palladin Overseas Fund Limited

c/o Citco Fund Services (Cayman Islands) Ltd.
Corporate Centre, West Bay Road
P.O. Box 31106 SMB
Grand Cayman, Cayman Islands
Facsimile: 345-949-3877
Telephone: 345-949-3977
Residence: Cayman Islands

The Palladin Group L.P.
As Investment Advisor
195 Maplewood Avenue
Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

Lancer Securities Ltd.

c/o The Palladin Group L.P.
195 Maplewood Avenue
Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420
Residence: New York

The Palladin Group L.P.
As Investment Advisor
195 Maplewood Avenue
Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

</TABLE>

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<TABLE>
<CAPTION>

INVESTOR NAME	INVESTOR ADDRESS AND FACSIMILE NUMBER	INVESTOR'S REPRESENTATIVES' ADDRESS AND FACSIMILE NUMBER
<S> Fisher Capital Ltd.	<C> _Citadel Investment Group, L.L.C. 225 West Washington Street Chicago, Illinois 60606 Attention: Daniel Hopkins Kenneth A. Simpler Facsimile: (312) 338-0780 Telephone: (312) 338-7800 Residence: Illinois	<C> Katten Muchin & Zavis 525 W. Monroe Street Chicago, Illinois 60661-3693 Attention: Robert J. Brantman, Esq. Facsimile: (312) 902-1061 Telephone: (312) 902-5200
Wingate Capital Ltd.	_Citadel Investment Group, L.L.C. 225 West Washington Street Chicago, Illinois 60606 Attention: Daniel Hopkins Kenneth A. Simpler Facsimile: (312) 338-0780 Telephone: (312) 338-7800 Residence: Illinois	Katten Muchin & Zavis 525 W. Monroe Street Chicago, Illinois 60661-3693 Attention: Robert J. Brantman, Esq. Facsimile: (312) 902-1061 Telephone: (312) 902-5200
Conseco Direct Life	c/o The Palladin Group L.P. 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz	The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040

</TABLE>

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EXHIBIT A

FORM OF NOTICE OF EFFECTIVENESS
OF REGISTRATION STATEMENT

[TRANSFER AGENT]

Attn: _____

RE: GENERAL MAGIC, INC.

Ladies and Gentlemen:

We are counsel to GENERAL MAGIC, INC., a Delaware corporation (the "COMPANY"), and have represented the Company in connection with that certain Exchange Agreement (the "EXCHANGE AGREEMENT") entered into by and among the Company and the Holders named therein (collectively, the "HOLDERS") pursuant to which the Company issued to the Holders shares of its Series F Convertible Preferred Stock, par value \$.001 per share (the "PREFERRED SHARES") convertible into shares of the Company's common stock, par value \$.001 per share (the "COMMON STOCK"). Pursuant to the Exchange Agreement, the Company also has entered into a Registration Rights Agreement with the Holders (the "REGISTRATION RIGHTS AGREEMENT") pursuant to which the Company agreed, among other things, to register the Registrable Securities (as defined in the Registration Rights Agreement), including the shares of Common Stock issuable upon conversion of the Preferred Shares and the Company's Series D Convertible Preferred Stock held by the Holders and the exercise of certain warrants held by the Holders, under the Securities Act of 1933, as amended (the "1933 ACT"). In connection with the Company's obligations under the Registration Rights Agreement, on _____, 1999, the Company filed a Registration Statement on Form S-3 (File No. 333-_____) (the "REGISTRATION STATEMENT") with the Securities and Exchange Commission (the "SEC") relating to the Registrable Securities which names each of the Holders as a selling stockholder thereunder.

In connection with the foregoing, we advise you that a member of the SEC's staff has advised us by telephone that the SEC has entered an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS] and we have no knowledge as of the date hereof, after telephonic inquiry of a member of the SEC's staff, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC.

Very truly yours,

[COMPANY COUNSEL]

By: _____

cc: [LIST NAMES OF HOLDERS]

AMENDMENT #1 TO
REGISTRATION RIGHTS AGREEMENT

This Amendment (the "Amendment") to the Registration Rights Agreement, dated as of March 30, 1999 (the "Agreement"), by and among General Magic, Inc., a Delaware corporation (the "Company") and the undersigned buyers (the "Buyers"), is made as of June 25, 1999 among the Company and the Buyers.

RECITAL

WHEREAS, Section 3(a) of the Agreement provides that the Company shall use its best efforts to cause the Registration Statement (as defined in the Agreement) to become effective no later than June 28, 1999 (the "Effectiveness Deadline") and Section 2(h) of the Agreement provides that if the Registration Statement is not declared effective by the SEC by the Effectiveness Deadline, the Company must pay to each of the undersigned the Registration Delay Payments (as defined in the Agreement);

WHEREAS, the Registration Statement was filed on April 28, 1999 and the Securities and Exchange Commission (the "SEC") delivered a comment letter on the Registration Statement on June 2, 1999 (the "Comment Letter");

WHEREAS, the undersigned Buyers object to Comment #3 of the Comment Letter and acknowledge that such a position could delay the date of the effectiveness of the Registration Statement beyond June 28, 1999;

NOW, THEREFORE, in consideration of the foregoing:

1. WAIVER. Each of the undersigned Buyers hereby agrees to extend the Effectiveness Deadline to July 12, 1999 and waive any and all of its rights relating to a delay of the effectiveness of the Registration Statement prior to July 12, 1999. Each of the undersigned Buyers acknowledges that such rights include, without limitation, the right to receive Registration Delay Payments pursuant to Section 2(h) of the Agreement.

2. AMENDMENT TO THE AGREEMENT. The parties hereby agree that the Agreement shall be amended as follows:

2.1 Amendment to Section 2(a). The last sentence of Section 2(a) shall be deleted in its entirety and the following substituted in lieu thereof:

"The Company shall use its best efforts to have the Registration Statement(s) declared effective by the SEC as soon as practicable, but in no event later than July 12, 1999."

2.2 Amendment to clause (i) to Section 2(h). Clause (i) to Section 2(h) shall be deleted in its entirety and the following substituted in lieu thereof:

"(i) the Registration Statement is not declared effective by the SEC on or before July 12, 1999;"

3. MISCELLANEOUS.

3.1 Other Provisions. All other provisions of the Agreement shall remain in full force and effect.

3.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the undersigned has caused this amendment to be duly executed and delivered by its proper and duly authorized officers.

HFTP INVESTMENT LLC

By:Promethean Investment Group L.L.C.
Its:Investment Manager

By: /s/ John Floegel

Name: John Floegel
Its: Authorized Signatory

RGC INTERNATIONAL INVESTORS, LDC

By:Rose Glen Capital Management,L.P.
Its:Investment Advisor

By: RGC General Partner Corp.
Its: General Partner

By: /s/ Wayne Bloch

Name: Wayne Bloch
Its: Managing Director

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HALIFAX FUND, L.P.

By: The Palladin Group, L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

PALLADIN PARTNERS I, L.P.

By: Palladin Asset Management, L.L.C.
Its: General Partner

By: /s/ Robert Chender
Name: Robert Chender
Title: Managing Director

PALLADIN OVERSEAS FUND LIMITED

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

THE GLENEAGLES FUND COMPANY

By: The Palladin Group L.P.

Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

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CONSECO DIRECT LIFE

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

FISHER CAPITAL LTD.

By: /s/ Kenneth Simpler

Name: Kenneth Simpler
Title: Vice President

WINGATE CAPITAL LTD.

By: /s/ Kenneth Simpler

Name: Kenneth Simpler
Title: Vice President

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GENERAL MAGIC, INC.

By: /s/ James P. McCormick

Name: James P. McCormick
Title: Chief Operating Officer
and Chief Financial Officer

AMENDMENT #2 TO
REGISTRATION RIGHTS AGREEMENT

This Amendment #2 (the "Amendment") to the Registration Rights Agreement, dated as of March 30, 1999, by and among General Magic, Inc., a Delaware corporation (the "Company") and the undersigned buyers (the "Buyers"), as amended on June 25, 1999 (the "Agreement"), is made as of July 9, 1999 among the Company and the Buyers.

RECITAL

WHEREAS, Section 3(a) of the Agreement provides that the Company shall use its best efforts to cause the Registration Statement (as defined in the Agreement) to become effective no later than July 12, 1999 (the "Effectiveness Deadline") and Section 2(h) of the Agreement provides that if the Registration Statement is not declared effective by the SEC by the Effectiveness Deadline, the Company must pay to each of the undersigned the Registration Delay Payments (as defined in the Agreement);

WHEREAS, the Registration Statement was filed on April 28, 1999; the Securities and Exchange Commission (the "SEC") delivered a comment letter on the Registration Statement on June 2, 1999 (the "June 2 Comment Letter"); an Amendment #2 in response to the June 2 Comment Letter was filed on June 16, 1999; and the SEC delivered a subsequent comment letter on June 22, 1999 (the "June 22 Comment Letter");

WHEREAS, the undersigned Buyers objected to Comment #3 of the June 2 Comment Letter and Comment #1 to the June 22 Comment Letter and acknowledge that such a position could delay the date of the effectiveness of the Registration Statement beyond July 12, 1999;

NOW, THEREFORE, in consideration of the foregoing:

1. WAIVER. Each of the undersigned Buyers hereby agrees to extend the Effectiveness Deadline to July 26, 1999 and waive any and all of its rights relating to a delay of the effectiveness of the Registration Statement prior to July 26, 1999. Each of the undersigned Buyers acknowledges that such rights include, without limitation, the right to receive Registration Delay Payments pursuant to Section 2(h) of the Agreement.

2. AMENDMENT TO THE AGREEMENT. The parties hereby agree that the Agreement shall be amended as follows:

2.1 Amendment to Section 2(a). The last sentence of Section 2(a) shall be deleted in its entirety and the following substituted in lieu thereof:

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"The Company shall use its best efforts to have the Registration Statement(s) declared effective by the SEC as soon as practicable, but in no event later than July 26, 1999."

2.2 Amendment to clause (i) to Section 2(h). Clause (i) to Section 2(h) shall be deleted in its entirety and the following substituted in lieu thereof:

"(i) the Registration Statement is not declared effective by the SEC on or before July 26, 1999;"

3. MISCELLANEOUS.

3.1 Other Provisions. All other provisions of the Agreement shall remain in full force and effect.

3.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

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IN WITNESS WHEREOF, the undersigned has caused this amendment to be duly executed and delivered by its proper and duly authorized officers.

HFTP INVESTMENT LLC

By:Promethean Investment Group L.L.C.
Its:Investment Manager

By: /s/ James F. O'Brien

Name: James F. O'Brien, Jr.
Its: President

RGC INTERNATIONAL INVESTORS, LDC

By:Rose Glen Capital Management,L.P.
Its:Investment Advisor

By: RGC General Partner Corp.
Its: General Partner

By:

Name: Wayne Bloch
Its: Managing Director

[Amendment #2 to Registration Rights Agreement]

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HALIFAX FUND, L.P.

By: The Palladin Group, L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

PALLADIN PARTNERS I, L.P.

By:Palladin Asset Management, L.L.C.
Its:General Partner

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

PALLADIN OVERSEAS FUND LIMITED

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

THE GLENEAGLES FUND COMPANY

By: The Palladin Group L.P
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

[Amendment #2 to Registration Rights Agreement]

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CONSECO DIRECT LIFE

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

FISHER CAPITAL LTD.

By: /s/ Kenneth Simpler

Name: Kenneth Simpler
Title: Vice President

WINGATE CAPITAL LTD.

By: /s/ Kenneth Simpler

Name: Kenneth Simpler
Title: Vice President

[Amendment #2 to Registration Rights Agreement]

GENERAL MAGIC, INC.

By: /s/ James P. McCormick

Name: James P. McCormick
Title: Chief Operating Officer
and Chief Financial Officer

[Amendment #2 to Registration Rights Agreement]

AMENDMENT #3 TO
REGISTRATION RIGHTS AGREEMENT

This Amendment #3 (the "Amendment") to the Registration Rights Agreement, dated as of March 30, 1999, by and among General Magic, Inc., a Delaware corporation (the "Company") and the undersigned buyers (the "Buyers"), as amended on June 25, 1999 and July 9, 1999 (the "Agreement"), is made as of July 23, 1999 among the Company and the Buyers.

RECITAL

WHEREAS, Section 3(a) of the Agreement provides that the Company shall use its best efforts to cause the Registration Statement (as defined in the Agreement) to become effective no later than July 26, 1999 (the "Effectiveness Deadline") and Section 2(h) of the Agreement provides that if the Registration Statement is not declared effective by the SEC by the Effectiveness Deadline, the Company must pay to each of the undersigned the Registration Delay Payments (as defined in the Agreement);

WHEREAS, the Registration Statement was filed on April 28, 1999; the Securities and Exchange Commission (the "SEC") delivered a comment letter on the Registration Statement on June 2, 1999 (the "June 2 Comment Letter"); an Amendment #2 in response to the June 2 Comment Letter was filed on June 16, 1999; and the SEC delivered a subsequent comment letter on June 22, 1999 (the "June 22 Comment Letter");

WHEREAS, the undersigned Buyers (other than RGC International Investors, LDC) objected to Comment #3 of the June 2 Comment Letter and Comment #1 to the June 22 Comment Letter and acknowledge that such a position could delay the date of the effectiveness of the Registration Statement beyond July 26, 1999;

NOW, THEREFORE, in consideration of the foregoing:

1. WAIVER. Each of the undersigned Buyers hereby agrees to extend the Effectiveness Deadline to August 9, 1999 and waive any and all of its rights relating to a delay of the effectiveness of the Registration Statement prior to August 9, 1999. Each of the undersigned Buyers acknowledges that such rights include, without limitation, the right to receive Registration Delay Payments pursuant to Section 2(h) of the Agreement.

2. AMENDMENT TO THE AGREEMENT. The parties hereby agree that the

Agreement shall be amended as follows:

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2.1 Amendment to Section 2(a). The last sentence of Section 2(a) shall be deleted in its entirety and the following substituted in lieu thereof:

"The Company shall use its best efforts to have the Registration Statement(s) declared effective by the SEC as soon as practicable, but in no event later than August 9, 1999."

2.2 Amendment to clause (i) to Section 2(h). Clause (i) to Section 2(h) shall be deleted in its entirety and the following substituted in lieu thereof:

"(i) the Registration Statement is not declared effective by the SEC on or before August 9, 1999;"

3. MISCELLANEOUS.

3.1 Other Provisions. All other provisions of the Agreement shall remain in full force and effect.

3.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

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IN WITNESS WHEREOF, the undersigned has caused this amendment to be duly executed and delivered by its proper and duly authorized officers.

HFTP INVESTMENT LLC

By:Promethean Investment Group L.L.C.
Its:Investment Manager

By: /s/ James F. O'Brien

Name: James F. O'Brien, Jr.
Its: President

RGC INTERNATIONAL INVESTORS, LDC

By: Rose Glen Capital Management, L.P.
Its: Investment Manager

By: RGC General Partner Corp.
Its: General Partner

By: /s/ Wayne Bloch

Name: Wayne Bloch
Its: Managing Director

[Amendment #3 to Registration Rights Agreement]

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HALIFAX FUND, L.P.

By: The Palladin Group, L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

PALLADIN PARTNERS I, L.P.

By: Palladin Asset Management, L.L.C.
Its: General Partner

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

PALLADIN OVERSEAS FUND LIMITED

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

THE GLENEAGLES FUND COMPANY

By: The Palladin Group L.P
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

[Amendment #3 to Registration Rights Agreement]

5

CONSECO DIRECT LIFE

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

FISHER CAPITAL LTD.

By: /s/ Kenneth Simpler

Name: Kenneth Simpler
Title: Vice President

WINGATE CAPITAL LTD.

By: /s/ Kenneth Simpler

Name: Kenneth Simpler
Title: Vice President

[Amendment #3 to Registration Rights Agreement]

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GENERAL MAGIC, INC.

By: /s/ James P. McCormick

Name: James P. McCormick
Title: Chief Operating Officer
and Chief Financial Officer

[Amendment #3 to Registration Rights Agreement]

AMENDMENT #4 TO
REGISTRATION RIGHTS AGREEMENT

This Amendment #4 (the "Amendment") to the Registration Rights Agreement, dated as of March 30, 1999, by and among General Magic, Inc., a Delaware corporation (the "Company") and the undersigned buyers (the "Buyers"), as amended on June 25, 1999, July 9, 1999 and July 23, 1999 (the "Agreement"), is made as of August 6, 1999 among the Company and the Buyers.

RECITAL

WHEREAS, Section 3(a) of the Agreement provides that the Company shall use its best efforts to cause the Registration Statement (as defined in the Agreement) to become effective no later than August 9, 1999 (the "Effectiveness Deadline") and Section 2(h) of the Agreement provides that if the Registration Statement is not declared effective by the SEC by the Effectiveness Deadline, the Company must pay to each of the undersigned the Registration Delay Payments (as defined in the Agreement);

WHEREAS, the Registration Statement was filed on April 28, 1999; the Securities and Exchange Commission (the "SEC") delivered a comment letter on the Registration Statement on June 2, 1999 (the "June 2 Comment Letter"); an Amendment #2 in response to the June 2 Comment Letter was filed on June 16, 1999; and the SEC delivered a subsequent comment letter on June 22, 1999 (the "June 22 Comment Letter");

WHEREAS, the undersigned Buyers objected to Comment #3 of the June 2 Comment Letter and Comment #1 to the June 22 Comment Letter and acknowledge that such a position could delay the date of the effectiveness of the Registration Statement beyond August 9, 1999;

NOW, THEREFORE, in consideration of the foregoing:

1. WAIVER. Each of the undersigned Buyers hereby agrees to extend the Effectiveness Deadline to August 23, 1999 and waive any and all of its rights relating to a delay of the effectiveness of the Registration Statement prior to August 23, 1999. Each of the undersigned Buyers acknowledges that such rights include, without limitation, the right to receive Registration Delay Payments pursuant to Section 2(h) of the Agreement.

2. AMENDMENT TO THE AGREEMENT. The parties hereby agree that the Agreement shall be amended as follows:

2.1 Amendment to Section 2(a). The last sentence of Section 2(a) shall be deleted in its entirety and the following substituted in lieu thereof:

2

"The Company shall use its best efforts to have the Registration Statement(s) declared effective by the SEC as soon as practicable, but in no event later than August 23, 1999."

2.2 Amendment to clause (i) to Section 2(h). Clause (i) to Section 2(h) shall be deleted in its entirety and the following substituted in lieu thereof:

"(i) the Registration Statement is not declared effective by the SEC on or before August 23, 1999 (the "SCHEDULED EFFECTIVE DATE");"

3. MISCELLANEOUS.

3.1 Other Provisions. All other provisions of the Agreement shall remain in full force and effect.

3.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

3

IN WITNESS WHEREOF, the undersigned has caused this amendment to be duly executed and delivered by its proper and duly authorized officers.

HFTP INVESTMENT LLC

By: Promethean Investment Group L.L.C.
Its: Investment Manager

By: /s/ James F. O'Brien

Name: James F. O'Brien, Jr.
Its: President

RGC INTERNATIONAL INVESTORS, LDC

By: Rose Glen Capital Management, L.P.
Its: Investment Advisor

By: RGC General Partner Corp.
Its: General Partner

By: /s/ Wayne Bloch

Name: Wayne Bloch
Its: Managing Director

[Amendment #4 to Registration Rights Agreement]

4

HALIFAX FUND, L.P.

By: The Palladin Group, L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

PALLADIN PARTNERS I, L.P.

By: Palladin Asset Management, L.L.C.
Its: General Partner

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

PALLADIN OVERSEAS FUND LIMITED

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender

Title: Managing Director

THE GLENEAGLES FUND COMPANY

By: The Palladin Group L.P
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

[Amendment #4 to Registration Rights Agreement]

5

CONSECO DIRECT LIFE

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: /s/ Robert Chender

Name: Robert Chender
Title: Managing Director

FISHER CAPITAL LTD.

By: /s/ Kenneth Simpler

Name: Kenneth Simpler
Title: Vice President

WINGATE CAPITAL LTD.

By: /s/ Kenneth Simpler

Name: Kenneth Simpler
Title: Vice President

GENERAL MAGIC, INC.

By: /s/ James P. McCormick

Name: James P. McCormick

Title: Chief Operating Officer and
Chief Financial Officer

WAIVER AGREEMENT

This Waiver Agreement (the "Agreement") is made and entered into as of September 9, 1999, by and among General Magic, Inc., a Delaware corporation (the "Company") and the stockholders listed on the Schedule of Stockholders attached hereto (each a "Stockholder," and collectively, the "Stockholders"), which include all of holders of the issued and outstanding shares of the Series D Convertible Preferred Stock of the Company (the "Series D Stock").

WHEREAS, as of March 30, 1999, the Company issued and sold to the Stockholders a total of 2,000 shares of its Series D Stock pursuant to a Securities Purchase Agreement, dated as of March 30, 1999, by and among the Company and the Stockholders (the "Series D Agreement") and in connection therewith the Company filed a Certificate of Designations, Preferences and Rights with respect to the Series D Stock with the Secretary of State of Delaware (the "Series D COD").

WHEREAS, pursuant to an Exchange Agreement, dated as of the date hereof, by and among the Company and certain of the Stockholders (the "Exchange Agreement"), the Company has offered and certain of the Stockholders have agreed to exchange an aggregate of 1,000 shares of the Series D Stock for the Company's Series F Convertible Preferred Stock (the "Series F Stock") on a share for share basis.

WHEREAS, the Stockholders desire to waive their rights under Sections 2(d) (i) and 2(d) (iii) of the Series D COD, Section 4(g) and 4(m) of the Series D Agreement, Section 8(a) of the warrants issued in connection with the Series C Convertible Preferred Stock (the "Series C Warrants") and Section 8(a) of the warrants issued in connection with the Series D Stock (the "Series D Warrants" and collectively with the Series C Warrants, the "Warrants") with respect to the issuance of the Series F Stock in connection with the Exchange Agreement;

WHEREAS, the Stockholders desire to waive certain rights under Sections 3(d) (i) and 3(h) (i) of the Series D COD;

WHEREAS, the Stockholders (other than RGC International Investors, LDC ("RGC")) desire to waive all rights relating to the Registration Rights Agreement, dated as of March 30, 1999, by and among certain of the Stockholders and the Company, as amended (the "Series D Registration Rights Agreement") under the Series D COD;

WHEREAS, the Stockholders desire to waive their rights under Section 2(d) (i) of the Series D COD, Section 8(a) of the Series C Warrants and Section 8(a) of the Series D Warrants with respect to the issuance of Common Stock under that certain Common Stock Investment Agreement, dated as of July 30, 1999, by and between the Company and Cripple Creek Securities, LLC., as in effect on July 30, 1999 (the "Investment Agreement"), provided there are no amendments or waivers of provisions thereof (i) relating to (A) the aggregate dollar amount of the shares of Common Stock issuable under the Investment Agreement, (B) the per share purchase price or the \$2.00 per share minimum purchase price or (C) additional consideration to be received or costs or expenses recoverable by the Investor thereunder or (ii) which would result in a larger number of shares of Common Stock being issued or available for issuance under

the Investment Agreement than was contemplated on July 30, 1999 by the Investment Agreement (collectively, the "Prohibited Amendments or Waivers").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Agreement Upon Transfer; Legend.

(a) Each Stockholder agrees not to transfer, sell or exchange (collectively, "Transfer") any shares of Series D Stock (other than the exchange for Series F Stock pursuant to the Exchange Agreement) or the Warrants to any transferee unless such transferee agrees in writing to be bound by the terms and provisions of this Agreement.

(b) Each certificate representing any shares of Series D Stock or any Warrants shall be endorsed by the Company with a legend reading substantially as follows:

THE SECURITIES EVIDENCED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AS SET FORTH IN A WAIVER AGREEMENT, DATED SEPTEMBER 9, 1999, AS IT MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER. NO REGISTRATION OR TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE ISSUER UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH.

2. Rights Under the Series D COD.

(a) Each Stockholder agrees that the issuance of the Series F Stock as contemplated by the Exchange Agreement and any issuance of Common Stock under the Investment Agreement, provided there are no Prohibited Amendments or Waivers, shall not result in any adjustment to the Fixed Conversion Price (as defined in the Series D COD). Each Stockholder agrees to waive any and all rights under Section 2(d)(i) of the Series D COD with respect to the issuance of the Series F Stock and the issuance of the Common Stock under the Investment Agreement, provided there are no Prohibited Amendments or Waivers.

(b) Each Stockholder agrees that the Ratchet Date, as defined in Section 2(d)(i)(A) of the Series D COD, shall be the earlier of (i) the date on which an aggregate of at least 600 Preferred Shares (as defined in the Series D COD) have been converted pursuant to Section 2 of the Series D COD and (ii) the date which is one year after the date the Registration Statement (as defined by and filed pursuant to the Registration Rights Agreement dated September 9, 1999 by and among certain of the Stockholders and the Company (the "Series F Registration Rights Agreement")) is declared effective by the SEC.

(c) Each Stockholder agrees not to exercise its rights under Section 2(d)(iii) of the Series D COD with respect to the issuance of the Series F Stock and agrees to waive any and

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all its rights under Section 2(d)(iii) of the Series D COD with respect to issuance of the Series F Stock.

(d) Each Stockholder (other than RGC as to the shares of Common Stock issuable upon conversion of the Series D Stock not exchanged by RGC pursuant to the Exchange Agreement) agrees that the failure of the Registration Statement (as defined in the Series D COD) to be declared effective within 180 days after the Issuance Date (as defined in the Series D COD) shall not constitute a Triggering Event (as defined in the Series D COD) under Section 3(d)(i) of the Series D COD or an Excluded Redemption Event (as defined in the Series D COD) under Section 3(h)(i) of the Series D COD and agrees to waive any and all rights relating to the failure of such Registration Statement to be declared effective within such time period, but only to the extent that the following proviso is enforceable against the Company; provided, however, that the Company agrees that a Triggering Event (as defined in the Certificate of Designations, Preferences and Rights of the Series F Stock (the "Series F COD")) under Section 3(d)(i) of the Series F COD shall constitute a Triggering Event under Section 3(d)(i) of the Series D COD as of the date of such Triggering Event under the Series F COD and an Excluded Redemption Event (as defined in the Series F COD) under Section 3(h)(i) of the Series F COD shall constitute an Excluded Redemption Event under Section 3(h)(i) of the Series D COD as of the date of such Excluded Redemption Event under the Series F COD.

(e) Each Stockholder (other than RGC as to the shares of Common Stock issuable upon conversion of the Series D Stock not exchanged by RGC pursuant to the Exchange Agreement) agrees that the lapses for any reason in the effectiveness of or the unavailability of a Registration Statement (as defined in the Series D COD) shall not constitute a Triggering Event (as defined in the Series D COD) under Section 3(d)(ii) of the Series D COD or an Excluded Redemption Event (as defined in the Series D COD) under Section 3(h)(ii) of the Series D COD and agrees to waive any and all rights relating to the lapses for any reason in the effectiveness of or the unavailability of such Registration Statement (but only to the extent that the following proviso is enforceable against the Company); provided, however, that the Company agrees that a Triggering Event (as defined in the Series F COD) under Section 3(d)(ii) of the Series F COD shall constitute a Triggering Event (as defined in the Series D COD) under Section 3(d)(ii) of the Series D COD as of the date of such Triggering Event under the Series F COD and an Excluded Redemption Event (as defined in the Series F COD) under Section 3(h)(ii) of the Series F COD shall

constitute an Excluded Redemption Event (as defined in the Series D COD) under Section 3(h)(ii) of the Series D COD as of the date of such Excluded Redemption Event under the Series F COD.

(f) Each Stockholder (other than RGC as to the shares of Common Stock issuable upon conversion of the Series D Stock not exchanged by RGC pursuant to the Exchange Agreement) agrees to waive all rights to an extension to the Maturity Date (as defined by the Series D COD) pursuant to Section 2(g) of the Series D COD (but only to the extent that the following proviso is enforceable against the Company); provided, however, that the Company agrees that an extension to the Maturity Date (as defined in the Series F COD) pursuant to Section 2(g) of the Series F COD shall result in an equivalent extension to the Maturity Date (as defined by the Series D COD) under Section 2(g) of the Series D COD.

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(g) Each Stockholder (other than RGC as to the shares of Common Stock issuable upon conversion of the Series D Stock not exchanged by RGC pursuant to the Exchange Agreement) agrees to waive all rights pursuant to Section 5(i) of the Series D COD (but only to the extent that the following proviso is enforceable against the Company); provided, however, that the Company agrees that it will not exercise its rights under Section 5 of the Series D COD unless on each day during the period beginning 60 trading days prior to the Company's Election Conversion Date (as defined in the Series D COD) and ending on and including the Company's Election Conversion Date (as defined in the Series D COD), no Grace Period (as defined in Section 3(f) of the Series F Registration Rights Agreement) shall be in effect and the Registration Statement (as defined in the Series F Registration Rights Agreement) shall have been effective and available for the sale of no less than 125% of the Registrable Securities (as defined in the Series F Registration Rights Agreement).

(h) Each Stockholder (other than RGC as to the shares of Common Stock issuable upon conversion of the Series D Stock not exchanged by RGC pursuant to the Exchange Agreement) agrees to waive all rights pursuant to Section 7(i) of the Series D COD (but only to the extent that the following proviso is enforceable against the Company); provided, however, that the Company agrees that it will not exercise its rights under Section 7 of the Series D COD unless on each day during the period beginning 20 trading days prior to the Company's Reset Redemption Date (as defined in the Series D COD) and ending on and including the Company's Reset Redemption Date (as defined in the Series D COD), no Grace Period (as defined in Section 3(f) of the Series F Registration Rights Agreement) shall be in effect and the Registration Statement (as defined in the Series F Registration Rights Agreement) shall have been effective and available for the sale of no less than 125% of the Registrable Securities (as defined in the Series F Registration Rights Agreement).

(i) The Company and each Stockholder (other than RGC as to the shares of Common Stock issuable upon conversion of the Series D Stock not exchanged by RGC pursuant to the Exchange Agreement) agree that (I) the term "Registration Rights Agreement" as such term is used in Sections 2(b)(xvi), 3(d)(vii), 3(g), 5(v), 6 and 7(iv) of the Series D COD shall mean and refer to the Series F Registration Rights Agreement; (II) the term "Registration Statement" as such term is used in Sections 3(i)(i), 3(i)(ii), 4(a) and 6 of the Series D COD shall mean and refer to the Registration Statement (as defined in the Series F Registration Rights Agreement); and (III) the term "Registrable Securities" as such term is used in Sections 3(i)(ii) and 6 of the Series D COD shall mean and refer to the Registrable Securities (as defined in the Series F Registration Rights Agreement).

3. Rights under Series D Agreement.

(a) Each of the Stockholders consents, under Section 4(g) of the Series D Agreement, to the issuance of the Series F Stock as contemplated by the Exchange Agreement.

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(b) Each of the Stockholders agrees to waive any and all its rights under Section 4(m) of the Series D Agreement with respect to the issuance of the Series F Stock as contemplated by the Exchange Agreement.

4. Rights under Series C Warrants and Series D Warrants.

(a) Each Stockholder agrees to exclude the issuance of the Series F Stock as contemplated by the Exchange Agreement and any issuance of Common Stock

under the Investment Agreement, assuming there are no Prohibited Amendments or Waivers, from Section 8(a) of the Series C Warrants and agrees that such issuances shall not result in any adjustment to the Warrant Exercise Price (as defined in the Series C Warrants). Each Stockholder agrees to waive any and all rights under Section 8(a) of the Series C Warrants with respect to the issuance of the Series F Stock and the Common Stock under the Investment Agreement, assuming there are no Prohibited Amendments or Waivers.

(b) Each Stockholder agrees to exclude the issuance of the Series F Stock as contemplated by the Exchange Agreement and any issuance of Common Stock under the Investment Agreement, assuming there are no Prohibited Amendments or Waivers, from Section 8(a) of the Series D Warrants and agrees that such issuances shall not result in any adjustment to the Warrant Exercise Price (as defined in the Series D Warrants). Each Stockholder agrees to waive any and all rights under Section 8(a) of the Series D Warrants with respect to the issuance of the Series F Stock and the Common Stock under the Investment Agreement, assuming there are no Prohibited Amendments or Waivers.

5. Governing Law; Miscellaneous.

(a) Governing Law; Jurisdiction; Jury Trial. The corporate laws of the State of Delaware shall govern all issues concerning the relative rights of the Company and its stockholders. All other questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and interpreted in accordance with the laws of the State of New York without regard to the principles of conflict of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of (i) the state and federal courts sitting in the City of New York, borough of Manhattan and (ii) the state and federal courts sitting in the State of California, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

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(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(e) Entire Agreement; Amendments. This Agreement supersedes all other prior oral or written agreements between the Stockholders, the Company, their affiliates and persons acting on their behalf with respect to the matters discussed herein, and, except as specifically set forth herein, neither the Company nor any Stockholder makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and holders of the Series D Stock, the Series F Stock and the Warrants representing at least 2/3 of the shares of the Common Stock issuable upon conversion or exercise of the Series D Stock, the Series F Stock and the Warrants held by the Stockholders (determined on an as converted to Common Stock basis at the time of such determination, without regard to any limitations on conversions or exercises), and no provision hereof may be waived other than by an instrument in writing

signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Series D Stock, the Series F Stock and the Warrants then outstanding. No consideration shall be offered or paid to any person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement or holders of the Series D Stock, the Series F Stock and the Warrants. Notwithstanding the foregoing, this last sentence of this Section 5(e) and the provisions relating to RGC in Sections 2(d), 2(e), 2(f), 2(g), 2(h) and 2(i) shall not be deleted or otherwise amended without the written consent of RGC.

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(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) upon receipt, when delivered by a delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

General Magic, Inc.
420 N. Mary Avenue
Sunnyvale, California 94086
Telephone:(408) 774-4000
Facsimile:(408) 774-4033
Attention:President

With a copy to:

Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306
Telephone:(650)843-5000
Facsimile:(650)857-0663
Attention: Timothy J. Moore, Esq.

If to a Stockholder, to its address and facsimile number on the Schedule of Stockholders, with copies to such Stockholder's representatives as set forth on the Schedule of Stockholders. Each party shall provide five (5) days' prior written notice to the other party of any change in address or facsimile number. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, overnight or courier delivery or transmission by facsimile in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the holders of the Series D Stock, the Series F Stock and the Warrants representing at least two-thirds (2/3) of Common Stock issuable upon conversion or exercise of the Series D Stock, the Series F Stock and the Warrants held by the Stockholders (determined on an as converted to Common Stock basis at the time of such determination, without regard to any limitations on conversions or exercises), including by merger or consolidation, except pursuant to a Major Transaction with respect to which the Company is in compliance with Sections 2(d) (iv) and 3 of the Series D COD.

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(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

(i) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as

the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

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

(k) Remedies. Each Stockholder and each holder of the Series D Stock shall have all rights and remedies set forth in this Agreement and all rights and remedies which such holders have been granted at any time under any other agreement or contract relating to the subject matter hereof and all of the rights which such holders have under any law. Any person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

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

COMPANY:

INVESTORS:

GENERAL MAGIC, INC.

HFTP INVESTMENT LLC

By: Promethean Asset Management, L.L.C.
Its: Investment Manager

By:

Name: Steven Markman
Its: Chief Executive Officer and
President

By: -----
Name: James F. O'Brien, Jr.
Its: President

THEMIS PARTNERS L.P.

By: Promethean Asset Management, L.L.C.
Its: General Partner

By: -----
Name: James F. O'Brien, Jr.
Its: President

HERACLES FUND

By: Promethean Asset Management, L.L.C.
Its: Investment Advisor

By: -----
Name: James F. O'Brien, Jr.
Its: President

RGC INTERNATIONAL INVESTORS, LDC

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

By: -----
Name: Steven Katznelson

Its: Managing Director

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HALIFAX FUND, L.P.

By: The Palladin Group, L.P.
Its: Attorney-in-Fact

By: _____
Name: Robert Chender
Title: Managing Director

PALLADIN PARTNERS I, L.P.

By: Palladin Asset Management, L.L.C.
Its: General Partner

By: _____
Name: Robert Chender
Title: Managing Director

PALLADIN OVERSEAS FUND LIMITED

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: _____
Name: Robert Chender
Title: Managing Director

THE GLENEAGLES FUND COMPANY

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: _____
Name: Robert Chender
Title: Managing Director

LANCER SECURITIES LTD.

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: _____
Name: Robert Chender
Its: Managing Director

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CONSECO DIRECT LIFE

By: The Palladin Group L.P.
Its: Attorney-in-Fact

By: _____
Name: Robert Chender

Its: Managing Director

PALLADIN SECURITIES, LLC

By: -----
Name: Robert Chender
Its: Principal

FISHER CAPITAL LTD.

By: -----
Name:
Its: Vice President

WINGATE CAPITAL LTD.

By: -----
Name:
Its: Vice President

SCHEDULE OF STOCKHOLDERS

<TABLE>
<CAPTION>

INVESTOR NAME	INVESTOR ADDRESS AND FACSIMILE NUMBER	INVESTOR'S REPRESENTATIVES' ADDRESS AND FACSIMILE NUMBER
<S> HFTP Investment LLC	<C> Promethean Asset Management, L.L.C. 750 Lexington Avenue, 22nd Floor New York, New York 10022 Attn: James F. O'Brien, Jr. Facsimile: 212-758-9334 Telephone: 212-702-5200 Residence: New York	<C> Katten Muchin & Zavis 525 West Monroe, Suite 1600 Chicago, Illinois 60661-3693 Attn: Robert J. Brantman, Esq. Facsimile: 312-902-1061 Telephone: 312-902-5200
Themis Partners, L.P.	Promethean Asset Management, L.L.C. 750 Lexington Avenue, 22nd Floor New York, New York 10022 Attn: James F. O'Brien, Jr. Facsimile: 212-758-9334 Telephone: 212-702-5200 Residence: New York	Katten Muchin & Zavis 525 West Monroe, Suite 1600 Chicago, Illinois 60661-3693 Attn: Robert J. Brantman, Esq. Facsimile: 312-902-1061 Telephone: 312-902-5200
Heracles Fund	Bank of Bermuda (Cayman) Limited P.O. Box 513 3rd Floor British American Center Dr. Roy's Drive Georgetown, Grand Cayman Cayman Island, BWI Attn: Allen J. Bernardo Facsimile: 809-949-7802 Residence: Cayman Islands	Katten Muchin & Zavis 525 West Monroe, Suite 1600 Chicago, Illinois 60661-3693 Attn: Robert J. Brantman, Esq. Facsimile: 312-902-1061 Telephone: 312-902-5200
RGC International Investors, LDC	c/o Rose Glen Capital Management, L.P. 3 Bala Plaza East, Suite 200 Bala Cynwyd, Pennsylvania Attn: Gary Kaminsky Facsimile: 610-617-0570 Telephone: 610-617-5900 Residence: Cayman Islands	Rose Glen Capital Management, L.P. 3 Bala Plaza East, Suite 200 Bala Cynwyd, Pennsylvania Attn: Gary Kaminsky Facsimile: 610-617-0570 Telephone: 610-617-5900
Palladin Partners I, L.P.	c/o The Palladin Group L.P. 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz	The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040

Facsimile: 973-313-6490
Telephone: 973-313-6420
Residence: New York

Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

Halifax Fund, L.P.

c/o Citco Fund Services (Cayman Islands) Ltd.
Corporate Centre, West Bay Road
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Grand Cayman, Cayman Islands
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Telephone: 345-949-3977
Residence: Cayman Islands

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As Investment Advisor
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Maplewood, New Jersey 07040
Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

The Gleneagles Fund Company

c/o Citco Fund Services (Cayman Islands) Ltd.
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Grand Cayman, Cayman Islands
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Telephone: 345-949-3977
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Attn: Kevin Gerlitz
Facsimile: 973-313-6490
Telephone: 973-313-6420

</TABLE>

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<CAPTION>

INVESTOR NAME	INVESTOR ADDRESS AND FACSIMILE NUMBER	INVESTOR'S REPRESENTATIVES' ADDRESS AND FACSIMILE NUMBER
<S> Palladin Overseas Fund Limited	<C> c/o Citco Fund Services (Cayman Islands) Ltd. Corporate Centre, West Bay Road P.O. Box 31106 SMB Grand Cayman, Cayman Islands Facsimile: 345-949-3877 Telephone: 345-949-3977 Residence: Cayman Islands	<C> The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420
Fisher Capital Ltd.	Citadel Investment Group, L.L.C. 225 West Washington Street Chicago, Illinois 60606 Attention: Daniel Hopkins Kenneth A. Simpler Facsimile: (312) 338-0780 Telephone: (312) 338-7800 Residence: Illinois	Katten Muchin & Zavis 525 W. Monroe Street Chicago, Illinois 60661-3693 Attention: Robert J. Brantman, Esq. Facsimile: (312) 902-1061 Telephone: (312) 902-5200
Wingate Capital Ltd.	Citadel Investment Group, L.L.C. 225 West Washington Street Chicago, Illinois 60606 Attention: Daniel Hopkins Kenneth A. Simpler Facsimile: (312) 338-0780 Telephone: (312) 338-7800 Residence: Illinois	Katten Muchin & Zavis 525 W. Monroe Street Chicago, Illinois 60661-3693 Attention: Robert J. Brantman, Esq. Facsimile: (312) 902-1061 Telephone: (312) 902-5200
Lancer Securities Ltd.	c/o The Palladin Group L.P. 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420 Residence: New York	The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420
Conseco Direct Life	c/o The Palladin Group L.P. 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420 Residence: New York	The Palladin Group L.P. As Investment Advisor 195 Maplewood Avenue Maplewood, New Jersey 07040 Attn: Kevin Gerlitz Facsimile: 973-313-6490 Telephone: 973-313-6420
Palladin Securities, LLC	c/o The Palladin Group L.P. 195 Maplewood Avenue	The Palladin Group L.P. As Investment Advisor

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