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AVATECH  
SOLUTIONS

April 3, 1998

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**VIA OVERNIGHT DELIVERY**

Florida Secretary of State  
Amendment Section  
409 E. Gaines Street  
Tallahassee, Florida 32399

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
98 APR -8 PM 2:47

**RE: Articles of Merger-Avatech Solutions, Inc., Avatech of Florida, Inc., and Florida Design Automation, Inc.**

Dear Sir/Madam:

Enclosed for filing, please find one (1) original and one (1) copy of the Articles of Merger by and among Avatech Solutions, Inc., Avatech of Florida, Inc., and Florida Design Automation, Inc. Also enclosed is our check in the amount of \$105.00 for filing fees associated with this request.

Please return a date stamped copy to me at your earliest convenience. I have enclosed a return overnight delivery envelope for your convenience. **Please note that on this same date, I have sent to the Florida Secretary of State, Qualification/Tax Lien Section, an application for Foreign Corporation Qualification for Avatech of Florida, Inc.**

Please contact me immediately with any questions. Thank you in advance for your assistance.

Sincerely,



Jennifer K. Givens  
Mergers and Acquisitions Coordinator

Enclosures

cc: A. Lynne Puckett, Esquire (with enclosures)

Merger of  
4/9/98

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

FLORIDA DESIGN AUTOMATION, INC., a FL corp., #P95000095827

AVATECH SOLUTIONS, INC., a non qualified Delaware corp.

into

**AVATECH OF FLORIDA, INC.**, a Delaware corporation F98000002014

File date: April 8, 1998

Corporate Specialist: Susan Payne

98 APR -8 PM 2:47

## ARTICLES OF MERGER

**THESE ARTICLES OF MERGER** dated as of the 31st day of March, 1998, pursuant to Section 607.1105 and 607.0120 of the Florida Statutes (collectively known as "the Code") are entered into by and among **AVATECH SOLUTIONS, INC.**, a Delaware corporation ("Avatech"), **AVATECH OF FLORIDA, INC.**, a Delaware corporation ("Avatech of Florida") and **FLORIDA DESIGN AUTOMATION, INC.**, a Florida corporation ("FDA"), which are hereinafter collectively referred to as the "Constituent Corporations."

### THIS IS TO CERTIFY:

**FIRST:** Each of the Constituent Corporations has agreed to effect a merger, and the terms and conditions of the merger, the manner of carrying the same into effect, and the manner and basis of converting or exchanging the shares of issued stock of each of the Constituent Corporations into different stock or other consideration, and the manner of dealing with any issued stock of the Constituent Corporations not to be so converted or exchanged are and shall be as set forth herein.

**SECOND:** Avatech of Florida, a Delaware corporation, shall be the surviving corporation under the name of Avatech of Florida, Inc., whose principal address is 11403 Cronhill Drive, Suite A, Owings Mills, Maryland 21117.

**THIRD:** The parties to these Articles of Merger are Avatech, a Delaware corporation, organized on September 9, 1996 under the general laws of Delaware; Avatech of Florida, a Delaware corporation, organized on March 24, 1998 under the general laws of Delaware; and FDA, a Florida corporation organized on January 1, 1996.

**FOURTH:** The Certificate of Incorporation of Avatech of Florida will not be amended as a result of the merger.

**FIFTH:** Avatech has an authorized of six million five hundred thousand (6,500,000) shares of Common Stock, with a par value of \$0.01 per share ("Avatech Stock") of which 4,365,240 shares are currently issued and outstanding.

Avatech has an authorized capitalization of fifty (50) shares of Common Stock, with a par value of \$0.01 per share ("Avatech of Florida Stock") of which 25 shares are currently issued and outstanding.

FDA has an authorized capitalization of 1,000 shares of Common Stock, without par value (the "FDA Stock"), of which 1,000 shares are issued and outstanding.

**SIXTH:** The manner and basis of converting or exchanging the issued stock of each of the Constituent Corporations into different stock or other consideration, and the manner of dealing with any issued stock of the Constituent Corporations not to be so converted or exchanged on the Effective Date (as defined hereinbelow) shall be as follows:

(a) The aggregate consideration for the merger ("Merger Consideration") shall be shares of Avatech Stock. Each of the 1,000 shares of FDA Stock shall be converted into 100,000 fully paid and non-assessable shares of Avatech Stock. The Merger Consideration shall be distributed and paid to all of the stockholders of FDA as follows:

After the Effective Date, each owner of an outstanding certificate or certificates theretofore representing shares of FDA shall be entitled, upon surrendering such certificate or certificates to Avatech, to receive in exchange therefor a certificate or certificates representing the number of shares of stock of Avatech into which the shares of FDA theretofore represented by the surrendered certificate or certificates shall have been converted as hereinbefore provided. Until so surrendered, each outstanding certificate which, prior to the Effective Date, represented shares of FDA shall be deemed, for all corporate purposes, to represent the ownership of Avatech Stock on the basis hereinbefore provided.

(b) Avatech will not issue fractional shares or fractional share certificates, but in lieu of the issuance of fractional shares; any FDA shareholder otherwise entitled to a fractional share equal to one-half or more of one share of Avatech Stock shall receive a full share of Avatech Stock and any fractional share equal to less than one-half share of Avatech Stock shall be eliminated and extinguished.

(c) If a certificate evidencing outstanding shares of FDA Stock is lost, stolen, or destroyed, the registered owner thereof shall be entitled to receive the Avatech Stock certificate to which he would otherwise be entitled on exchange of such certificate, by notifying in writing of such lost, stolen or destroyed certificate and giving Avatech evidence of loss and a bond sufficient to indemnify Avatech against any claim that may be made against it on account of the alleged lost, stolen and destroyed certificate and the issuance of the certificate.

**SEVENTH:** The location of the principal office of Avatech of Florida in the State of Delaware is 30 Old Rudnick Lane, Dover, Delaware 19901, and the name and address of the resident agent of said Avatech in Florida, service of process upon whom shall bind such corporation in any action, suit or proceeding pending at the time of filing these Articles of

Merger or thereafter instituted or filed against it, is Nancy Strand, 536 Interstate Court, Sarasota, Florida 34240.

**EIGHTH:** The principal office of FDA in the State of Florida is located in Sarasota County. FDA does not own an interest in property in any county in the State of Florida, the title to which could be affected by the recording of an instrument among the Land Records.

**NINTH:** The location of the principal office of Avatech is 11403 A Cronhill Drive, Owings Mills, Maryland 21117. Avatech does not own an interest in property in any county in the State of Florida, the title to which could be affected by the recording of an instrument among the Land Records.

**TENTH:** The Merger was authorized and approved by FDA, in the manner and by the vote required by its charter and the laws of the State of Florida. The Board of Directors of FDA duly adopted a resolution, by Written Consent dated as of January 6, 1998, declaring that the Merger be duly advised on substantially the terms and conditions set forth in a Plan and Agreement of Merger (the "Plan") and directing the Plan's submission for consideration by its shareholders. The Merger was duly submitted to and approved by the shareholders of FDA by Written Consent dated as of January 6, 1998, in the manner and by a vote required in Section 607.0704 of the Code.

**ELEVENTH:** The Merger was authorized and approved by Avatech of Florida in the manner and by the vote required by its charter and the laws of the State of Delaware. The Board of Directors of Avatech of Florida duly adopted a resolution by Written Consent of the Sole Director dated as of March 31, 1998, declaring that the Merger be duly advised on substantially the terms and conditions set forth in the Plan and directing the Plan's submission for consideration by its stockholders. The Merger was duly submitted to and approved by the stockholders of Avatech of Florida by a Written Consent of the Sole Stockholder dated as of March 31, 1998 in the manner and by a vote required in Section 251 of the General Corporation Law of the State of Delaware.

**TWELFTH:** The Merger was authorized and approved by Avatech in the manner and by the vote required by its charter and the laws of the State of Delaware. The Board of Directors of Avatech duly adopted a resolution at a meeting of the Board of Directors on January 16, 1998, declaring that the Merger be duly advised on substantially the terms and conditions set forth in the Plan. No consent of the stockholders was required.

**THIRTEENTH:** Upon the Effective Date:

(a) the assets and liabilities of FDA shall be taken up on the books of Avatech of Florida at the amount at which they shall at that time be carried on the books of FDA, subject to such adjustments, if any, as may be necessary to conform to Avatech of Florida's accounting procedures;

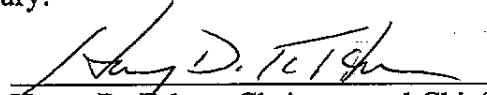
(b) Avatech of Florida shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of FDA; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choices in action, and all and every other interest of, or belonging to, or due to FDA, shall be taken and deemed to be vested in Avatech of Florida without further act or deed; and the title to all real estate, or any interest therein, vested in FDA shall not revert or be in any way impaired by reason of the Merger;

(c) Avatech of Florida shall thenceforth be responsible and liable for all of the liabilities and obligations of FDA; and any claim existing or action or proceeding pending by or against FDA may be prosecuted to judgment as if the merger had not taken place, or Avatech of Florida may be substituted in its place, and neither the rights of creditors nor any liens upon the property of FDA shall be impaired by the Merger; and


(d) the Constituent Corporations, by mutual consent of their respective Board of Directors, may amend, modify and supplement these Articles of Merger in such manner as may be agreed upon by them in writing at any time before or after approval or adoption thereof by the stockholders of any of the Constituent Corporations or all of them; *provided, however,* that no such amendment, modification or supplement shall affect the rights of the stockholders of any of the Constituent Corporations in a manner which is materially adverse to such stockholders in the judgment of their respective Board of Directors.

**FOURTEENTH:** The merger provided for in these Articles of Merger shall become effective, and the separate existence of FDA, except insofar as continued by statute, shall cease on the date that these Articles of Merger, duly advised, approved, signed, acknowledged, sealed, and verified by FDA and Avatech of Florida as required by the laws of the State of Florida and the State of Delaware, are filed for record with the Florida Department of State, Corporations Division or on a date specified by the parties hereto as provided by the laws of the State of Florida, whichever is later (the "Effective Date").

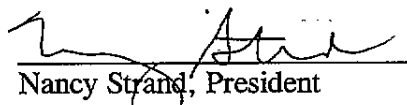
The UNDERSIGNED, Chairman and Chief Executive Officer of **AVATECH SOLUTIONS, INC.**, a Delaware corporation, who executed on behalf of said corporation the foregoing Articles of Merger, of which this Certificate is made a part, hereby acknowledges, in the name and on behalf of said corporation, the foregoing Articles of Merger, to be the corporate act of said corporation and further certifies that, to the best of his knowledge, information, and belief, the matters and facts set forth therein with respect to the approval thereof are true in all material respects, under the penalties of perjury.

  
Henry D. Felton, Chairman and Chief  
Executive Officer

The UNDERSIGNED, President of **AVATECH OF FLORIDA, INC.**, a Delaware corporation, who executed on behalf of said corporation the foregoing Articles of Merger, of which this Certificate is made a part, hereby acknowledges, in the name and on behalf of said corporation, the foregoing Articles of Merger, to be the corporate act of said corporation and further certifies that, to the best of his knowledge, information, and belief, the matters and facts set forth therein with respect to the approval thereof are true in all material respects, under the penalties of perjury.

  
Henry D. Felton, President

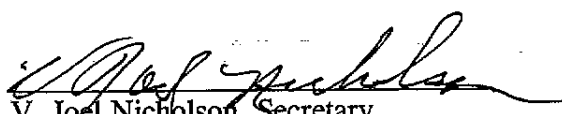
The UNDERSIGNED, President of **FLORIDA DESIGN AUTOMATION, INC.**, a Florida corporation, who executed on behalf of said corporation the foregoing Articles of Merger, of which this Certificate is made a part, hereby acknowledges, in the name and on behalf of said corporation, the foregoing Articles of Merger, to be the corporate act of said corporation and further certifies that, to the best of her knowledge, information, and belief, the matters and facts set forth therein with respect to the approval thereof are true in all material respects, under the penalties of perjury.


  
Nancy Strand, President

IN WITNESS WHEREOF, Avatech Solutions, Inc., Avatech of Florida, Inc. and Florida Design Automation, Inc. have caused these Articles of Merger to be signed in their respective corporate names and on their behalf by their respective Presidents and witnessed or attested by their respective Secretaries as of the 31st day of March, 1998.

ATTEST:

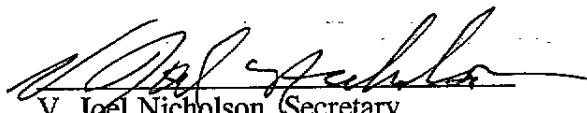
AVATECH SOLUTIONS, INC.

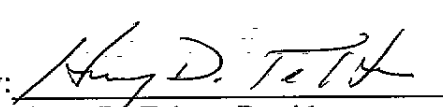
  
V. Joel Nicholson, Secretary

By:  (SEAL)  
Henry D. Felton, Chairman and Chief  
Executive Officer

ATTEST:

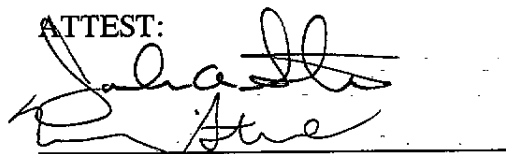
AVATECH OF FLORIDA, INC.

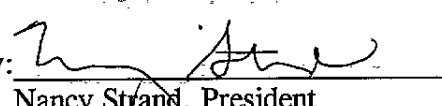
  
V. Joel Nicholson, Secretary

By:  (SEAL)  
Henry D. Felton, President

ATTEST:

FLORIDA DESIGN AUTOMATION, INC.


  
Nancy Strand, Secretary


By:  (SEAL)  
Nancy Strand, President



## ARTICLE IV

### CONVERSION AND EXCHANGE OF SHARES

4.1 Conversion. Each of the shares of common stock of FDA shall be converted into that number of fully paid and nonassessable shares of Surviving<sup>AV</sup> Common Stock which equals the FDA Shares (as herein defined). 

4.2 Exchange of Certificates. After the Effective Date, each owner of an outstanding certificate or certificates theretofore representing shares of FDA shall be entitled, upon surrendering such certificate or certificates to the Surviving Corporation, to receive in exchange therefor a certificate or certificates representing the number of shares of stock of the Surviving<sup>AV</sup> Common Stock into which the shares of FDA theretofore represented by the surrendered certificate or certificates shall have been converted as hereinbefore provided. Until so surrendered, each outstanding certificate which, prior to the Effective Date, represented shares of FDA shall be deemed, for all corporate purposes, to represent the ownership of the Surviving<sup>AV</sup> Common Stock on the basis hereinbefore provided. 

4.3 Fractional Shares. No scrip or fractional share certificates of Surviving Common Stock shall be issued as a result of the Merger, but in lieu of each fractional interest, a shareholder entitled to a fractional share equal to one-half or more of one share of Surviving Common Stock shall receive a full share of Surviving Common Stock and any fractional share equal to less than one-half of one share of Surviving Common Stock shall be eliminated and extinguished.

4.4 Lost Certificates. If a certificate evidencing outstanding shares of the Merging Corporation's stock is lost, stolen, or destroyed, the registered owner thereof shall be entitled to receive the Avatech certificate to which he would otherwise be entitled on exchange of such

PLAN AND AGREEMENT OF MERGER  
FLORIDA DESIGN AUTOMATION, INCORPORATED  
INTO  
AVATECH SOLUTIONS, INC.

## PLAN AND AGREEMENT OF MERGER

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**PLAN AND AGREEMENT OF MERGER**  
**FLORIDA DESIGN AUTOMATION, INC.**  
**INTO**  
**AVATECH SOLUTIONS, INC.**

THIS PLAN AND AGREEMENT OF MERGER (which, with the Exhibits and Schedules attached hereto that are hereby incorporated herein by reference) are collectively referred to as the "Agreement") is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 199\_, by and between Avatech Solutions, Inc., a Delaware corporation ("Avatech" or "Surviving Corporation") and Florida Design Automation, a Florida corporation ("FDA" or the "Merging Corporation").

**Explanatory Statement**

A. Avatech is a corporation organized and existing under the laws of the State of Delaware, its Certificate of Incorporation having been filed in the office of the Secretary of State of the State of Delaware on September 9, 1996, and recorded in the office of the recorder of deeds for the County of New Castle in said state, on September 9, 1996, and the registered office of Avatech being located at 1209 Orange Street, in the City of Wilmington, County of New Castle, and the name of its registered agent being Corporation Trust Company.

B. The total number of shares of stock which Avatech has authority to issue is 500,000, of which 417,100 shares are designated as voting ("AV Common Stock"), and 82,900 shares are designated as non-voting ("ANV Common Stock").

C. FDA is a corporation organized and existing under the laws of the State of Florida, its Articles of Incorporation having been filed in the office of the Secretary of State of the State of Florida on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, and the registered office of FDA being located at

\_\_\_\_\_, and its registered agent being \_\_\_\_\_.

D. The aggregate number of shares which \_\_\_\_\_ has authority to issue is \_\_\_\_\_ shares of common stock, of which \_\_\_\_\_ shares are issued and outstanding.

E. FDA and Avatech intend that the Merger be considered a "tax-free" exchange pursuant to Section 368 of the Code.

F. The board of directors of the Merging Corporation deems it advisable that FDA be merged into Avatech on the terms and conditions hereinafter set forth, in accordance with the applicable provisions of the statutes of the states of Florida and Delaware, respectively, which permit such merger.

NOW THEREFORE, in consideration of the mutual promises, agreements, covenants, representations, and warranties contained herein, and the Explanatory Statement, which is incorporated herein by reference and made a substantive part hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned corporations do hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Definitions. As used in this Agreement, the following terms shall have the meaning set forth after each such term.

1.1 "1934 Act" means the Securities and Exchange Act of 1934, as amended.

1.2 "1933 Act" means the Securities Act of 1933, as amended.

1.3 "ANV Common Stock" means the shares of common stock of Avatech designated as non-voting common stock.

1.4 "AV Common Stock" means the shares of common stock of Avatech designated as voting common stock.

1.5 "Balance Sheet" means: the consolidated balance sheet (including the notes thereto), as at \_\_\_\_\_, 199\_\_.

1.6 "Certificate of Incorporation" means the Certificate of Incorporation of Avatech, as filed in the office of the Secretary of State of the State of Delaware on the 9th day of September, 1996.

1.7 "Closing" means the closing of the Merger, to be held at the offices of Shapiro and Olander, 36 South Charles Street, Baltimore, Maryland, on a mutually agreeable date, but in no event later than fifteen (15) days following the date on which all conditions to the closing of the Merger, as set forth herein, have been satisfied.

1.8 "Code" means the Internal Revenue Code of 1986, as amended.

1.9 "Controlling Person" means each person, if any, who controls Avatech within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act.

1.10 "Corporation" means the Merging Corporation.

1.11 "Effective Date" means the date the Merger becomes effective as provided by the applicable laws of the states of Delaware and Florida.

1.12 "Environmental Laws" means all Federal, state and local laws relating to pollution, protection of the environment, and waste disposal.

1.13 "ERISA" means the Employees Retirement Income Security Act of 1974.



1.14 "Financial Statements" means the Merging Corporation's Balance Sheet and Interim Balance Sheet and the related unaudited consolidated statements of income, changes in shareholders' equity and cash flow for the period ending on the last day of the second month preceding the Effective Date, including the notes, if any, thereto.

1.15 "Insiders" means the respective officers, directors, partners, employees, representatives or agents of the Merging Corporation.

1.16 "Intangible Property" means licenses or other rights held or owned by the Merging Corporation to use all software, patents, trademarks, trade names, trade secrets, copyrights, inventions, formulae, methods and processes.

1.17 "Interim Balance Sheet" means the Merging Corporation's unaudited consolidated balance sheet as of a date not more than sixty (60) days prior to the date of Closing.

1.18 "Investment Letters" means letters that are acceptable in form and substance to Avatech's counsel, which letters will be executed by each Shareholder.

1.19 "Lien" means any security interest, mortgage, pledge, claim, lien, or encumbrance on any of the assets of the Merging Corporation.

1.20 "Material Adverse Effect" means any event reasonably expected to (i) result in a material adverse effect on the properties, business, results of operations, condition (financial or otherwise), or affairs of the Merging Corporation, or (ii) in any manner, draw into question the validity of any of the Merger Documents.

1.21 "Merger" means the merger of FDA into Avatech in accordance with the applicable provisions of the laws of the states of Florida and Delaware.

1.22 "Merger Documents" means any of the other documents executed and delivered in connection with the Merger to which the Merging Corporation, or any of its Shareholders, are parties.

1.23 "Plan" or "Plans" means any plan or arrangement of the Corporation which constitutes an "employee benefit plan," as defined in Section 3(3) of ERISA.

1.24 "Shareholder" or "Shareholders" means the holders of any shares of the capital stock of the Merging Corporation.

1.25 "Shares" means, when used immediately following, or in conjunction with, the term FDA, the aggregate number of shares of Surviving <sup>AV</sup> Common Stock to be received by the shareholders of FDA on the Effective Date, which number of shares shall be determined prior to date of final merger.

1.26 "State Acts" means any applicable state securities laws or Blue Sky laws.

1.27 "Surviving Common Stock" means a certificate or certificates representing shares of AV Common Stock into which the shares of FDA theretofore represented by the surrendered certificate or certificates shall have been converted.

## ARTICLE II

### MERGER

2.1 Merger. FDA shall be merged into Avatech and become a single corporation and Avatech shall be the Surviving Corporation upon the Effective Date.

2.2 Closing. The Closing shall occur as soon as practicable after all of the conditions contained herein shall have been satisfied.

2.3 Effect of Merger. Upon the Effective Date:

2.3.1 FDA and Avatech shall be a single corporation, which shall be Avatech, the Surviving Corporation, and the separate existence of FDA shall cease except to the extent provided by the laws of the states of Florida and Delaware in the case of a merger of a corporation into another corporation;

2.3.2 Avatech shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, of the Merging Corporation; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and every other interest of, or belonging to, or due to the Merging Corporation, shall be taken and deemed to be vested in the Surviving Corporation without further act or deed; and the title to any real estate, or any interest therein, vested in the Merging Corporation shall not revert or be in any way impaired by reason of the Merger;

2.3.3 Avatech shall henceforth be responsible and liable for all of the liabilities and obligations of the Merging Corporation; and any claim existing or action or proceeding pending by or against the Merging Corporation may be prosecuted to judgment as if the Merger had not taken place, or the Surviving Corporation may be substituted in its place, and neither the rights of creditors nor any liens upon the property of the Merging Corporation shall be impaired by the Merger; and

2.3.4 The aggregate amount of the net assets of the Merging Corporation which was available for the payment of dividends immediately prior to the Merger, to the extent that the value thereof is not transferred to stated capital by the issuance of shares or

otherwise, shall continue to be available for the payment of dividends by the Surviving Corporation.

### ARTICLE III

#### CERTIFICATE OF INCORPORATION, BY-LAWS, AND DIRECTORS AND OFFICERS OF SURVIVING CORPORATION

3.1 Certificate of Incorporation. The Certificate of Incorporation of Avatech shall not be amended in any respect by reason of this Agreement, and said Certificate of Incorporation shall constitute the certificate of incorporation of the Surviving Corporation until further amended in the manner provided by law. The Certificate of Incorporation is set forth as Exhibit "A" attached hereto and made a part of this Agreement with the same force and effect as if set forth in full herein.

The Certificate of Incorporation set forth in said Exhibit "A", and separate and apart from this Agreement, may be certified separately as the Certificate of Incorporation of the Surviving Corporation.

3.2 By-Laws. The By-laws of Avatech as existing and constituted immediately prior to the Effective Date shall be and constitute the By-laws of the Surviving Corporation until thereafter amended.

3.3 Officers and Directors. The board of directors, the members thereof, and the officers of Avatech immediately prior to the Effective Date, shall be and constitute the board of directors, the members thereof, and the officers of the Surviving Corporation, until they are removed or their terms expire in accordance with the By-laws of the Surviving Corporation.

certificate, by notifying Avatech in writing of such lost, stolen or destroyed certificate and giving Avatech evidence of loss and a bond sufficient to indemnify Avatech against any claim that may be made against it on account of the alleged lost, stolen or destroyed certificate and the issuance of the certificate representing Surviving Common Stock.

## ARTICLE V

### PAYMENT OF EXPENSES AND FURTHER ASSURANCES

5.1 Expenses. All of the expenses of carrying this Agreement into effect and accomplishing the Merger provided for herein shall be borne by the Surviving Corporation.

5.2 Further Assurances. If at any time the Surviving Corporation shall consider or be advised that any further assignment or assurance in law is necessary or desirable to vest in the Surviving Corporation the title to any property or rights of the Merging Corporation, the proper officers and directors of the Merging Corporation shall execute and make all such proper assignments and assurances in law and do all things necessary or proper to thus vest such property or rights in the Surviving Corporation, and otherwise to carry out the purposes of this Agreement.

## ARTICLE VI

### APPROVAL OF MERGER

6.1 Shareholder Approval. This Agreement shall be submitted to the Shareholders of the Merging Corporation, as provided by law, and shall take effect, and be deemed to be the plan and agreement of merger of said corporations upon the approval or adoption thereof by the Shareholders in accordance with the requirements of the laws of the states of Delaware and Florida and upon the execution, filing and recording of such documents and the doing of such acts and

things as shall be required for accomplishing the Merger under the provisions of the applicable statutes of the states of Delaware and Florida as heretofore amended and supplemented.

6.2 Abandonment of Merger. Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be abandoned by the Merging Corporation by an appropriate resolution of its board of directors at any time prior to the Agreement's approval or adoption by the Shareholders.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Merging Corporation. The Merging Corporation represents and warrants to Avatech that:

7.1.1 Organization. The Merging Corporation has been duly organized, is validly existing as a corporation in good standing under the laws of its state of incorporation, and has the requisite corporate power and authority to own, lease, and operate its properties, and to carry on its business as it is currently being conducted.

7.1.2 Power and Authority. The Merging Corporation has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement, and the Merging Corporation has all requisite corporate power and authority to execute, deliver, and perform its obligations under any of the other documents in connection with the Merger Documents, and to consummate all transactions contemplated hereby.

7.1.3 Capital Stock. All of the issued and outstanding shares of capital stock of, or other ownership interests in, the Merging Corporation have been duly and validly authorized and issued, and all such shares of capital stock are fully paid and

nonassessable, and are owned free and clear of any Lien. No such capital stock was issued in violation of any preemptive or similar rights.

7.1.4        Rights of Others. The Merging Corporation has no direct or indirect subsidiaries, and there are no outstanding subscriptions, rights, warrants, options, calls, convertible securities, commitments of sale, or Liens related to or entitling any person to purchase or otherwise to acquire any shares of the capital stock of, or other ownership interest in, the Merging Corporation.

7.1.5        Validity of Agreement. This Agreement has been duly and validly authorized, executed, and delivered by the Merging Corporation and constitutes a valid and legally binding agreement of the Merging Corporation, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws relating to or affecting creditor's rights generally, by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law) and, as to rights of indemnification, by principles of public policy or federal or state securities laws relating thereto.

7.1.6        Financial Statements. The Merging Corporation has delivered to Avatech, (a) a balance sheet of the Merging Corporation for each of its three preceding fiscal years and (b) an Interim Balance Sheet and (c) any additional Financial Statements associated therewith. Such Financial Statements and notes thereto fairly present the financial condition and results of operations of the Merging Corporation as at the respective dates thereof and for the periods therein referred to, all in accordance with generally accepted United States accounting principles, subject, in the case of interim financial

statements, to normal recurring year-end adjustments (the effect of which will not, individually or in the aggregate, be materially adverse) and the absence of notes (which, if presented, would not differ materially from those included in the Balance Sheet); the Financial Statements reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such Financial Statements.

7.1.7            Liabilities. Except as set forth in Schedule 7.1.7, or (i) in the Financial Statements, or (ii) liabilities for federal and state income taxes which may hereinafter be disclosed on tax audits, the Merging Corporation had no obligations or liabilities, contingent or otherwise. Schedule 7.1.7 also sets forth any (a) amounts owed to Insiders and (b) accounts payable that have been outstanding for more than sixty (60) days.

7.1.8            No Conflict. Except as set forth in Schedule 7.1.8, the execution, delivery, and performance of this Agreement and the other Merger Documents by the Merging Corporation and the consummation of the transactions contemplated hereby will not violate, conflict with, or result in a breach or violation of the charter or by-laws of the Merging Corporation or any of the terms or provisions of, or constitute a default or cause an acceleration of any obligation under, or result in the imposition or creation of (or the obligation to create or impose) a Lien with respect to the charter or by-laws of the Merging Corporation, any bond, note, debenture, or other evidence of indebtedness or any indenture, mortgage, deed of trust, or other agreement or instrument to which either the Merging Corporation is a party or by which it is bound, or to which any properties of the Merging Corporation are or may be subject, or contravene any order of any court or governmental



agency or body having jurisdiction over the Merging Corporation or any of its properties, or violate or conflict with any statute, rule or regulation, or administrative or court decree applicable to the Merging Corporation or any of its properties, except for any such violations, conflicts, breaches, or defaults which, singularly or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

7.1.9            Tax Matters.

(a) Except as set forth in Schedule 7.1.9, all federal, state, local and foreign returns, (including, without limitation, estimated tax returns, withholding tax returns with respect to employees, and FICA and FUTA returns) required to be filed by or on behalf of the Merging Corporation have been timely filed or requests for extensions have been timely filed, granted and have not expired and all returns filed are complete and accurate. All taxes shown on filed returns have been paid. As of the date hereof, and as of the Effective Date, there is and shall be no audit examination, deficiency or refund litigation or matter in controversy with respect to any taxes that might result in a determination adverse to the Merging Corporation, except as reserved against in the Financial Statements or disclosed in Schedule 7.1.9. All taxes, interest, additions and penalties due with respect to completed and settled examinations or concluded litigation have been paid.

(b) Except as disclosed in Schedule 7.1.9, the Merging Corporation has not executed an extension or waiver of any statute of limitations on the assessment or collection of any tax due that is currently in effect.

(c) To the extent any federal, state, local or foreign taxes are due from the Corporation for the period or periods beginning on the date of commencement of

its most recent fiscal year, or thereafter through and including the Effective Date, adequate provision on an estimated basis has been or will be made for the payment of such taxes by establishment of appropriate tax liability accounts on the Interim Balance Sheet.

(d) Deferred taxes of the Merging Corporation have been provided for in accordance with generally accepted accounting principles.

7.1.10        Properties. Except as set forth in Schedule 7.1.10, the Merging Corporation has good and marketable title, free and clear of all Liens, encumbrances, charges, defaults or equities of whatever character, to all of its properties and assets, tangible or intangible, whether real, personal or mixed, reflected in the Financial Statements or Interim Balance Sheet as being owned by it at the date of the most recent Balance Sheet or acquired by it thereafter. All buildings, and all fixtures, equipment and other property and assets which, in the opinion of the Merging Corporation's management are material to its business, held under leases or subleases by the Merging Corporation are held under valid instruments enforceable in accordance with their terms (except as disclosed in Schedule 7.1.10 and except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceedings may be brought). The policies of fire, theft, liability and other insurance maintained with respect to the assets or businesses of the Merging Corporation provide adequate coverage against any loss reasonably foreseeable in the conduct of the Merging Corporation's business.

7.1.11      Compliance with Laws. Except as set forth in Schedule 7.1.11, the Merging Corporation:

(a) is in compliance with all laws, regulations, reporting and licensing requirements and orders applicable to its business or any of its employees (because of such employee's activities on behalf of it), the breach or violation of which could have a Material Adverse Effect on its business; and

(b) has received no notification (not disclosed on Schedule 7.1.11), from any agency or department of federal, state or local government or regulatory authorities or the staff thereof asserting that it is not in compliance with any of the statutes, regulations, rules or ordinances which such governmental authority or regulatory authority enforces, or threatening to revoke any license, franchise, permit or governmental authorization, and is subject to no agreement with any regulatory authority with respect to its assets or business.

7.1.12      Employee Benefit Plan. Except as set forth in Schedule 7.1.12, with respect to any Plan:

(a) Except for liabilities to the Pension Benefit Guaranty Corporation pursuant to Section 4007 of ERISA, all of which have been fully paid, and except for liabilities arising under the Code, if any, all of which have been fully paid, the Merging Corporation has no liability to the Pension Benefit Guaranty Corporation or to the Internal Revenue Service with respect to any pension plan qualified under Section 401 of the Code.

(b) All Plans comply in all material respects with ERISA and, where applicable for tax-qualified or tax-favored treatment, with the Code. As of the date of the

most recent Financial Statements, there exists no material liability under any Plan that is not reflected on the Financial Statements as of such date, or in the notes thereto (other than such normally unrecorded liabilities under the Plans for sick leave, holiday, education, bonus, vacation, incentive compensation and anniversary awards, provided that such liabilities are not in any event material). The amounts accrued for any sick leave, vacation or holidays are set forth on Schedule 7.1.12. Neither the Plans nor any trustee or administrator thereof has engaged in any "prohibited transactions" within the meaning of Section 406 of ERISA or, where applicable, Section 4975 of the Code for which no exemption is applicable, nor have there been any "reportable events" within the meaning of Section 4043 of ERISA for which the 30-day notice therefor has not been waived.

(c) No litigation is pending against any Plan or Plan fiduciary seeking the payment of benefits or alleging a breach of trust or fiduciary duty by any plan fiduciary.

(d) The Merging Corporation is not a party to any multi-employer pension plan as defined in Section 414(f) of the Code and Section 3(37) of ERISA.

7.1.13        Commitments and Contracts. Except as set forth in Schedule 7.1.13, the Merging Corporation is not a party or subject to any of the following (whether written or oral, express or implied):

(a) any employment contract or understanding (including any understandings or obligations with respect to severance or termination pay liabilities or fringe benefits) with any present or former officer, director, employee or consultant (other

than those which are terminable at will by the Merging Corporation without the necessity of making payments to such person following termination of employment);

(b) any plan, contract or understanding providing for bonuses, pensions, options, deferred compensation, retirement payments, profit sharing or similar understandings with respect to any present or former officer, director, employee or consultant;

(c) any contract or agreement with any labor union;

(d) any contract not made in the ordinary course of business containing covenants limiting the freedom of the Merging Corporation to compete in any line of business or with any person or involving any restriction regarding the area in which, or method by which, the Merging Corporation will carry on its business (other than as may be required by law or applicable authorities);

(e) any lease with annual rental payments aggregating \$1,500 or more.

7.1.14        Labor. No work stoppage involving the Merging Corporation is pending or, to the best of the Merging Corporation's knowledge, threatened. The Merging Corporation is not involved in, or threatened with or affected by, any labor dispute, arbitration, lawsuit or administrative proceeding which could materially and adversely affect the business of the Merging Corporation. The Merging Corporation's employees are not represented by any labor union nor are any collective bargaining agreements otherwise in effect with respect to such employees.

7.1.15        Material Contracts. Except as set forth in Schedule 7.1.15, and except as is otherwise provided in this Agreement, neither the Merging Corporation nor any of its assets, businesses or operations is, as of the date hereof, a party to, or bound, or affected by, or receives benefits under, (i) any material agreement, arrangement or commitment not cancelable by it without penalty, or (ii) any material agreement, arrangement or commitment relating to the employment, election or retention in office of any director or officer or employee.

7.1.16        Material Contract Defaults. Except as set forth in Schedule 7.1.16, the Merging Corporation is not in default in any material respect under any material contract, agreement, commitment, arrangement, lease, insurance policy or other instrument to which it is a party or by which its assets, business or operations may be bound or affected or under which it or its assets, business or operations receive benefits, and there has not occurred any event which, with the lapse of time or the giving of notice or both, would constitute a default.

7.1.17        Legal Proceedings. Except as set forth in Schedule 7.1.17, there are no actions, suits or proceedings instituted or pending, or to the best knowledge of the Merging Corporation threatened (or unasserted but considered probable of assertion and which if asserted would have at least a reasonable probability of an unfavorable outcome), including eminent domain proceedings, against or relating to the Merging Corporation, or against any property, asset, interest or right of the Merging Corporation, that could have a material and adverse effect on the financial condition (present or prospective), business, properties, assets, operations, liabilities or prospects of the Merging Corporation, or that

threaten or would impede the consummation of the transactions contemplated by this Agreement. The Merging Corporation is not a party to any agreement or instrument or subject to any charter or other corporate restriction or any judgment, order, writ, injunction, stay, decree, rule, regulation, code or ordinance that threatens or might impede the consummation of the transactions contemplated by this Agreement.

7.1.18        Absence of Certain Changes or Events. Except as set forth in Schedule 7.1.18, since the date of the Financial Statements, including the Interim Balance Sheet, the Merging Corporation has not: (i) incurred any material liability, except in the ordinary course of its business or, except as permitted pursuant to this Agreement; (ii) suffered any material adverse change in its business, operations, assets or condition (financial or otherwise); or (iii) failed to operate its business in the ordinary course.

7.1.19        Accounts Receivable. All notes and accounts receivable of the Merging Corporation shown on the Financial Statements or thereafter acquired have been collected or are current and collectible subject to returns and allowances in the ordinary course of business (in the case of each note in accordance with its terms, and in the case of each account within 30 days after billing) at the aggregate recorded amounts thereof on the books of the Merging Corporation and are subject to no counterclaims or set-offs. Schedule 7.1.19, sets forth all accounts receivable that (i) are payable from Insiders or (ii) have not been paid for sixty (60) days or more.

7.1.20        Proprietary Rights. The Merging Corporation owns or possesses adequate licenses or other rights to use all Intangible Property currently used by it in the conduct of its business, without any known conflict with the rights of others. No royalties,

honoraria or fees are payable by the Merging Corporation to any person by reason of the ownership or use of its Intangible Property. All items of its Intangible Property are valid and in good standing and are adequate and sufficient to permit the Merging Corporation to conduct its business as now operated, and no other rights are due or required by the Merging Corporation in its operations. There are no licenses, sublicenses or agreements relating to their use now in effect, and none of the aforesaid are being infringed by others. No claim is pending or threatened or has been made within the past five years, to the effect that operation by the Merging Corporation of its business or the manufacture or sale of any of its products, software or any formula, method, process, part or material it employs, infringes or conflicts in any way upon any rights owned or claimed by others.

7.1.21 Environmental Matters.

(a) The operations of the business of the Merging Corporation and the buildings in which its business is conducted conform <sup>to the best of Merging Corporation's knowledge.</sup> with all applicable Federal, state and local laws, ordinances and regulations (including those relating to zoning and environmental protection), and all buildings or operations of the Merging Corporation and its business that are subject to the Occupational Safety and Health Act of 1970, as amended, comply with employee working conditions as prescribed by such act.

(b) The Merging Corporation, <sup>to the best of it's knowledge,</sup> has no underground storage tanks, either empty or containing any liquid, or gas, including but without limitation, solvents, fuel, waste oil, natural gas, or propane, on any premises used in its business.

(c) The Merging Corporation, <sup>to the best of it's knowledge,</sup> has obtained all permits, licenses and other authorizations and filed all notices which are required to be obtained or filed by the



Merging Corporation for the operation of its business under the Environmental Laws. The Merging Corporation, <sup>to the best of its knowledge,</sup> is in compliance in all respects with (i) all terms and conditions of all required permits, licenses and authorizations; and (ii) all other applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws or contained in any law, regulation, code, plan, order, decree, judgment, notice or demand letter issued, entered, promulgated or approved thereunder. There are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance in all respects, or which may give rise to any common law or statutory liability, or otherwise form the basis of any claim, action, suit, proceeding, hearing or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant, waste, or hazardous or toxic material with respect to the Merging Corporation or its businesses, properties or plants.

<sup>To the best of Merging Corporation's knowledge,</sup>  
(d) There are no actions, suits or proceedings, or demands, claims, notices or investigations (including, without limitation, notices, demand letters or requests for information from any environmental agency) instituted or pending, or threatened relating to actual or asserted liability of the Merging Corporation or any of its operations or buildings under any Environmental Law.

7.1.22        No Broker. The Merging Corporation has incurred no liability for finder's, agent's or brokerage fees, commissions or compensation in connection with this Agreement or the transactions contemplated hereby.

7.1.23        Best Efforts. On or prior to the Closing, the Merging Corporation will, to the extent permitted by applicable laws, rules and regulations, take such actions and execute and deliver all such agreements, documents, certificates or amendments to this Agreement as may be necessary or desirable to effectuate the provisions and intent of this Agreement.

7.1.24        No Consents. No consent, waiver, approval, authorization, or order of, or filing, registration, qualification, license, or permit of or with any court or governmental agency, body, or administrative agency or other person is required for the execution, delivery, and performance of this Agreement or any of the Merger Documents by the Merging Corporation, and the consummation of the contemplated transactions, except (i) such as have been obtained and made, and (ii) as to which the failure to be obtained or made would not, either individually or in the aggregate, have a Material Adverse Effect.

7.2        Representations and Warranties of Avatech. Avatech represents and warrants to the Merging Corporation:

7.2.1        Avatech has been duly organized, is validly existing as a corporation in good standing under the laws of the State of Delaware, and has the requisite corporate power and authority to own, lease, and operate its properties, and to carry on its business as it is currently being conducted.

7.2.2 On the Effective Date, Avatech will have an authorized capitalization of 500,000 shares of common stock.

7.2.3 The shares of Surviving Common Stock to be delivered to the Shareholders in connection with the Merger will be AV Common Stock, which shares will be validly issued, fully paid, and nonassessable.

7.2.4 The execution and delivery of this Agreement by Avatech have been duly authorized by proper corporate action and, on the Effective Date, Avatech will have all necessary corporate power and authority to consummate the transactions contemplated hereby.

7.3 Representations and Warranties of the Shareholders of the Merging Corporation.

The Shareholders hereby agree with Avatech that:

7.3.1 No Securities Registration. The Shareholders acknowledge and agree that Avatech does not currently file, and does not in the foreseeable future contemplate filing, periodic reports with the Securities and Exchange Commission pursuant to the provisions of the 1934 Act. The Shareholders also acknowledge and agree that Avatech has not agreed to register any of its securities for distribution in accordance with the provisions of the 1933 Act or any State Acts, (with the possible exception of any negotiated registration rights agreement between any of the Shareholders and Avatech), and that Avatech has not agreed to comply with any exemption from registration under the 1933 Act or any State Acts for the resale of shares of Surviving Common Stock. Hence, by virtue of the provisions of certain rules respecting "restricted securities" promulgated by the Securities and Exchange Commission, the Surviving Common Stock which each

Shareholder will receive pursuant to the Merger may be required to be held for a period of not less than three years following the Effective Date, unless registered under the 1933 Act or the State Acts, or unless an exemption from such registration is available, in which case a Shareholder may still be limited in the number of shares that may be sold. The Shareholders agree to comply with any and all Federal and state securities laws in connection with any resale of shares of the Surviving Common Stock acquired pursuant to the Merger.

7.3.2        Shares Held for Investment. The Shareholders represent that they are acquiring the shares of Surviving Common Stock for investment, and not with a view to redistribution, and that the Shareholders are not participating, directly or indirectly, in any such undertaking or in the underwriting of any such undertaking. The Shareholders represent that they have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of an investment in Avatech and of making an informed investment decision, and that they understand the risks of, and other investment considerations relating to, the acquisition of the Surviving Common Stock pursuant to the terms and conditions of the Merger.

7.3.3        Shareholder Investment Letters. The Shareholders shall acknowledge and agree in their Investment Letters that Avatech is under no obligation, and shall assume no obligation, to cause shares of Surviving Common Stock to be registered under the 1933 Act or the State Acts except as provided by contract, and that each certificate representing shares of Surviving Common Stock issued to the Shareholders shall

be stamped or otherwise imprinted with, or contain, a legend in substantially the following form:

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended, or any state securities statute, and may not be sold, assigned, or transferred, with or without consideration unless (i) registered for resale or (ii) in circumstances in which the issuer hereof has received the written opinion of its counsel that such counsel is of the opinion that such sale, assignment or transfer does not involve a transaction requiring the registration of such securities under the Securities Act of 1933, as amended, or any state securities statute.

Shareholders shall further acknowledge in their Investment Letters that Avatech's issuance of Surviving Common Stock is made in reliance upon an exemption from registration under the 1933 Act, which exemption is in part premised upon representations made by each Shareholder in the Investment Letter, and each Shareholder shall review and truthfully and accurately complete and execute an Investment Letter and deliver same to Avatech at or before the Closing.

## ARTICLE VIII

### NEGATIVE COVENANTS

8. Conduct of Business. Except as otherwise contemplated hereby, between the date hereof and the Effective Date, or the time when this Agreement terminates as provided herein, the Merging Corporation agrees to not:

8.1 Make any change in its authorized capital stock.

8.2 Issue any shares of its capital stock, securities convertible into its capital stock, or any debt securities.

8.3 Issue or grant any options, warrants, or other rights to purchase shares of its capital stock.

8.4 Declare or pay any dividends or other distributions on any shares of its capital stock.

8.5 Purchase or otherwise acquire or agree to acquire for a consideration any share of its capital stock (other than in a fiduciary capacity).

8.6 Enter into or amend any employment, pension, retirement, stock option, profit sharing, deferred compensation, consultant, bonus, group insurance, or similar plan or agreement in respect of any of its directors, officers, or other employees, or increase the current level of contributions to any such plan now in effect.

8.7 Take any action materially and adversely affecting this Agreement or the transactions contemplated hereby or the Merging Corporation's financial condition (present or prospective), businesses, properties, or operations.

8.8 Acquire, consolidate or merge with any other company, corporation, or association, or acquire, other than in the ordinary course of business, any assets of any other company, corporation, or association.

8.9 Mortgage, pledge, or subject to a lien or any other encumbrance, any of its assets, dispose of any of its assets, incur or cancel any debts or claims, or increase the current level of compensation or benefits payable to its officers, employees or directors except in the ordinary course of business as heretofore conducted, or take any other action not in the ordinary course of their business as heretofore conducted, or incur any material obligation, or enter into any material contract.

8.10 Amend its Articles or Certificate of Incorporation or By-laws.

8.11 Take any action to solicit, initiate, encourage, or authorize any person, including directors, officers and other employees, to solicit from any third party any inquiries or proposals relating to the disposition of its business or assets, or the acquisition of its common stock, or the merger of it with any person other than Avatech, and it shall promptly notify Avatech orally of all the relevant details relating to all inquiries and proposals which it may receive relating to any of such matters. Nothing herein shall be construed to limit or affect the fiduciary obligation of the Merging Corporation's officers and directors to its shareholders.

## ARTICLE IX

### CONDITIONS TO MERGER

9. Closing Conditions. All obligations of the Merging Corporation and Avatech to consummate the Merger are subject to the fulfillment, prior to or on the Effective Date, of each of the following conditions, except in the event the parties hereto shall all waive one or more of such conditions in writing:

9.1 Accuracy of Representations, Warranties, and Covenants. The representations, warranties, and covenants of the Merging Corporation and Avatech contained in this Agreement or on any schedule, list, exhibit, certificate or document delivered by the Merging Corporation or Avatech pursuant to the provisions hereof shall be true in all material respects on the date hereof and as of the Effective Date.

9.2 Performance and Compliance. The Merging Corporation and Avatech shall have performed and complied in all material respects with all the agreements, covenants,

and conditions required by this Agreement to be performed or complied with by it prior to or on the Effective Date.

9.3 No Material Changes. There shall not have occurred any material adverse change since the date of this Agreement in the financial condition of the Merging Corporation.

9.4 Autodesk Consent and Dealer Agreement. Autodesk shall consent, in writing, to the Merger and execute any waivers, releases, or consents required pursuant to its authorized domestic dealer agreement with the Merging Corporation, and shall enter into and execute a new dealer agreement or agreements with Avatech on mutually acceptable terms and conditions.

9.5 Employment Agreements. Employment agreements between Avatech and principals of the Merging Corporation containing terms and conditions, including but not limited to compensation schedules, satisfactory to Avatech and the principals of the Merging Corporation shall be fully executed by the parties thereto.

9.6 Shareholder Approval. Irrespective of the approval of this Agreement by the Merging Corporation's Board of Directors or the vote of each individual Member of the Board of Directors of the Merging Corporation in approving this Agreement, the Shareholders shall have ratified, confirmed and approved this Agreement and the terms and conditions herein contained by the affirmative vote of Shareholders of the Corporation owning at least two-thirds (2/3) of its outstanding capital stock (or such lesser or greater fraction as may be permitted by the Merging Corporation's charter or applicable law), and final approval of this Agreement shall have taken place.



9.7 Investment Letters. Avatech shall have received Investment Letters executed by all the Shareholders.

9.8 Certificates and Opinions. The Merging Corporation shall provide to Avatech and Avatech shall provide to the Merging Corporation (i) a good standing certificate from the applicable State authority, (ii) copies of a resolution of its Board of Directors, authorizing the execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby, and (iii) an opinion of counsel, in form reasonably satisfactory to Avatech and to the Merging Corporation.

9.9 Schedules. The Merging Corporation shall have delivered to Avatech each Schedule referred to herein.

## ARTICLE X

### INDEMNIFICATION BY SHAREHOLDERS AND AVATECH

10.1 Indemnification by the Shareholders of the Merging Corporation. The Shareholders agree, jointly and severally, to indemnify and hold the officers, directors, partners, employees, representatives, and agents of Avatech or any Controlling Person ("Avatech Indemnified Person") harmless, to the fullest extent lawful, from and against any and all losses, claims, damages, liabilities, judgments, actions, and expenses (including without limitation and as incurred, reimbursement of all reasonable costs of investigating, preparing, pursuing, or defending any claim or action, or any investigation or proceeding by any governmental agency or body, commenced or threatened, including the reasonable fees and expenses of counsel to any Avatech Indemnified Person) directly or indirectly caused by, related to, based upon, arising out of, or in connection with:

10.1.1        Liabilities Existing at the Effective Date. All liabilities of the Merging Corporation of any nature, whether accrued, absolute, contingent, or otherwise, existing at the Effective Date, to the extent not reflected on the Merging Corporation's Balance Sheet, Interim Balance Sheet, Financial Statements or a Schedule hereto, including, without limitation, (i) any tax liabilities resulting from or arising out of taxes levied, imposed, or assessed by any governmental authority, federal, state, or local, with respect to the income and operations of the Merging Corporation for all periods prior to the Effective Date and (ii) payment for any rent associated with any lease for office space not previously terminated prior to the Effective Date.

10.1.2        Liabilities Prior to the Effective Date. Any liabilities of, or claims against, the Merging Corporation arising out of the conduct of the Merging Corporation's business prior to the Effective Date.

10.1.3        Untrue Statements, Misrepresentations, Omissions. Any damage or deficiency resulting from any material untrue statement, misrepresentation, breach of warranty, or nonfulfillment of any agreement on the part of such Merging Corporation under this Agreement or any other Merger Document, or any omission or alleged omission to state therein 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. All damages and liabilities described in Section 10.1.1 through 10.1.3 above are herein collectively referred to as an "Avatech Claim".

10.1.4        Reimbursement. The Shareholders shall reimburse any Avatech Indemnified Person, on demand, for any payment made by any Avatech Indemnified Person

at any time after the Effective Date, in respect of any Avatech Claim (the "Avatech Indemnification Payment Amount"). Any Avatech Indemnified Person shall have the right to employ his or her own counsel in any such action, and the reasonable fees and expenses of such counsel shall be paid, as incurred, by the Shareholders (unless it is ultimately determined that an Avatech Indemnified Person is not entitled to indemnification hereunder).

10.1.5 Purpose of Indemnification. Each Shareholder recognizes that the indemnification provided by this Article X is provided to the Avatech Indemnified Persons in order to protect the Avatech Indemnified Persons, generally, from any undisclosed liabilities of the Merging Corporation because Avatech will succeed to the liabilities of the Merging Corporation.

10.2 Indemnification by Avatech. Avatech agrees, jointly and severally, to indemnify and hold the officers, directors, partners, employees, representatives, and agents of the Merging Corporation (the "FDA Indemnified Person") harmless, to the fullest extent lawful, from and against any and all losses, claims, damages, liabilities, judgments, actions and expense (including without limitation and as incurred, reimbursement of all reasonable costs of investigating, preparing, pursuing, or defending any claim or action, or any investigation or proceeding by any governmental agency or body, commenced or threatened, including the reasonable fees and expenses of counsel to any FDA Indemnified Person) directly or indirectly caused by, related to, based upon, arising out of, or in connection with:

10.2.1 Liabilities Existing at the Effective Date. All liabilities of Avatech of any nature, whether accrued, absolute, contingent, or otherwise, existing at the Effective Date,

to the extent not disclosed to the Merging Corporation by Avatech in writing, including, without limitation, any tax liabilities resulting from or arising out of taxes levied, imposed, or assessed by any governmental authority, federal, state, or local, with respect to the income and operations of Avatech for all periods prior to the Effective Date.

10.2.2 Liabilities Prior to the Effective Date. Any liabilities of, or claims against, Avatech arising out of the conduct of Avatech's business prior to the Effective Date.

10.2.3 Untrue Statements, Misrepresentations, Omissions. Any damage or deficiency resulting from any material untrue statement, misrepresentation, breach of warranty, or nonfulfillment of any agreement on the part of Avatech under this Agreement or any other Merger Document, or any omission or alleged omission to state therein 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. All damages and liabilities described in Section 10.2.1 through 10.2.3 above are herein collectively referred to as an "FDA Claim".

10.2.4 Reimbursement. Avatech shall reimburse any FDA Indemnified Person, on demand, for any payment made by any FDA Indemnified Person at any time after the Effective Date, in respect of any FDA Claim (the "FDA Indemnification Payment Amount"). Any FDA Indemnified Person shall have the right to employ its own counsel in any such action, and the reasonable fees and expenses of such counsel shall be paid, as incurred by Avatech (unless it is ultimately determined that an FDA Indemnified Person is not entitled to indemnification hereunder).

10.3 Notification. Either the Shareholders or Avatech, as the indemnified party pursuant to Sections 10.1 or 10.2, as the case may be, agree, jointly and severally, to notify the indemnifying party upon receipt of the institution, threat, or assertion of any claim, proceeding (including any governmental investigation), or litigation in connection with the matters addressed by this Agreement which involve any indemnified party. In case any claim or proceeding (including any governmental investigation) shall be brought or asserted against any indemnified party with respect to which indemnity may be sought against the indemnifying parties, such indemnified party shall promptly notify the indemnifying party in writing (provided that the failure to give such notice shall not relieve the indemnifying party of its obligations pursuant to this Agreement, except to the extent that failure to give such notice has prejudiced the indemnifying party's ability to defend such action or proceeding and, in such event, only to the extent of such prejudice).

10.4 Settlement. The Shareholders or Avatech, as the indemnifying party, as the case may be, shall be liable for any settlement of any such action or proceeding effected with the indemnified party's prior written consent, which consent will not be unreasonably withheld, and the indemnifying party agrees, jointly and severally, to indemnify and hold harmless any indemnifying party from and against any loss, claim, damage, liability, or expense by reason of any settlement of any action effected with the written consent of the indemnified party.

Avatech is hereby granted full power and authority to take any and all action with respect to proceedings relating to taxes alleged to be due by the Merging Corporation, including the right to settle, compromise, and dispose of such proceedings in the name of Avatech, and Avatech shall be entitled to the benefit of any refund and credits of taxes in connection with the Merging Corporation for such periods.

10.5 Optional Redemption as Alternative to Indemnification. Anything in this Article X to the contrary notwithstanding, the indemnifying party shall have the option of discharging its obligation to pay the FDA or Avatech Indemnification Payment Amount, as the case may be, (either of which is referred to hereinafter as the "Indemnification Payment Amount") by notifying the indemnified party, in writing, that the indemnifying party elects treatment under this Section 10.5 (a "10.5 Notice"). In such event, Avatech shall immediately cause a valuation company selected by Avatech in the exercise of its sole discretion to value Avatech as of the date of the 10.5 Notice, which valuation shall be expressed as the dollar value of each issued and outstanding shares of Avatech Common Stock (the "Per Share Value"). The fees and expenses of the valuator, in connection with the valuation contemplated by this Section 10.5, shall be borne entirely by the indemnifying party discharging their obligation to pay the Indemnification Payment Amount. In the event that the Shareholders are the indemnifying party, upon delivery of such valuation by the valuator to both Avatech and the Shareholders, the Shareholders hereby agree to sell to Avatech, and Avatech agrees to redeem and purchase, in consideration of the discharge of the Indemnification Payment Amount, that number of shares of Avatech Common Stock owned by the Shareholders equal to the quotient obtained by dividing the Indemnification Payment Amount by the Per Share Value. The closing of the sale, and purchase and redemption, of such shares shall be immediately effectuated by the delivery from the Shareholders to Avatech of certificates for shares evidencing the number of Avatech shares sold, purchased, and redeemed hereunder, duly endorsed in blank, and the delivery by Avatech to the Shareholders of a limited release covering only the discharge of liability to Avatech equal to the Indemnification Payment Amount.

## ARTICLE XI

### ACCESS TO INFORMATION AND CONFIDENTIALITY

11.1 Access and Information. The Merging Corporation and Avatech shall each afford to the other, and to the other's accountants, counsel and other representatives, full access during normal business hours throughout the period prior to the Closing to all of its properties, books, contracts, commitments and records (including but not limited to tax returns), and, during such period, each shall furnish promptly to the other information concerning its business, properties and personnel as such other party may reasonably request, provided that no investigation pursuant to this Section shall affect any representations or warranties or the conditions to the obligations of the parties to consummate the Merger.

11.2 Furnishing Information. The Merging Corporation have furnished or will furnish upon Avatech's request, to each other all the information (including Financial Statements, information and schedules) concerning itself required for inclusion in:

11.2.1 Registration Statement. Any registration statement or other statement to be filed with the Securities and Exchange Commission on behalf of Avatech under the 1933 Act, and any documents to be filed with the Securities and Exchange Commission in connection therewith;

11.2.2 State Filings. Any filings to be made by Avatech with state securities authorities in connection with the transactions contemplated hereunder; and

11.2.3 Other Requests. Any other request, application, statement, report or material to be made or filed by any party to or with any regulatory authority or any governmental

agency, department or instrumentality in connection with the transactions contemplated hereunder.

11.3 Confidentiality. It is hereby agreed that, except (i) as otherwise required in the performance by the parties of their respective obligations hereunder or under the Merger and (ii) as otherwise required by law, any non-public information received from the other party during the course of the investigation contemplated pursuant hereto shall remain and be kept as confidential information by it and all copies thereof will be returned promptly at the request of the party furnishing such information in the event of the termination of this Agreement and the Merger. Each of the parties may disclose such information to its respective employees, affiliates, counsel, accountants, representatives, professional advisors and consultants, and shall require each of them to agree to keep all such information confidential.

11.4 Updates to Information. At the reasonable request of any party hereto, any other party will update by amendment or supplement any disclosure made in writing by such party to the other party and each party hereby represents and warrants that such written disclosures, as so amended or supplemented, shall be true, correct and complete as of the date or dates thereof.

## ARTICLE XII

### GENERAL

12.1 Piggyback Registration Rights. As an additional incentive for the Merging Corporation to participate in the Merger, Avatech hereby agrees to provide each of the Shareholders with "piggyback registration rights," for up to ten percent (10%) of each Shareholder's Shares, in connection with an initial public offering of Avatech common stock, which right is subject to reduction in the number of Shares that can be sold by the Shareholders, to a number that shall be



approved by the Avatech Board of Directors after discussions with Avatech's underwriters.

12.2 Termination and Abandonment.

12.2.1 Grounds for Termination. This Agreement and the transactions contemplated hereby may be terminated at any time prior to the Closing, either before or after the meeting of the Shareholders of the Merging Corporation:

(a) By mutual consent in writing of the Merging Corporation and Avatech; or

(b) By the Merging Corporation by giving written notice thereof to Avatech if (i) a material adverse change shall have occurred in the financial condition, results of operations or business of the Merging Corporation since the date hereof, or (ii) Avatech has in any material respect breached any covenant, undertaking, representation or warranty contained in this Agreement and such breach has not been cured within thirty (30) days after the giving of such notice; or

(c) By Avatech by giving written notice thereof to the Merging Corporation if the Merging Corporation has in any material respect breached any covenant, undertaking, representation or warranty contained in this Agreement and such breach has not been cured within thirty (30) days after the giving of such notice; or

(d) By the Merging Corporation upon written notice to Avatech if any regulatory agency whose approval of the transactions contemplated by this Agreement is required denies such application for approval by final order or ruling

(which order or ruling shall not be considered final until expiration or waiver of all periods for review or appeal); or

(e) By the Merging Corporation upon written notice to Avatech if any condition precedent to a party's performance hereunder is not satisfied, fulfilled or waived; or

(f) By the Merging Corporation if the Merger shall violate any non-appealable final order, decree or judgment of any court or governmental body having competent jurisdiction; or

(g) By the Merging Corporation upon the bankruptcy, insolvency or assignment for the benefit of creditors of the Merging Corporation; or

(h) By the Merging Corporation, if the Shareholders shall fail to approve the Merger by the vote required under the laws of Florida and its charters and By-Laws.

12.2.2 Effect of Termination. In the event of termination of this Agreement for any reason other than a breach thereof, no party hereto shall have any liability to the others of any nature whatsoever, including any liability for loss, damages, or expenses suffered or claimed to be suffered by reason thereof, except as provided in Section 12.2.3.

12.2.3 Return of Information. In the event of the termination of this Agreement for any reason, each party shall deliver to the other party, and shall require each of its officers, agents, employees and independent advisers (including legal, financial and accounting advisers) to deliver to the other party all documents, work papers, and other material obtained from such other party relating to the transactions contemplated hereby, whether

obtained before or after the execution hereof. Each party agrees that notwithstanding any other provision contained in this Agreement, the undertakings and covenants regarding confidentiality contained in Article XI shall survive termination of this Agreement.

12.3 Notices. Any notices or other communication required or permitted hereunder shall be sufficiently given if sent by registered or certified mail, postage prepaid; by hand-delivery with a signed returned copy; or by delivery of a nationally recognized overnight delivery service; and addressed as follows:

To FDA:

Ms. Nancy Strand  
Florida Design Automation, Incorporated  
536 Interstate Court  
Sarasota, Florida 34240

To Avatech:

Mr. Henry D. Felton  
Avatech Solutions, Inc.  
11403A Cronhill Drive  
Owings Mills, Maryland 21117

with a copy to:

Christopher Dean Olander  
Shapiro and Olander  
36 South Charles Street, 20th Floor  
Baltimore, Maryland 21201

or such other addresses as shall be furnished in writing by either party to the other party. Any such notice or communication shall be deemed to have been given as of the date so mailed.

12.4 Amendment. This Agreement may be amended at any time prior to the Effective Date with the mutual written consent of the parties.

12.5 Governing Law; Counterparts. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware and, to the extent it involves any United

States statute, in accordance with the laws of the United States. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be considered one agreement.

12.6 Survival. All covenants, agreements, representations, and warranties made herein and in any certificate delivered pursuant hereto shall survive for a period of five (5) years from the Effective Date.

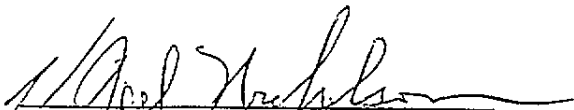
12.7 Waiver. At any time prior to the Effective Date, the parties may, by written agreement, (i) extend the time for the performance of any of the obligations or other acts of the parties hereto, (ii) waive any inaccuracy in the statements contained in this Agreement or in any document delivered, or (iii) waive compliance with any of the covenants, conditions, or agreements contained in this Agreement.

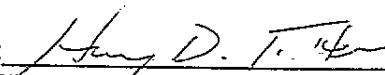
12.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties with regard to the specific subject matter and supersedes all prior written or oral understandings between the parties. As the final written expression of all of the agreements and understandings between the parties hereto, this Agreement is an exhaustive and complete expression of the parties' intent and, therefore, may be modified only by a writing signed by all the parties.

IN WITNESS WHEREOF, Avatech and \_\_\_\_\_ pursuant to the approval and authority duly given by resolutions adopted by their respective boards of directors have caused this Plan and Agreement of Merger to be executed by the President and attested by the Secretary of each party hereto, and the corporate seal affixed:

ATTEST:

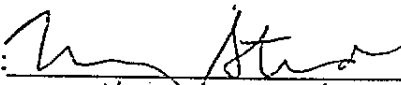
AVATECH SOLUTIONS, INC.

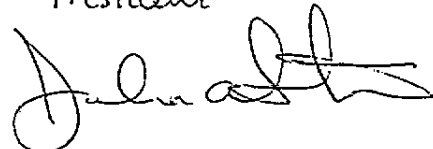
  
V. Joel Nicholson, Secretary

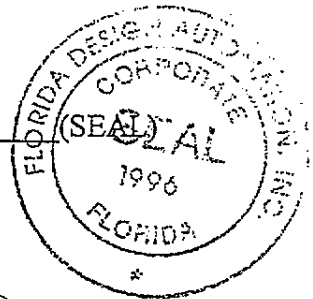
By:  (SEAL)  
Henry D. Felton  
Chairman and Chief Executive Officer

FLORIDA DESIGN AUTOMATION,  
INCORPORATED

\_\_\_\_\_  
Secretary

By:   
Name: Nancy Strand  
Title: President

  
Name: John A. Strand  
Title: Vice President



The following persons, Shareholders of the Merging Corporation, hereby execute this Agreement solely for the purpose of agreeing to be parties to, and bound by, the provisions of ARTICLE VII and ARTICLE X hereof.

Nancy Strand  
John Strand

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**EXHIBIT "A"**

Certificate of Incorporation of Avatech, and Amendments

*State of Delaware*  
*Office of the Secretary of State*

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PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "NEWCAD, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF SEPTEMBER, A.D. 1996, AT 9 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



A handwritten signature in cursive script, reading "Edward J. Freel", is written over a horizontal line.

*Edward J. Freel, Secretary of State*

2662225 8100

960260219

AUTHENTICATION:

8101138

DATE:

09-12-96



**CERTIFICATE OF INCORPORATION**  
**OF**  
**NEWCAD, INC.**

**ARTICLE FIRST.** The undersigned, A. Lynne Puckett, whose address is 2000 Charles Center South, 36 South Charles Street, Baltimore, Maryland 21201, being at least 18 years of age, acting as incorporator, does hereby form a corporation under and by virtue of the General Corporation Law of Delaware.

**ARTICLE SECOND.** The name of the corporation (the "Corporation") is:

NewCad, Inc.

**ARTICLE THIRD.** The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE FOURTH.** The purpose of the Corporation is to (i) design, manufacture, supply, distribute and market various technology including computer automated design software and hardware connected therewith; and (ii) to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

**ARTICLE FIFTH.** The total number of shares which the Corporation shall have authority to issue is Two Thousand (2,000) shares of common stock, with par value of One Cent (\$.01) per share. The holders of the common stock shall have no preemptive rights to subscribe for any shares of any class of stock of the Corporation whether now or hereafter authorized.

**ARTICLE SIXTH.** The Corporation is to have perpetual existence.

**ARTICLE SEVENTH.** The following provisions are hereby adopted for the purpose of defining, limiting, and regulating the powers of the Corporation and of the directors and stockholders:

(1) The Board of Directors of the Corporation is hereby empowered to authorize the issuance from time to time of shares of its stock of any class, whether now or hereafter authorized, or securities convertible into shares of its stock of any class or classes, whether now or hereafter authorized.

(2) The Board of Directors may classify or reclassify any unissued shares by fixing or altering in any one or more respects, from time to time before issuance of such shares, the

preferences, rights, voting powers, restrictions and qualifications of, the dividends on, the times and prices of redemption of, and the conversion rights of, such shares.

(3) The Corporation reserves the right to amend its Charter so that such amendment may alter the contract rights as expressly set forth in the Charter, of any outstanding stock, and any objecting stockholder whose rights may or shall be thereby substantially adversely affected shall not be entitled to the same rights as an objecting stockholder in the case of a consolidation, merger, share exchange, or transfer of all, or substantially all, of the assets of the Corporation.

(4) With respect to:

- (a) the amendment of the Charter of the Corporation;
- (b) the consolidation of the Corporation with one or more corporations to form a new consolidated corporation;
- (c) the merger of the Corporation into another corporation or the merger of one or more other corporations into the Corporation;
- (d) the sale, lease, exchange or other transfer of all, or substantially all, of the property and assets of the Corporation, including its goodwill;
- (e) the participation by the Corporation in a share exchange as the corporation the stock of which is to be acquired;
- (f) the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation; and
- (g) the issuance of shares of stock of any class now or hereafter authorized, or any securities exchangeable for, or convertible into, such shares, or warrants or other instruments evidencing rights or options to subscribe for, or otherwise acquire such shares;

such action shall be effective and valid if taken or approved by an affirmative vote of two-thirds (2/3) of the shares entitled to be cast thereon, after due authorization and/or approval and/or advice of such action by the Board of Directors as required by law, notwithstanding any provision of law requiring any action to be taken or authorized other than as provided in this Article SEVENTH, paragraph (4).

**ARTICLE EIGHTH.** No director of the Corporation shall personally be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director;

provided, however, that the foregoing clause shall not apply to any liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article EIGHTH shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

**ARTICLE NINTH.** Any person made, or threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer, employee or agent of the Corporation, or is or was acting at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including, without limitation, as a fiduciary of, or otherwise rendering service to, any employee benefit plan of or relating to the Corporation, shall be indemnified by the Corporation to the fullest extent provided by the General Corporation Law of the State of Delaware, as amended from time to time.

The right to indemnification conferred in the foregoing paragraph shall include the right to be paid by the Corporation the expenses incurred in defending any proceeding for which such right to indemnification is applicable in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the General Corporation Law of the State of Delaware requires, an advancement of expenses incurred by an indemnitee in his capacity as a director or officer (and not in any other capacity) in which service was or is rendered by such indemnitee (including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal for such expenses under this Article NINTH or otherwise.

**ARTICLE TENTH.** Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of the General Corporation Law of the State of Delaware or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provision of Section 279 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value

of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement or to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, or the Corporation, as the case may be, and also on the Corporation.

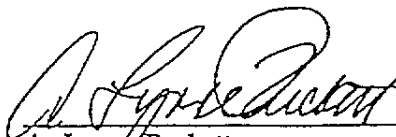
**ARTICLE ELEVENTH.** The number of directors constituting the whole Board of Directors of the Corporation shall be as provided in the By-Laws of the Corporation. Elections of directors need not be by written ballot except as, and to the extent, provided in the By-Laws of the Corporation. The name and mailing address of the persons who are to serve until the third annual meeting of stockholders or until their successors are elected and qualified are:

Greg Blackwell  
CADworks, Inc.  
Suite B-110  
4322 North Beltline Road  
Irving, Texas 75038

Brice Schaeffer  
Premier Design Systems, Inc.  
11400-A Cronridge Drive  
Owings Mills, Maryland 21117

Richard B. Burroughs, III, P.E.  
Applied Software Technology, Inc.  
1908 Cliff Valley Way, NE  
Atlanta, Georgia 30329

I, the undersigned, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 12 day of September, 1996.

 (SEAL)  
A. Lynne Puckett,  
Incorporator

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
AVATECH SOLUTIONS, INC.

AVATECH SOLUTIONS, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

FIRST: The Corporation has not received any payment for any of its capital stock.

SECOND: The amendment to the Corporation's Certificate of Incorporation set forth in the following resolution was approved by a majority of the Corporation's Board of Directors and was duly adopted in accordance with the provisions of Section 241 of the General Corporation Law of the State of Delaware.

RESOLVED: That the Certificate of Incorporation of the Corporation be amended by striking Article FIFTH in its entirety and substituting in lieu thereof the following new Article FIFTH:

FIFTH: The total number of shares which the Corporation shall have authority to issue is Five Hundred Thousand (500,000) shares with a par value of One Cent (\$0.01).

IN WITNESS WHEREOF, Avatech Solutions, Inc. has caused this Certificate to be signed and attested by its duly authorized officer, as of the 1st day of April, 1997.

AVATECH SOLUTIONS, INC.

By: \_\_\_\_\_

Henry D. Felton

Chairman and Chief Executive Officer

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 12:02 PM 05/01/1997  
971142403 - 2662225

## CERTIFICATE OF DESIGNATIONS

### ANY COMMON STOCK

(With \$0.01 Par Value)  
of

AVATECH SOLUTIONS, INC.

---

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

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Avatech Solutions, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), in accordance with the provisions of Section 103 thereof, DOES HEREBY CERTIFY:

FIRST: That pursuant to the authority conferred upon the Board of Directors by the Certificate of Incorporation of the Corporation, the Board of Directors of the Corporation adopted the following resolutions designating 82,900 shares of Common Stock, with a par value of \$0.01, as ANY Common Stock:

RESOLVED: That pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of Article Seventh, Section 2 of the Corporation's Certificate of Incorporation, 82,900 shares of the Corporation's Common Stock be, and it hereby is, designated as "ANY Common Stock" and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of the ANY Common Stock, and the qualifications, limitations or restrictions thereof, shall be as set forth in Exhibit A attached hereto.

RESOLVED: That the Chairman and Chief Executive Officer and the Secretary of the Corporation be, and they hereby are, authorized and directed, in the name and on behalf of the Corporation, to file the Certificate of Designations in accordance with the provisions of the Delaware General Corporation Law and to take such actions as they may deem necessary or appropriate to carry out the intent of the foregoing resolution.



Exhibit A to Certificate of  
Designations of Avatech Solutions, Inc.

1. Designation. The Corporation hereby designates 82,900 of the Common Stock as "ANV Common Stock," with a par value of \$0.01 (hereinafter called the "ANV Common Stock"), and the number of authorized shares constituting the ANV Common Stock hereinafter shall be Eighty-two Thousand Nine Hundred (82,900) shares.

2. Voting. Except as may be otherwise provided in these terms of the ANV Common Stock or by law, each holder of ANV Common Stock shall have no voting power whatsoever, and no holder of ANV Common Stock shall vote on or otherwise participate in any proceedings in which actions shall be taken by the Corporation of the stockholders thereof or be entitled to notification as to any meeting of the Board of Directors or the stockholders.

3. Dividends. The holders of shares of ANV Common Stock shall not be entitled to receive, when and if declared by the Board of Directors, out of the assets of the Corporation which are by law available therefor, dividends payable either in cash, in property or in shares of capital stock.

4. Dissolution, Liquidation or Winding Up. In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, holders of ANV Common Stock shall not be entitled, unless otherwise provided by law or in these terms of the ANV Common Stock, to receive any remaining assets of the Corporation of whatever kind available for distribution to stockholders.

5. Redemption. (a) In the event that the Corporation fails to achieve Critical Mass (as defined in that certain Management Services Agreement dated January 14, 1997, as amended, by and among W.J. Hindman and Associates, Inc., Henry D. Felton, W.J. Hindman, the Corporation, CADworks, Inc., and Premier Design Systems, Inc. (the "MSA")) within twenty-four (24) months after the date of the Management Services Agreement, the outstanding shares of ANV Common Stock shall be redeemed by the Corporation for an amount equal to \$.0025 per share; and

(b) In the event that the Corporation achieves Critical Mass, but fails to close the IPO (as defined in the MSA) within sixty (60) months after the date of the MSA, the portion of the outstanding shares of ANV Common Stock which exceeds ten percent (10%) of the total shares of any other series of the Corporation's Common Stock then outstanding, shall be redeemed at the call of the Corporation for an amount equal to \$.0025 per share.



CERTIFICATE OF DESIGNATIONS

AV COMMON STOCK

(With \$0.01 Par Value)  
of

AVATECH SOLUTIONS, INC.

---

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

---

Avatech Solutions, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), in accordance with the provisions of Section 103 thereof, DOES HEREBY CERTIFY.

FIRST: That pursuant to the authority conferred upon the Board of Directors by the Certificate of Incorporation of the Corporation, the Board of Directors of the Corporation adopted the following resolutions designating 417,100 shares of Common Stock, with a par value of \$0.01, as AV Common Stock:

RESOLVED: That pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of Article Seventh, Section 2 of the Corporation's Certificate of Incorporation, 417,100 shares of the Corporation's Common Stock be, and it hereby is, designated as "AV Common Stock" and the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the AV Common Stock, and the qualifications, limitations or restrictions thereof, shall be as set forth in Exhibit A attached hereto

RESOLVED: That the Chairman and Chief Executive Officer and the Secretary of the Corporation be, and they hereby are, authorized and directed, in the name and on behalf of the Corporation, to file the Certificate of Designations in accordance with the provisions of the Delaware General Corporation Law and to take such actions as they may deem necessary or appropriate to carry out the intent of the foregoing resolution.

SECOND. That the aforesaid resolutions were duly and validly adopted in accordance with the applicable provisions of Section 151 of the General Corporation Law of the State of Delaware and the Certificate of Incorporation and the By-Laws of the Corporation.

THIRD. That the aforesaid designations shall become effective upon the filing of this Certificate with the office of the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, said Avatech Solutions, Inc. has caused its corporate seal to be hereunto affixed and this Certificate to be executed and attested, this 11 day of April, 1997.

AVATECH SOLUTIONS, INC.

By: Henry D. Pelton  
Henry D. Pelton  
Chairman and Chief Executive Officer

[Corporate Seal]

Attest:

W. Noel Nicholson  
W. Noel Nicholson, Secretary

Exhibit A to Certificate of  
Designations of Avatech Solutions, Inc.

1. Designation. The Corporation hereby designates 417,100 of the Common Stock "AV Common Stock," with a par value of \$0.01 (hereinafter called the "AV Common Stock"), and the number of authorized shares constituting the AV Common Stock hereinafter shall be Four Hundred Seventeen Thousand One Hundred (417,100) shares.

2. Voting. Except as may be otherwise provided in these terms of the AV Common Stock or by law, each holder of AV Common Stock shall have one vote in respect of each share of stock held by such holder of record on the books of the Corporation for the election of directors and on all matters submitted to a vote of stockholders of the Corporation.

3. Dividends. The holders of shares of AV Common Stock shall be entitled to receive, when and if declared by the Board of Directors, out of the assets of the Corporation which are by law available therefor, dividends payable either in cash, in property or in shares of the Corporation's capital stock.

4. Dissolution, Liquidation or Winding Up. In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, holders of AV Common Stock shall be entitled, unless otherwise provided by law or in these terms of the AV Common Stock, to receive all of the assets of the Corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of AV Common Stock held by them respectively.

*State of Delaware*  
*Office of the Secretary of State*

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"CADWORKS, INC.", A TEXAS CORPORATION,

WITH AND INTO "AVATECH SOLUTIONS, INC." UNDER THE NAME OF "AVATECH SOLUTIONS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRD DAY OF JULY, A.D. 1997, AT 9 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



A handwritten signature in cursive script, reading "Edward J. Freel".

*Edward J. Freel, Secretary of State*

2662225 8100M

971332029

AUTHENTICATION:

8683301

DATE:

10-02-97

CERTIFICATE OF MERGER  
OF  
CADWORKS, INC.  
INTO  
AVATECH SOLUTIONS, INC.

AVATECH SOLUTIONS, INC. hereby certifies that:

(1) The name and state of incorporation of each of the constituent corporations are:

- (a) CADworks, Inc., a Texas corporation; and
- (b) Avatech Solutions, Inc., a Delaware corporation.

(2) An agreement of merger has been approved, adopted, certified, executed and acknowledged by the Boards of Directors and Shareholders of CADworks, Inc., and by Avatech Solutions Inc., in accordance with the provisions of Section 5.01 *et seq.* of the Business Corporation Act of the State of Texas, and subsection (c) of Section 252 of the General Corporation Law of the State of Delaware, respectively.

(3) The name of the surviving corporation is Avatech Solutions, Inc..

(4) The certificate of incorporation of Avatech Solutions, Inc. shall be the certificate of incorporation of the surviving corporation.

(5) The surviving corporation is a corporation of the State of Delaware.

(6) The executed agreement of merger is on file at the principal place of business of Avatech Solutions, Inc. at 11403-A Cronhill Drive, Owings Mills, Maryland 21117.

(7) A copy of the agreement of merger will be furnished by Avatech Solutions, Inc., on request and without cost, to any stockholder of CADworks, Inc.

(8) The authorized capital stock of CADworks, Inc. is 1,000,000 shares of Common Stock, \$ 0.10 par value.

IN WITNESS WHEREOF, AVATECH SOLUTIONS, INC. has caused this certificate to be signed by Henry D. Felton, its authorized officer, on the 20th day of June, 1997.

By: Henry D. Felton  
Henry D. Felton

Title: Chairman and Chief Executive Officer

*State of Delaware*  
*Office of the Secretary of State*

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"CADWORKS, INC.", A TEXAS CORPORATION,

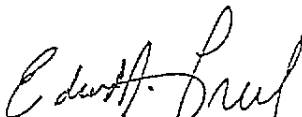
WITH AND INTO "AVATECH SOLUTIONS, INC." UNDER THE NAME OF "AVATECH SOLUTIONS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRD DAY OF JULY, A.D. 1997, AT 9 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



2662225 8100M

971332029

  
\_\_\_\_\_  
Edward J. Freel, Secretary of State

AUTHENTICATION:

8683300

DATE:

10-02-97

CERTIFICATE OF MERGER  
OF  
CADWORKS, INC.  
INTO  
AVATECH SOLUTIONS, INC.

AVATECH SOLUTIONS, INC. hereby certifies that:

- (1) The name and state of incorporation of each of the constituent corporations are:
  - (a) CADworks, Inc., a Texas corporation; and
  - (b) Avatech Solutions, Inc., a Delaware corporation.
- (2) An agreement of merger has been approved, adopted, certified, executed and acknowledged by the Boards of Directors and Shareholders of CADworks, Inc., and by Avatech Solutions Inc., in accordance with the provisions of Section 5.01 *et seq.* of the Business Corporation Act of the State of Texas, and subsection (c) of Section 252 of the General Corporation Law of the State of Delaware, respectively.
- (3) The name of the surviving corporation is Avatech Solutions, Inc..
- (4) The certificate of incorporation of Avatech Solutions, Inc. shall be the certificate of incorporation of the surviving corporation.
- (5) The surviving corporation is a corporation of the State of Delaware.
- (6) The executed agreement of merger is on file at the principal place of business of Avatech Solutions, Inc. at 11403-A Cronhill Drive, Owings Mills, Maryland 21117.
- (7) A copy of the agreement of merger will be furnished by Avatech Solutions, Inc., on request and without cost, to any stockholder of CADworks, Inc.
- (8) The authorized capital stock of CADworks, Inc. is 1,000,000 shares of Common Stock, \$ 0.10 par value.

IN WITNESS WHEREOF, AVATECH SOLUTIONS, INC. has caused this certificate to be signed by Henry D. Felton, its authorized officer, on the 20th day of June, 1997.

By: Henry D. Felton  
Henry D. Felton

Title: Chairman and Chief Executive Officer



# The State of Texas

## SECRETARY OF STATE CERTIFICATE OF MERGER

The undersigned, as Secretary of State of Texas, hereby certifies that the attached Articles of Merger of

CADWORKS, INC. - a Texas corporation  
with  
AVATECH SOLUTIONS, INC. - a Delaware corporation

have been received in this office and are found to conform to law. ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Merger.

Dated July 3, 1997.

Effective July 3, 1997 :

1007.

Antonio O. Garza, Jr.  
Secretary of State



**ARTICLES OF MERGER  
OF  
CADWORKS, INC.  
AND  
AVATECH SOLUTIONS, INC.**

THESE ARTICLES OF MERGER dated as of the 20th day of June, 1997, pursuant to Article 5.04 of the Texas Business Corporation Act are entered into by and between **AVATECH SOLUTIONS, INC.**, a Delaware corporation (the "Surviving Corporation"), and **CADWORKS, INC.**, a Texas corporation (the "Merging Corporation").

**THIS IS TO CERTIFY:**

1. The Plan and Agreement of Merger (the "Plan") attached hereto and incorporated by reference herein was approved by the shareholders of each of the undersigned corporations in the manner prescribed by the Texas Business Corporation Act and the General Corporation Law of the State of Delaware and by its constituent documents.

2. As to each of the undersigned corporations, the number of shares outstanding, the designation of the shares, and number of outstanding shares of each class entitled to vote as a class on such Plan, are as follows:

Name of Corporation	Shares Outstanding	Designation of Class	Shares Entitled to Vote
Avatech Solutions, Inc.	500	Voting Common	500
CADworks, Inc.	6,667	Voting Common	6,667

3. As to each corporation, the number of shares voted for and against such Plan are as follows:

Name of Corporation	Class	Total Voted For	Total Voted Against
Avatech Solutions, Inc.	Voting Common	500	0
CADworks, Inc.	Voting Common	6,667	0

[Signatures on following page]

IN WITNESS WHEREOF, Avatech Solutions, Inc. and CADworks, Inc. have caused these Articles of Merger to be signed in their respective corporate names and on their behalf by their respective Presidents and witnessed or attested by their respective Secretaries as of the day and year first above written.

[Signature]  
Secretary

CADWORKS, INC.

By: [Signature]  
Gregory Blackwell, President

AVATECH SOLUTIONS, INC.

[Signature]  
Secretary

By: [Signature]  
Henry D. Felton, Chairman and  
Chief Executive Officer

STATE OF MARYLAND

COUNTY OF BALTIMORE

Before me, a notary public, on this day personally appeared Henry D. Felton, known to me to be the person whose name is subscribed to the forgoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 20th day of June, 1997.

[Signature]  
Notary Public



My Commission Expires: 7/1/99

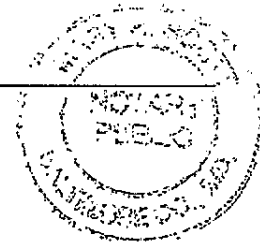
STATE OF MARYLAND

COUNTY OF Baltimore

Before me, a notary public, on this day personally appeared Gregory Blackwell, known to me to be the person whose name is subscribed to the forgoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 20th day of June 1997.

May H. St  
Notary Public



My Commission Expires: 7/1/99

~~-(NOTARIES CONTINUED ON FOLLOWING PAGE)-~~

**EXHIBIT "B"**

By-Laws of Avatech

BY-LAWS  
OF  
AVATECH SOLUTIONS, INC.

ARTICLE I  
Stockholders

Section 1.1. Annual Meetings. An annual meeting of stockholders shall be held for the election of directors at such date, time and place, either within or without the State of Delaware, as may be designated from time to time by resolution of the Board of Directors. Any other proper business may be transacted at the annual meeting.

Section 1.2. Special Meetings. Special meetings of stockholders for any purpose or purposes may be called by the president, secretary, a majority of the board of directors or a majority of the shareholders.

Section 1.3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given either in writing, via telephone, facsimile or electronic mail which shall state the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the notice of any meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation. If notice is given via telephone, facsimile or electronic mail, such notice shall be deemed to be given when confirmed by the stockholder.

Section 1.4. Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if, after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 1.5. Quorum. At each meeting of stockholders, except where otherwise provided by law, the Certificate of Incorporation of the Corporation or these By-Laws, the holders of a majority of the outstanding shares of stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. In the absence of a quorum, the stockholders so present may, by majority vote, adjourn the meeting from time to time in the manner provided in

Section 1.4 of these By-Laws until a quorum shall attend. If a majority of the shares entitled to vote in the election of directors of another corporation is held, directly or indirectly, by the Corporation, then shares of its own stock belonging to the Corporation or to such other corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.6. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, or in his absence, by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7. Voting; Proxies. Each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by him which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by: (1) attending the meeting and voting in person; (2) filing an instrument in writing revoking the proxy; or (3) filing another duly executed proxy, bearing a later date, with the Secretary of the Corporation. Voting at meetings of stockholders need not be by written ballot and need not be conducted by inspectors unless the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or by proxy at such meeting shall so determine. At all meetings of stockholders for the elections of directors a plurality of the votes cast shall be sufficient to elect. All other elections and questions shall, unless otherwise provided by law or by the Certificate of Incorporation or these By-Laws, be decided by the vote of the holders of a majority of the outstanding shares of stock entitled to vote thereon who are present in person or by proxy at the meeting; provided, however, that (except as otherwise required by law or by the Certificate of Incorporation) the Board of Directors may require a larger vote upon any election or question.

Section 1.8. Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, express consent to corporate action in writing without a meeting, receive payment of any dividend or other distribution or allotment of any rights, exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date which shall not be more than sixty (60) days prior to such action.

If no record date is fixed, then the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held and the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 1.9. List of Stockholders Entitled to Vote. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination, during ordinary business hours, of any stockholder for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, either at a place within the locality in which the meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 1.10. Action by Consent of Stockholders. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

## ARTICLE II

### Board of Directors

Section 2.1. Number; Election; Resignation; Removal; Vacancies. The business and property of the Corporation shall be conducted and managed by its Board of Directors. The Board of Directors shall consist of not less than five members. The exact number of Directors shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by a

majority of the entire Board of Directors. Each Director elected shall hold office until his successor shall be elected and shall qualify. Any director may resign at any time upon written notice to the Corporation. Except as otherwise provided in the certificate of incorporation, any director may be removed with or without cause, at any time by vote of the holders of a majority of the shares then entitled to vote at an election of directors, or by written consent of the stockholders pursuant to Section 1.10 of these By-Laws.

Section 2.2. Resignation; Filling Vacancies. Any director may resign at any time upon written notice to the Corporation. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 2.3. Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine and, if so determined, notices thereof need not be given.

Section 2.4. Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the President, the Secretary, or by any two (2) members of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the persons calling the meeting, in writing, via telephone, facsimile or electronic mail, at least forty-eight (48) hours before the special meeting.

Section 2.5. Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this By-Law shall constitute presence in person at such meeting.

Section 2.6. Quorum; Vote Required for Action. A majority of the whole number of directors shall constitute a quorum for the transaction of business at all meetings of the Board of Directors, but, if at any meeting less than a quorum shall be present, a majority of those present may adjourn the meeting from time to time, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by law or by the Certificate of Incorporation or by these By-Laws.



Section 2.7. Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board (whom the Board of Directors shall choose at its annual meeting from among its members) or, in his absence, by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Informal Action by Directors. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

### ARTICLE III Committees

Section 3.1. Committees. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have power or authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of dissolution, or amending these By-Laws; and unless the resolution expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger.

Section 3.2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these By-Laws.

## ARTICLE IV

### Officers

Section 4.1. Executive Officers; Election; Qualifications; Term of Office; Resignation; Removal; Vacancies. The Board of Directors shall choose (i) a President and Chief Executive Officer, (ii) a Chief Financial Officer, (iii) a Secretary, and (iv) a Treasurer. The Board of Directors may also choose one or more Executive Vice Presidents, one or more Senior Vice Presidents, one or more Vice Presidents, one or more Assistant Secretaries, and one or more Assistant Treasurers. Each such officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his election, and until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

Section 4.2. Powers and Duties of Executive Officers. The officers of the Corporation shall have such powers and duties in the management of the Corporation as may be prescribed by the Board of Directors. The officers of the Corporation shall have such additional powers and duties as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his duties.

## ARTICLE V

### Stock

Section 5.1. Certificates. Every holder of stock shall be entitled to have a certificate signed by or in the name of the Corporation by the President, and by the Secretary or an Assistant Secretary, of the Corporation, certifying the number of shares owned by him in the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 5.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative, to give

the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

## ARTICLE VI Indemnification

Section 6.1. Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation may elect by a majority vote of its Board of Directors to indemnify a person who is or was an employee or agent of the Corporation against the same events that the Corporation is herein required to indemnify directors or officers of the Corporation. The Corporation shall be required to indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

Section 6.2. Prepayment of Expenses. The Corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking, in form and substance satisfactory to the Corporation's independent legal counsel by the director or officer to repay all amounts advanced if it should be ultimately determined that the director or officer is not entitled to be indemnified under this Article or otherwise.

Section 6.3. Claims. If a claim for indemnification or payment of expenses under this Article is not paid in full within sixty days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested information or payment of expenses under applicable law.

Section 6.4. Non-Exclusivity of Rights. The rights conferred on any person by this Article VI shall not be exclusive of any other rights which such persons may have or hereafter

acquire under any statute, provision of the certificate of incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6.6. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

## ARTICLE VII Miscellaneous

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 7.2. Seal. The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 7.3 Manner of Giving. Whenever notice is required to be given to any director or stockholder under the provisions of the General Corporation Law of Delaware or under the Certificate of Incorporation or under these By-Laws, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram or facsimile transmission.

Section 7.4. Waiver of Notice of Meetings of Stockholders Directors and Committees. Any written waiver of notice, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice.

Section 7.5. Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if (a) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum or (b) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 7.6. Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or be in the form of, magnetic tape or media, photographs, microphotographs, or any other information storage device, provided that the record so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

Section 7.7. Amendment of By-Laws. These By-Laws may be altered or repealed, and new by-laws made, by a majority vote of directors at any meeting at which a quorum is present and as otherwise permitted by law.