

P98000079720

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TALLAHASSEE, FLORIDA

C. Coulliette APR 22 2003

CT CORPORATION

April 22, 2003

Secretary of State, Florida
409 East Gaines Street
Tallahassee FL 32399

Re: Order #: 5835504 SO
Customer Reference 1: 87487.0001
Customer Reference 2:

Dear Secretary of State, Florida:

Please file the attached:

EdVerify, Inc. (FL)
Merger (Discontinuing Company)
Florida

EdVerify Holdings, Inc. (DE)
Merger (Survivor)
Florida

Enclosed please find a check for the requisite fees. Please return evidence of filing(s) to my attention.

If for any reason the enclosed cannot be filed upon receipt, please contact me immediately at (850) 222-1092. Thank you very much for your help.

660 East Jefferson Street
Tallahassee, FL 32301
Tel. 850 222 1092
Fax 850 222 7615

CT CORPORATION

Sincerely,

Jeffrey J Netherton
Sr. Fulfillment Specialist
Jeff_Netherton@cch-lis.com

660 East Jefferson Street
Tallahassee, FL 32301
Tel. 850 222 1092
Fax 850 222 7615

ARTICLES OF MERGER
Merger Sheet

MERGING:

EDVERIFY, INC., a Florida corporation, P98000079720

INTO

EDVERIFY HOLDINGS, INC., a Delaware entity not qualified in Florida.

File date: April 22, 2003

Corporate Specialist: Cheryl Coulliette

ARTICLES OF MERGER

MERGING

EDVERIFY, INC., a Florida corporation,

WITH AND INTO

EDVERIFY HOLDINGS, INC., a Delaware corporation

(Pursuant to Section 607.1104 of the Florida Business Corporation Act)

EdVerify, Inc., a Florida corporation (the "Corporation"), DOES HEREBY CERTIFY:

FIRST: That the Corporation and EdVerify Holdings, Inc., a Delaware corporation ("Holdings"), are the constituent corporations in the Merger (as defined below) and are incorporated and existing under the laws of the States of Florida and Delaware, respectively.

SECOND: That the plan of merger (the "Plan of Merger") describing the terms and conditions of the merger of the Corporation with and into Holdings (the "Merger") has been approved, adopted, certified, executed and acknowledged by the Corporation on April 17, 2003 in accordance with Section 607.1104 of the Florida Business Corporation Act (the "FBCA") and by the Corporation in accordance with Section 253 of the General Corporation Law of the State of Delaware (the "DGCL").

THIRD: That the required vote of the shareholders of the Corporation, by written consent, approved the Merger and the Plan of Merger.

FOURTH: That the sole stockholder of Holdings, by written consent, approved the Merger and the Plan of Merger and waived the mailing requirement in accordance with Section 607.1104 of the FBCA.

FIFTH: That Holdings shall be the surviving corporation and that the Certificate of Incorporation of Holdings shall remain in full force and effect and shall be the Certificate of Incorporation of the surviving corporation.

FILED
2003 APR 22 PM 1:07
CLERK OF CIRCUIT COURT
JALAHASSEE, FLORIDA

IN WITNESS WHEREOF, the Corporation has caused these Articles of Merger to be signed by an authorized officer, this 17th day of April, 2003.

EDVERIFY, INC.

By: Judith D. Moore
Name: Judith D. Moore
Title: President and Chief Executive Officer

EDVERIFY HOLDINGS, INC.

By: Judith D. Moore
Name: Judith D. Moore
Title: President and Chief Executive Officer

EXHIBIT A
PLAN OF MERGER

PLAN OF MERGER

THIS PLAN OF MERGER, dated as of April 17, 2003 (this "Agreement"), is entered into between EdVerify, Inc., a Florida corporation (the "Company"), and EdVerify Holdings, Inc., a wholly owned subsidiary of the Company and a Delaware corporation ("Holdings").

RECITALS

WHEREAS, the Board of Directors and shareholders of the Company have determined that the merger of the Company with and into Holdings (the "Merger"), in accordance with the provisions of the Florida Business Corporation Act, as amended (the "FBCA") and the Delaware General Corporation Law, as amended ("DGCL"), and subject to the terms and conditions of this Agreement, is advisable and in the best interests of the Company; and

WHEREAS, the sole stockholder of Holdings has determined that the merger of the Company into Holdings, in accordance with the provisions of the DGCL and subject to the terms and conditions of this Agreement, is advisable and in the best interests of Holdings.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound do hereby agree as follows:

1. **Merger.** Upon the terms and subject to the conditions set forth in this Agreement, the Company shall be merged with and into Holdings. The Merger shall be consummated by filing (i) with the Secretary of State of the State of Florida a properly executed articles of merger in such form as is required by the relevant provisions of the FBCA (the "Articles of Merger"), in substantially the form as attached as Exhibit A and (ii) with the Secretary of State of the State of Delaware a properly executed certificate of ownership and merger in such form as is required by the relevant provisions of the DGCL (the "Certificate of Ownership and Merger"), in substantially the form as attached as Exhibit B. The Merger shall become effective (the "Effective Time") upon the later to occur of (i) the effective time of filing of the Articles of Merger with the Secretary of State of the State of Florida and (ii) the effective time of filing of the Certificate of Ownership and Merger with the Secretary of State of the State of Delaware.
2. **Effects of Merger.** The Merger shall have the effects set forth in this Agreement, Section 607.1106 of the FBCA and Section 259 of the DGCL.
3. **Surviving Corporation.** Following the Effective Time, the separate business entity existence the Company shall cease and Holdings shall be the surviving corporation in the Merger (the "Surviving Company") and shall succeed to and assume the rights and obligations of the Company in accordance with applicable law.
4. **Certificate of Incorporation.** At the Effective Time, the certificate of incorporation of Holdings, as attached as Exhibit C, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with applicable law.
5. **Bylaws.** The bylaws of Holdings as in effect immediately prior to the Effective Time, as attached hereto as Exhibit D, shall be the bylaws of the Surviving Company until thereafter amended as provided therein or by applicable law.

6. Board of Directors and Officers. The directors of the Company immediately prior to the Effective Time shall be the directors of the Surviving Company following the Effective Time and such persons shall serve as directors until their respective successors are duly elected or appointed and qualified in the manner provided in the certificate of incorporation and bylaws of the Surviving Company. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Company following the Effective Time and such persons shall serve as officers until their respective successors are duly elected or appointed and qualified in the manner provided in the certificate of incorporation and bylaws of the Surviving Company.

7. Conversion of Securities. At the Effective Time, by virtue of the Merger and without any further action on the part of (i) the Company, (ii) Holdings or (iii) the holder of any of the following:

(A) each issued and outstanding share of common stock, \$0.001 par value per share, of the Company (the "Company Common Stock") shall be converted into one validly issued, fully paid and non-assessable share of common stock, \$0.0001 par value per share, of the Surviving Company (the "Surviving Company Common Stock");

(B) each option granted by the Company to purchase Company Common Stock which is outstanding immediately prior to the Effective Time (the "Converted Option") shall cease to represent a right to acquire Company Common Stock and shall be converted into an option to purchase the same number of shares of Surviving Company Common Stock and on the same terms as under the Converted Option;

(C) each warrant issued by the Company exercisable to purchase Company Common Stock which is outstanding immediately prior to the Effective Time (the "Converted Warrant") shall cease to represent a right to purchase Company Common Stock and shall be converted into a warrant to purchase the same number of shares of Surviving Company Common Stock and on the same terms as under the Converted Warrant;

(D) each issued and outstanding share of Series A Convertible Preferred Stock, \$0.001 par value per share, of the Company shall be converted into one validly issued, fully paid and non-assessable share of Series A Convertible Preferred Stock, \$0.0001 par value per share, of the Surviving Company;

(E) each issued and outstanding share of Series B Convertible Preferred Stock, \$0.001 par value per share, of the Company shall be converted into one validly issued, fully paid and non-assessable share of Series B Convertible Preferred Stock, \$0.0001 par value per share, of the Surviving Company;

(F) each issued and outstanding share of Series C Convertible Preferred Stock, \$0.001 par value per share, of the Company shall be converted into one validly issued, fully paid and non-assessable share of Series C Convertible Preferred Stock, \$0.0001 par value per share, of the Surviving Company;

(G) each issued and outstanding share of Series D-1 Convertible Preferred Stock, \$0.001 par value per share, of the Company shall be converted into one validly issued, fully paid and non-assessable share of Series D-1 Convertible Preferred Stock, \$0.0001 par value per share, of the Surviving Company; and

(H) each issued and outstanding share of Series E Convertible Preferred Stock, \$0.001 par value per share, of the Company shall be converted into one validly issued, fully

paid and non-assessable share of Series E Convertible Preferred Stock, \$0.0001 par value per share, of the Surviving Company.

8. Conditions to Consummation of Merger. Consummation of the Merger is subject to the following conditions precedent: (i) this Agreement shall have been duly authorized by all necessary corporation action on the part of the Company and on the part of Holdings and (ii) the Company and Holdings shall have received all consents, orders or approvals and shall have satisfied all other requirements prescribed by law that are necessary for consummation of the Merger.

9. Assumption of Company's Privileges, Assets and Liabilities by Surviving Company. From and after the Effective Time, all of the estate property, rights, privileges, powers and franchises of the Company shall become vested in and held by the Surviving Company as fully and entirely and without change or diminution as the same were before held and enjoyed by the Company, and the Surviving Company shall assume all the obligations of the Company.

10. Holdings Name Change. Pursuant to Section 253(b), at the Effective Time, the name of Holdings shall change to "EdVerify, Inc."

11. Termination; Amendment. This Agreement may be terminated and abandoned by action of the Boards of Directors of the Company and Holdings at any time prior to the Effective Time, whether before or after approval by the shareholders of either or both of the parties hereto. The Boards of Directors of the parties hereto may amend this Agreement at any time prior to the Effective Time; provided, that an amendment made subsequent to the approval of this Agreement by the shareholders of either of the parties hereto shall not (i) change the amount or kind of shares, securities, cash, property or rights to be received in exchange for or on conversion of all or any of the shares of the parties hereto or (ii) change any other term or conditions of this Agreement if such change would adversely affect the holders of any capital stock of either party hereto.

12. Inspection of Agreement. Executed copies of this Agreement shall be on file at 1001 Fleet Street, Baltimore, Maryland 21202. A copy of this Agreement shall be furnished by Holdings, upon request and without cost, to any stockholder of the Company or Holdings.

13. Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware without regard to its conflicts of law principles or rules.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, each of the parties hereto has caused this Plan of Merger to be executed on its behalf by its officer duly authorized, all as of the date first above written.

EDVERIFY, INC.
a Florida corporation

By: Judith D. Moore
Name: Judith D. Moore
Title: President and Chief Executive
Officer

EDVERIFY HOLDINGS, INC.
a Delaware corporation

By: Judith D. Moore
Name: Judith D. Moore
Title: President and Chief Executive
Officer

EXHIBIT A

ARTICLES OF MERGER

MERGING

EDVERIFY, INC., a Florida corporation,

WITH AND INTO

EDVERIFY HOLDINGS, INC., a Delaware corporation

(Pursuant to Section 607.1104 of the Florida Business Corporation Act)

EdVerify, Inc., a Florida corporation (the "Corporation"), DOES HEREBY CERTIFY:

FIRST: That the Corporation and EdVerify Holdings, Inc., a Delaware corporation ("Holdings"), are the constituent corporations in the Merger (as defined below) and are incorporated and existing under the laws of the States of Florida and Delaware, respectively.

SECOND: That the plan of merger (the "Plan of Merger") describing the terms and conditions of the merger of the Corporation with and into Holdings (the "Merger") has been approved, adopted, certified, executed and acknowledged by the Corporation on April 17, 2003 in accordance with Section 607.1104 of the Florida Business Corporation Act (the "FBCA") and by the Corporation in accordance with Section 253 of the General Corporation Law of the State of Delaware (the "DGCL").

THIRD: That the required vote of the shareholders of the Corporation, by written consent, approved the Merger and the Plan of Merger.

FOURTH: That the sole stockholder of Holdings, by written consent, approved the Merger and the Plan of Merger and waived the mailing requirement in accordance with Section 607.1104 of the FBCA.

FIFTH: That Holdings shall be the surviving corporation and that the Certificate of Incorporation of Holdings shall remain in full force and effect and shall be the Certificate of Incorporation of the surviving corporation.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Merger to be signed by an authorized officer, this ____ day of _____, 2003.

EDVERIFY, INC.

By: _____
Name: Judith D. Moore
Title: President and Chief Executive Officer

EDVERIFY HOLDINGS, INC.

By: _____
Name: Judith D. Moore
Title: President and Chief Executive Officer

EXHIBIT B

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

EDVERIFY, INC., a Florida corporation

WITH AND INTO

EDVERIFY HOLDINGS, INC., a Delaware corporation

**(Pursuant to Section 253 of the
Delaware General Corporation Law)**

EdVerify, Inc., a corporation organized and existing under the laws of the State of Florida ("EdVerify"), DOES HEREBY CERTIFY:

FIRST: That EdVerify owns all of the outstanding shares of common stock, par value \$0.001 per share (the only outstanding class of stock), of EdVerify Holdings, Inc. ("Holdings") as of the date hereof.

SECOND: That the merger of EdVerify with and into Holdings (the "Merger") pursuant to Section 253 of the Delaware General Corporation Law, in which Holdings shall be the surviving corporation, has been approved by resolutions of the Board of Directors of EdVerify on March 12, 2003, a copy of which is attached hereto as Exhibit A (the "EdVerify Board Resolutions").

THIRD: That the merger has been adopted, approved, certified, executed and acknowledged by EdVerify in accordance with the laws of the State of Florida.

FOURTH: That the Merger has been approved by holders of the outstanding stock of EdVerify entitled to vote thereon in accordance with the Florida Business Corporation Act.

FIFTH: That the name of Holdings is hereby changed, pursuant to Section 253(b) of the Delaware General Corporation Law and the EdVerify Board Resolutions, to "EdVerify, Inc."

SIXTH: That the EdVerify Board Resolutions provide for the pro rata issuance of stock of Holdings to the holders of the stock of EdVerify on surrender of any certificates therefor.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, EdVerify has caused this Certificate of Ownership and Merger to be executed by its duly authorized officer this __ day of _____, 2003.

EDVERIFY, INC.
a Florida corporation

By: _____
Name: Judith D. Moore
Title: President and Chief Executive
Officer

EXHIBIT C

**CERTIFICATE OF INCORPORATION
OF
EDVERIFY HOLDINGS, INC.**

FIRST. The name of this corporation is EdVerify Holdings, Inc. (the "Corporation").

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

THIRD. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law"). The Corporation shall have all power necessary or convenient to the conduct, promotion or attainment of such acts and activities.

FOURTH. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 190,000,000 shares, of which (a) 120,000,000 shares shall be Common Stock (the "Common Stock") and (b) 70,000,000 shares shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock and Common Stock shall each have a par value of one one-hundredth of one cent (\$0.0001).

Of the Corporation's authorized Preferred Stock (a) 1,250,000 shares shall be designated as Series A Convertible Preferred Stock (the "Series A Preferred"), (b) 752,920 shares shall be designated as Series B Convertible Preferred Stock (the "Series B Preferred"), (c) 1,046,823 shares shall be designated as Series C Convertible Preferred Stock (the "Series C Preferred"), (d) 3,000,000 shares shall be designated as Series D-1 Convertible Preferred Stock (the "Series D Preferred"), and (e) 50,000,000 shares shall be designated as Series E Convertible Preferred Stock (the "Series E Preferred"). The Series D Preferred and the Series E Preferred shall be collectively referred to herein as the "Senior Preferred Stock." The Series A Preferred, Series B Preferred and Series C Preferred shall be collectively referred to herein as the "Junior Preferred Stock." The Senior Preferred Stock and the Junior Preferred Stock shall be referred to herein as the "Designated Preferred Stock."

The designations, preferences, powers, qualifications, and special or relative rights or privileges of the Common Stock and the Preferred Stock shall be as set forth below.

1. RELATIVE SENIORITY.

The Series D Preferred and the Series E Preferred shall rank pari passu to each other and senior to all other equity securities of the Corporation, including the Junior Preferred Stock and the Common Stock, with respect to dividend, liquidation, conversion and redemption rights. The Series A Preferred and the Series B Preferred shall rank pari passu to each other and senior only to the Series C Preferred and the Common Stock, with respect to dividend, liquidation and conversion rights. The Series C Preferred shall rank senior only to the Common Stock, with respect to dividend, liquidation and conversion rights.

2. DIVIDEND RIGHTS.

(a) **Senior Preferred Stock.** The holders of Senior Preferred Stock, in preference to all holders of Junior Preferred Stock and Common Stock, shall be entitled to receive out of funds legally available for the purpose, cumulative dividends as provided in this Section 2. Dividends on each share of Senior Preferred Stock shall accrue at the rate of 8% per annum on the sum of (i) with respect to the Series D Preferred, \$1.1849 plus all accrued and unpaid dividends accrued thereon pursuant to this Section 2 and (ii) with respect to the Series E Preferred, \$0.156 plus all accrued and unpaid dividends accrued thereon pursuant to this Section 2 (collectively, the "Senior Preferred Dividends"). The Senior Preferred Dividends shall commence to accrue on each share of Senior Preferred Stock from the date of the issuance of any Senior Preferred Stock as if the Senior Preferred Stock was issued (i) with respect to the Series D Preferred, on June 15, 2001 and (ii) with respect to the Series E Preferred, on June 6, 2002 and will be calculated and compounded annually on December 31 of each year (each a "Dividend Date") in respect of the prior twelve-month period prorated on a daily basis for partial periods. The Senior Preferred Dividends shall be payable within 10 days of the Dividend Date as follows: (i) with respect to the Series D Preferred, (A) until June 15, 2004, the Senior Preferred Dividends on the Series D Preferred will be paid in additional shares of Series D Preferred, unless the holders of a majority of the Series D Preferred consent to such payment in cash, and (B) after June 15, 2004, the Senior Preferred Dividends on the Series D Preferred will be paid, in the sole discretion of the Board of Directors, in either cash or additional shares of Series D Preferred; and (ii) with respect to the Series E Preferred, (A) until June 6, 2005, the Senior Preferred Dividends on the Series E Preferred will be paid in additional shares of Series E Preferred, unless the holders of a majority of the Series E Preferred consent to such payment in cash, and (B) after June 6, 2005, the Senior Preferred Dividends on the Series E Preferred will be paid, in the sole discretion of the Board of Directors, in either cash or additional shares of Series E Preferred. No dividends or other distributions shall be authorized, declared, paid or set apart for payment with respect to Junior Preferred Stock, Common Stock or any other equity securities of the Corporation unless the Senior Preferred Dividends are first declared and paid in full with respect to the Senior Preferred Stock.

(b) **Junior Preferred Stock.** Subject to Section 2(a) above, the holders of Junior Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, if at all, dividends on a parity with each holder of shares of Common Stock. Such dividends shall be payable per each share of Junior Preferred Stock in an amount equal to the dividends per share payable on the number of shares of Common Stock into which such shares of Junior Preferred Stock is convertible on the record date for determining eligibility to receive such dividends, or if no such record date is established, on the date such dividends are actually paid.

(c) **Common Stock.** Subject to Section 2(a) above, when, as and if dividends with respect to the Common Stock are declared by the Board of Directors, whether payable in cash, in property or in securities of the Corporation, the holders of Common Stock shall be entitled to share equally in and to receive such dividends in accordance with the number of shares of Common Stock held by each such holder.

3 VOTING RIGHTS.

(a) **Preferred Stock.** Except as otherwise provided herein or as required by law, each holder of shares of Designated Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which all shares of Designated Preferred Stock held by such holder are then convertible in accordance with Sections 6 and 7 below, at each meeting of shareholders of the Corporation (and written actions of shareholders in lieu of meetings) with respect to any and all matters presented to the shareholders of the Corporation for their action or consideration. Except as otherwise provided herein or as required by law, holders of Designated

Preferred Stock shall vote together with the holders of Common Stock as a single class on all actions to be taken by the shareholders of the Corporation.

(b) Common Stock. Except as otherwise provided herein or as required by law, each holder of Common Stock shall be entitled to vote on all matters and shall be entitled to one vote for each share of Common Stock standing in such holder's name on the books of the Corporation.

(c) Record Date. The number of shares of Designated Preferred Stock or Common Stock, as the case may be, entitled to vote on any matter shall be determined in each case as of the record date for the determination of shareholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited.

(d) Consent of Senior Preferred Stock. Except where the vote or written consent of a greater number of shares of the capital stock of the Corporation is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law or this Certificate of Incorporation, without the affirmative vote or written consent of the holders of at least 60% of the Senior Preferred Stock, the Corporation shall not:

- (i) amend the Certificate of Incorporation or bylaws of the Corporation;
- (ii) create or authorize any additional shares of capital stock, establish (including by reclassification of an existing class or series) any other class or classes of capital stock or establish any other securities exchangeable or convertible into a class of capital stock;
- (iii) issue additional shares of Preferred Stock or Common Stock or securities exchangeable or convertible into Preferred Stock or Common Stock, other than 8,505,000 shares of Common Stock currently reserved for issuance under the Corporation's 1999 Stock Option Plan and pursuant to convertible or exchangeable securities outstanding as of the date any Preferred Stock is first issued by the Corporation;
- (iv) effect any sale, liquidation, winding up, merger, consolidation or sale of all or substantially all of the assets of the Corporation or any other transaction in the case of any merger, consolidation or sale of assets in which control of the Corporation is transferred;
- (v) repurchase or redeem any capital stock of the Corporation (other than the Senior Preferred Stock);
- (vi) sell any subsidiary or shares held in any subsidiary;
- (vii) increase or decrease the authorized maximum number of members constituting the Board of Directors to a number other than eight;
- (viii) authorize, pay, declare or set apart for payment any cash dividend on any shares of the Corporation's capital stock other than with respect to the Series E Preferred Stock;
- (ix) borrow funds or guarantee indebtedness in any single transaction or series of transactions in an amount in excess of \$75,000; or
- (x) enter into any contract or obligation that requires the Corporation to make annual payments in excess of \$75,000, other than with respect to annual payments relating to an employee's salary, in which case such limit shall be \$100,000.

4. LIQUIDATION RIGHTS.

Upon any liquidation, dissolution, or winding-up of the Corporation, either voluntary or involuntary, distributions to the shareholders of the Corporation shall be made in the following manner:

(a) Senior Preferred Stock Liquidation Preference. The holders of Senior Preferred Stock shall first receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Junior Preferred Stock and Common Stock or any other class or series of capital stock of the Corporation, an amount equal to (i) with respect to the Series D Preferred, \$2.37 per share of Series D Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series D Preferred) then held by them, plus all accrued and unpaid dividends on the Series D Preferred for each share of Series D Preferred held by them as of the date payment is made pursuant to this Section 4(a), and (ii) with respect to the Series E Preferred, \$0.312 per share of Series E Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series E Preferred) then held by them, plus all accrued and unpaid dividends on the Series E Preferred for each share of Series E Preferred held by them as of the date payment is made pursuant to this Section 4(a). If the assets of the Corporation legally available for distribution shall be insufficient to permit the payment in full to such holders of the Senior Preferred Stock of the full aforesaid preferential amounts, then the entire assets of the Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Preferred Stock in accordance with the aggregate liquidation preference (as set forth in this Section 4(a)) of the shares of the Senior Preferred Stock held by each of them.

(b) Series A and B Preferred Liquidation Preference. After payment has been made to the holders of the Senior Preferred Stock of the full amounts to which they shall be entitled as aforesaid pursuant to Section 4(a) above, the holders of Senior Preferred Stock and the holders of Series A Preferred and Series B Preferred shall be entitled to share ratably in the remaining assets of the Corporation legally available for distribution pro rata based on the number of shares of Common Stock held by them (assuming conversion of all such Senior Preferred Stock, Series A Preferred and Series B Preferred) until (i) the holders of Series D Preferred have received assets with an aggregate fair market value of \$3.37 per share of Series D Preferred (such sum to include all amounts received pursuant to Section 4(a) above and such target amount of \$3.37 to be adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series D Preferred), (ii) the holders of Series E Preferred have received assets with an aggregate fair market value of \$1.312 per share of Series E Preferred (such sum to include all amounts received pursuant to Section 4(a) above and such target amount of \$1.312 to be adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series E Preferred), (iii) the holders of Series A Preferred have received assets with an aggregate fair market value of \$1.00 per share of such Series A Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series A Preferred) together with an amount equal to all dividends declared and unpaid on each such share of Series A Preferred up to the date fixed for distribution; and (iv) the holders of Series B Preferred have received assets with an aggregate fair market value of \$1.00 per share of such Series B Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series B Preferred) together with an amount equal to all dividends declared and unpaid on each such share of Series B Preferred up to the date fixed for distribution. If the assets of the Corporation legally available for distribution shall be insufficient to permit the payment in full to such holders of Senior Preferred Stock, Series A Preferred and Series B Preferred of the full aforesaid preferential amounts, then the entire assets of the Corporation legally available for distribution, subject to Section 4(a) above, shall be distributed ratably among the holders of the Senior Preferred Stock,

Series A Preferred and Series B Preferred in accordance with the aggregate liquidation preference (as set forth in this Section 4(b)) of the shares of Senior Preferred Stock, Series A Preferred and Series B Preferred held by each of them.

(c) Series C Preferred Liquidation Preference. After payment has been made to the holders of Senior Preferred Stock, Series A Preferred and Series B Preferred of the full amounts to which they shall be entitled as aforesaid pursuant to Sections 4(a) and 4(b) above, the holders of Senior Preferred Stock and the holders of Series C Preferred shall be entitled to share ratably in the remaining assets of the Corporation legally available for distribution pro rata based on the number of shares of Common Stock held by them (assuming conversion of all such Senior Preferred Stock and Series C Preferred) until (i) the holders of Series D Preferred have received assets with an aggregate fair market value of \$5.37 per share of Series D Preferred (such sum to include all amounts received pursuant to Sections 4(a) and 4(b) above and such target amount of \$5.37 to be adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series D Preferred), and (ii) the holders of Series E Preferred have received assets with an aggregate fair market value of \$3.312 per share of Series E Preferred (such sum to include all amounts received pursuant to Sections 4(a) and 4(b) above and such target amount of \$3.312 to be adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series E Preferred), (iii) the holders of Series C Preferred have received assets with an aggregate fair market value of \$2.00 per share of Series C Preferred (as adjusted to reflect stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of Series C Preferred) together with an amount equal to all dividends declared and unpaid on each such share of Series C Preferred up to the date fixed for distribution. If the assets of the Corporation legally available for distribution shall be insufficient to permit the payment in full to such holders of Senior Preferred Stock and Series C Preferred of the full aforesaid preferential amounts, then the entire assets of the Corporation legally available for distribution, subject to Sections 4(a) and 4(b) above, shall be distributed ratably among the holders of the Senior Preferred Stock and Series C Preferred in accordance with the aggregate liquidation preference (as set forth in this Section 4(c)) of the shares of Senior Preferred Stock and Series C Preferred held by each of them.

(d) Remaining Assets. After payment has been made to the holders of Senior Preferred Stock and Junior Preferred Stock of the full amounts to which they shall be entitled as aforesaid pursuant to Sections 4(a), 4(b) and 4(c) above, the holders of Senior Preferred Stock and Common Stock shall be entitled to share ratably in the remaining assets of the Corporation legally available for distribution pro rata based on the number of shares of Common Stock held by them (assuming conversion of all such Senior Preferred Stock).

(e) Definition of Liquidation. With the exception of sales made pursuant to Section 7 of that certain Fifth Amended and Restated Shareholders' Agreement of even date hereof by and among the Corporation and the shareholders named therein, as such agreement may be amended from time to time (the "Shareholders' Agreement"), and subject to the provisions of Section 4(e)(iv) below, the following events shall be considered a liquidation, dissolution, or winding-up of the Corporation under this Section 4:

(i) any consolidation or merger of the Corporation into or with any other entity or entities (other than a consolidation or merger in which the shares of the Corporation outstanding immediately prior to the closing of such merger or consolidation (A) represent or are converted into shares of the surviving or resulting entity that represent more than 50% of the total number of shares of the surviving or resulting entity that are outstanding or are reserved for issuance immediately after the closing of the merger or consolidation and (B) have the power to elect more than 50% of the surviving or resulting corporation's directors);

(ii) the acquisition from the Corporation and/or from any shareholders of the Corporation in a single transaction or series of related transactions by any person or group of more than 50% of the Corporation's outstanding Common Stock (assuming the conversion of the outstanding shares of Designated Preferred Stock); or

(iii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation.

(iv) The Corporation shall not treat any of the events described in Sections 4(e)(i), 4(e)(ii) or 4(e)(iii) above as a liquidation, dissolution or winding-up of the Corporation (A) with respect to the Series E Preferred, upon the vote or written consent of the holders of at least a majority of Series E Preferred, (B) with respect to the Series D Preferred, upon the vote or written consent of the holders of at least a majority of Series D Preferred, (C) with respect to the Series C Preferred, upon the vote or written consent of the holders of at least a majority of Series C Preferred, (D) with respect to the Series B Preferred, upon the vote or written consent of the holders of at least a majority of Series B Preferred, (E) with respect to the Series A Preferred, upon the vote or written consent of the holders of at least a majority of Series A Preferred.

(f) Consideration Received. In any liquidation, dissolution, or winding-up of the Corporation, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

(i) Securities not subject to an investment letter or other similar restrictions on free marketability covered by Section 4(f)(ii) below:

(A) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the 30-day period ending three days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30-day period ending three days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(ii) The method of valuation of securities subject to an investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 4(f)(i)(A), (B), or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

5. REDEMPTION.

(a) Redemption Election and Notice. On or after June 15, 2006, the holders of 60% of the Senior Preferred Stock (the "Senior Preferred Majority") may, at any time, require the Corporation to redeem all (or less than all) of the outstanding Senior Preferred Stock. In any such case, the Senior Preferred Majority shall notify the Corporation in writing of its or their intent to exercise the rights afforded by this Section 5(a) and specify a date not less than 30 nor more than 120 days from the date of such notice on which the Senior Preferred Stock shall be redeemed by the Corporation (the "Redemption Date").

(b) Redemption Price. The total amount to be paid for the Senior Preferred Stock to be redeemed pursuant to Section 5(a) above shall be a per share price equal to (i) with respect to the Series D Preferred, \$1.1849 (as adjusted for any stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of the Series D Preferred) plus all accrued but unpaid dividends on such share as of the date of the redemption payment, and (ii) with respect to the Series E Preferred, \$0.156 (as adjusted for any stock dividends, stock splits, recapitalizations and the like that affect the number of issued and outstanding shares of the Series E Preferred) plus all accrued but unpaid dividends on such share as of the date of the redemption payment (collectively, the "Redemption Price").

(c) Interest. In the event shares of Senior Preferred Stock scheduled for redemption pursuant to Section 5(a) above are not redeemed because of a prohibition under applicable law, such shares shall be redeemed as soon as such prohibition no longer exists and the portion of the Redemption Price applicable to such shares will bear interest at the annual rate of eight percent.

(d) Insufficient Funds for Redemption. If the Corporation does not have sufficient funds legally available to redeem all shares requested to be redeemed on any given Redemption Date, then it shall redeem the Senior Preferred Stock pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(e) Redemption Notice. Not more than 50 days and not less than 10 days prior to any Redemption Date, the Corporation shall mail written notice (a "Redemption Notice"), postage prepaid, to all holders of Senior Preferred Stock to be redeemed setting forth (i) the Redemption Date, (ii) the Redemption Price for the shares to be redeemed and (iii) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates.

(f) Deposit of Redemption Price Funds. On or prior to any Redemption Date, the Corporation shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. The balance of any funds deposited by the Corporation pursuant to this Section 5(f) remaining unclaimed at the expiration of one year following such Redemption Date shall be returned to the Corporation promptly upon its written request.

(g) Surrender of Certificates. On or after any Redemption Date, each holder of shares of Senior Preferred Stock requested to be redeemed shall surrender such holder's certificates representing such shares to the Corporation in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Corporation is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as a holder of Senior Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; provided that in the event that shares of Senior Preferred Stock are not redeemed due to a default in payment by the Corporation or because the Corporation does not have sufficient legally available funds, such shares of Senior Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(h) Failure to Redeem. In the event that the Corporation fails to redeem all of the Senior Preferred Stock within two years of the Redemption Date, (i) the holders of Senior Preferred Stock shall have the right to elect the smallest number of additional directors that would provide them with a majority of the Board of Directors in accordance with the Shareholders' Agreement, (ii) the Series D Conversion Price (defined in Section 6(a)(i) below) then in effect shall decrease at the rate of 25% per year thereafter, with the first such decrease taking effect on the second anniversary of the Redemption Date and (iii) the Series E Conversion Price (defined in Section 6(b)(i) below) then in effect shall decrease at the rate of 25% per year thereafter, with the first such decrease taking effect on the second anniversary of the Redemption Date.

(i) Additional Redemption. The Corporation shall have no unilaterally exercisable right to repurchase or redeem any Junior Preferred Stock or Common Stock. The holders of Junior Preferred Stock shall have no unilaterally exercisable right to require the Corporation to repurchase or redeem any of their Junior Preferred Stock. No appraiser shall have the power to expand, modify or delete any of the procedures set forth herein.

6. CONVERSION.

The holders of Designated Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Optional Conversion.

(i) *Series D Preferred.* Each share of Series D Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series D Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series D Preferred may be converted shall be determined by dividing \$1.1849 by the Series D Conversion Price (defined below) in effect at the time of conversion. As of the date any Series D Preferred is issued by the Corporation, the "Series D Conversion Price" shall initially be \$0.156, which number is subject to subsequent adjustment as provided in Section 7 below.

(ii) *Series E Preferred.* Each share of Series E Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series E Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series E Preferred may be converted shall be determined by dividing \$0.156 by the Series E Conversion Price (defined below) in effect at the time of conversion. As of the date any Series E Preferred is issued by the Corporation, the "Series E Conversion Price" shall initially be \$0.156, which number is subject to subsequent adjustment as provided in Section 7 below.

(iii) *Series A Preferred.* Each share of Series A Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series A Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series A Preferred may be converted shall be determined by dividing \$1.00 by the Series A Conversion Price (defined below) in effect at the time of conversion. As of the date any Series A Preferred is issued by the Corporation, the "Series A Conversion Price" shall initially be \$0.50, which number is subject to subsequent adjustment as provided in Section 7 below.

(iv) *Series B Preferred.* Each share of Series B Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series B Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series B Preferred may be converted shall be determined by dividing \$1.00 by the Series B Conversion Price (defined below) in effect at the time of conversion. As of the date any Series B Preferred is issued by the Corporation, the "Series B Conversion Price" shall initially be \$0.49, which number is subject to subsequent adjustment as provided in Section 7 below.

(v) *Series C Preferred.* Each share of Series C Preferred shall be convertible, without the payment of any additional consideration and at the option of the holder thereof, at any time after the date of the first issuance of such shares of Series C Preferred by the Corporation, into shares of Common Stock as more fully described below. The number of fully paid and nonassessable shares of Common Stock into which each share of Series C Preferred may be converted shall be determined by dividing \$2.00 by the Series C Conversion Price (defined below) in effect at the time of conversion. As of the date any Series C Preferred is issued by the Corporation, the "Series C Conversion Price" shall initially be \$0.86, which number is subject to subsequent adjustment as provided in Section 7 below.

(b) Automatic Conversion.

(i) *Series D Preferred.* Each share of Series D Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series D Conversion Price for each such share immediately upon the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with a public offering price of not less than \$5.92 per share (as adjusted to reflect subsequent stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) and with aggregate gross proceeds to the Corporation of not less than \$25,000,000 (a "Qualified IPO").

(ii) *Series E Preferred.* Each share of Series E Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series E Conversion Price for each such share immediately upon the closing of a Qualified IPO.

(iii) *Series A Preferred.* Each share of Series A Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series A Conversion Price for each such share immediately upon the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with a public offering price of not less than \$3.00 per share (as adjusted to reflect subsequent stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) and with aggregate gross proceeds to the Corporation of not less than \$10,000,000.

(iv) *Series B Preferred.* Each share of Series B Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series B Conversion Price for each such share immediately upon the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with a public offering price of not less than \$3.00 per share (as adjusted to reflect subsequent stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) and with aggregate gross proceeds to the Corporation of not less than \$10,000,000.

(v) Series C Preferred. Each share of Series C Preferred shall automatically be converted into shares of Common Stock utilizing the then effective Series C Conversion Price for each such share immediately upon the closing of the sale of the Corporation's securities pursuant to a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with a public offering price of not less than \$3.00 per share (as adjusted to reflect subsequent stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock) and with aggregate gross proceeds to the Corporation of not less than \$10,000,000.

(c) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Designated Preferred Stock, and any shares of Designated Preferred Stock surrendered for conversion that would otherwise result in a fractional share of Common Stock shall be redeemed for the then fair market value thereof as determined by the Board of Directors, payable as promptly as possible whenever funds are legally available therefore. If more than one share of Designated Preferred Stock is surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock to be issued upon conversion shall be computed on the basis of the aggregate number of shares of Designated Preferred Stock so surrendered.

(d) Mechanics of Conversion. Before any holder of Designated Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for the Designated Preferred Stock and shall give written notice to the Corporation at such office that it elects to convert the same and shall state therein the name or names in which it wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Designated Preferred Stock, or to its nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which it shall be entitled as aforesaid, together with cash in lieu of any fraction of a share. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Designated Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(e) Validly Issued. All shares of Common Stock that may be issued upon conversion of the Designated Preferred Stock will upon issuance by the Corporation be validly issued, fully paid, nonassessable and free from all taxes, liens, and charges with respect to the issuance thereof.

(f) Expenses. The issuance of certificates representing shares of Common Stock upon conversion of any Designated Preferred Stock shall be made to each applicable shareholder without charge for any excise tax in respect of such issuance. However, if any certificate is to be issued in a name other than that of the holder of record of the Designated Preferred Stock, the person or persons requesting the issuance thereof shall pay to the Corporation the amount of any tax which may be payable in respect of any transfer involved in such issuance, or shall establish to the satisfaction of the Corporation that such tax has been paid or is not due and payable.

(g) Status of Converted Stock. If any Designated Preferred Stock shall be converted pursuant to this Section 6, the Designated Preferred Stock so converted shall resume the status of authorized but unissued and undesignated Preferred Stock.

(h) Payment of Dividends. If any Designated Preferred Stock shall be converted pursuant to this Section 6, to the extent it is legally able to do so, the Corporation shall pay to the holder of record of any Designated Preferred Stock being converted the following: (i) first, with respect to the holders Senior Preferred Stock, any accrued but unpaid dividends on any such Senior

Preferred Stock surrendered for conversion, and (ii) second, with respect to the holders of Junior Preferred Stock, any declared but unpaid dividends on any such Junior Preferred Stock surrendered for conversion.

(i) Common Stock Reserved. The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of Designated Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all Senior Preferred Stock from time to time outstanding.

7. ADJUSTMENT OF CONVERSION PRICE.

(a) Adjustment of the Series D Conversion Price. The Series D Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the effective date of this Certificate of Incorporation (the "Effective Date") subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series D Preferred, the Series D Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series D Preferred, the Series D Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) Except as otherwise provided in Section 7(a)(iii) below, if the Corporation shall at any time or from time to time on or after the Effective Date, issue or sell Equity Securities (defined in Section 7(f)(i) below) for no consideration or at a consideration per share (the "Series D Lower Price") less than the Series D Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series D Conversion Price of each share of Series D Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series D Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series D Preferred Conversion Price,

and the denominator of which is

(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

provided that (x) for the purpose of this Section 7(a)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (y) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or conversion rate of the Series D Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) Notwithstanding the foregoing, if the Corporation shall at any time or from time to time on or after the Effective Date issue or sell Equity Securities (defined in Section 7(f)(i) below) at a Series D Lower Price that is less than or equal to 45% of the Series D Conversion Price then in effect, the Series D Conversion Price shall automatically become such Series D Lower Price.

(iv) In the event the Corporation on or after the Effective Date shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(a)(iv), the holders of Series D Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series D Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(v) If at any time or from time to time on or after the Effective Date there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series D Preferred shall thereafter be entitled to receive upon conversion of such Series D Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series D Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series D Conversion Price then in effect and the number of shares purchasable upon conversion of such Series D Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(b) Adjustment of the Series E Conversion Price. The Series E Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the Effective Date subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series E Preferred, the Series E Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series E Preferred, the Series E Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) Except as otherwise provided in Section 7(b)(iii) below, if the Corporation shall at any time or from time to time on or after the Effective Date issue or sell Equity Securities (defined in Section 7(f)(i) below) for no consideration or at a consideration per share (the "Series E Lower Price") less than the Series E Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series E Conversion Price of each share of Series E Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series E Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock

that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series E Preferred Conversion Price, and the denominator of which is

(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

provided that (x) for the purpose of this Section 7(b)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (y) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or conversion rate of the Series E Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) Notwithstanding the foregoing, if the Corporation shall at any time or from time to time on or after the Effective Date issue or sell Equity Securities (defined in Section 7(f)(i) below) at a Series E Lower Price that is less than or equal to 45% of the Series E Conversion Price then in effect, the Series E Conversion Price shall automatically become such Lower Price.

(iv) In the event the Corporation on or after the Effective Date shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(b)(iv), the holders of Series E Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series E Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(v) If at any time or from time to time on or after the Effective Date there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series E Preferred shall thereafter be entitled to receive upon conversion of such Series E Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series E Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series E Conversion Price then in effect and the number of shares purchasable upon conversion of such Series E Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(c) Adjustment of the Series A Conversion Price. The Series A Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the Effective Date subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series A Preferred, the Series A Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of

the Series A Preferred, the Series A Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) If the Corporation shall at any time or from time to time on or after the Effective Date issue or sell Equity Securities (defined in Section 7(f)(i) below) for no consideration or at a consideration per share less than the Series A Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series A Conversion Price of each share of Series A Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series A Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series A Conversion Price,

and the denominator of which is

(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

provided that (x) for the purpose of this Section 7(c)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (y) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or conversion rate of the Series A Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) In the event the Corporation on or after the Effective Date shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(c)(iii), the holders of Series A Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(iv) If at any time or from time to time on or after the Effective Date there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon conversion of such Series A Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series A Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series A Conversion Price then in effect and the number of shares purchasable upon conversion of such Series A Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(d) Adjustment of the Series B Conversion Price. The Series B Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the Effective Date subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series B Preferred, the Series B Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series B Preferred, the Series B Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) If the Corporation shall at any time or from time to time on or after the Effective Date issue or sell Equity Securities (defined in Section 7(f)(i) below) for no consideration or at a consideration per share less than the Series B Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series B Conversion Price of each share of Series B Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series A Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series B Conversion Price,

and the denominator of which is

(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

provided that (x) for the purpose of this Section 7(d)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (y) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or conversion rate of the Series B Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) In the event the Corporation on or after the Effective Date shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(d)(iii), the holders of Series B Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series B Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(iv) If at any time or from time to time on or after the Effective Date there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series B Preferred shall thereafter be entitled to receive upon

conversion of such Series B Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series B Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series B Conversion Price then in effect and the number of shares purchasable upon conversion of such Series B Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(e) Adjustment of the Series C Conversion Price. The Series C Conversion Price from time to time in effect shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time on or after the Effective Date subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding Common Stock, without an equivalent subdivision of, or dividend on, the Series C Preferred, the Series C Conversion Price in effect immediately prior to such subdivision or the issuance of such dividend shall be proportionately decreased, and in case the Corporation shall at any time combine the outstanding shares of Common Stock, without an equivalent combination of the Series C Preferred, the Series C Conversion Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision, dividend or combination.

(ii) If the Corporation shall at any time or from time to time on or after the Effective Date issue or sell Equity Securities (defined in Section 7(f)(i) below) for no consideration or at a consideration per share less than the Series C Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale, the Series C Conversion Price of each share of Series C Preferred shall be adjusted to a price (calculated to the nearest cent) determined by multiplying the Series C Conversion Price in effect immediately prior to such issuance or sale by a fraction, the numerator of which is:

(A) an amount equal to (x) the number of shares of Common Stock outstanding immediately prior to such issue plus (y) the number of shares of Common Stock that the "consideration actually received" by the Corporation for the total number of additional shares of Common Stock so issued would purchase at such Series C Conversion Price,

and the denominator of which is

(B) an amount equal to the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such additional shares of Common Stock so issued;

provided that (x) for the purpose of this Section 7(e)(ii), all shares of Common Stock issuable upon exercise or conversion of options, warrants or convertible securities outstanding immediately prior to such issuance shall be deemed to be outstanding, and (y) the number of shares of Common Stock deemed issuable upon exercise or conversion of options, warrants or convertible securities shall not give effect to any adjustments to the conversion price or conversion rate of the Series C Preferred resulting from the issuance of additional shares of Common Stock that is the subject of this calculation.

(iii) In the event the Corporation on or after the Effective Date shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 7(f)(i) below, then, in each such case for the purpose of this Section 7(e)(iii), the holders of

Series C Preferred shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series C Preferred are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(iv) If at any time or from time to time on or after the Effective Date there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 7 or Section 4 above), provision shall be made so that the holders of the Series C Preferred shall thereafter be entitled to receive upon conversion of such Series C Preferred the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of such Series C Preferred after the recapitalization to the end that the provisions of this Section 7 (including adjustment of the Series C Conversion Price then in effect and the number of shares purchasable upon conversion of such Series C Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(f) Applicable Provisions. For purposes of this Section 7(f), each of the Series D Conversion Price, Series E Conversion Price, Series A Conversion Price, Series B Conversion Price and Series C Conversion Price may be referred to herein as a "Conversion Price." In addition, for purposes hereof, the following provisions shall be applicable:

(i) The Term "Equity Securities" shall mean any shares of Common Stock, or any obligation or any share of stock or other security of the Corporation convertible into or exchangeable for Common Stock, except for (A) up to 8,505,000 shares of Common Stock issued or issuable to officers, directors, employees or consultants of the Corporation pursuant to a written stock option plan approved by the Board of Directors and at an exercise price of no less than the fair market value of such Common Stock (collectively, a "Stock Award"), and any reissuance thereof upon any expiration, termination, surrender or forfeiture, approved by the Board of Directors (as appropriately adjusted to reflect stock splits, stock dividends, recapitalizations and the like that affect the number of issued and outstanding shares of Common Stock), or such greater number as may be approved by a majority of the Board of Directors, which majority must include at least two of the directors designated by the holders of Senior Preferred Stock pursuant to the Shareholders' Agreement; provided, however, that if any Stock Award issued on or before the Effective Date expires, or is terminated, surrendered or forfeited, in whole or in part, the Common Stock covered by such expired, terminated, surrendered or forfeited Stock Award may then be reissued and shall not be deemed to be Equity Securities in accordance with this Section 7(f)(i), provided that the aggregate number of shares so excluded does not exceed 8,505,000 shares; (B) shares issued pursuant to transactions described in Sections 7(a)(i), 7(b)(i), 7(c)(i), 7(d)(i) and 7(e)(i) above; (C) shares of Common Stock issued upon conversion of the Designated Preferred Stock; (D) up to 1,389,500 shares of Common Stock issuable upon the exercise of warrants outstanding as of the Effective Date (subject to adjustment as set forth in such warrants); (E) shares of Common Stock issued by the Corporation pursuant to a Qualified IPO; and (F) shares issued as a dividend pursuant to Section 2 above.

(ii) In the case of an issue or sale for cash of shares of Common Stock, the "consideration actually received" by the Corporation therefore shall be deemed to be the amount of cash received, before deducting therefrom any commissions or expenses paid by the Corporation.

(iii) In case of the issuance of additional shares of Common Stock for a consideration other than cash or a consideration partly other than cash, the amount of the

consideration other than cash received by the Corporation for such shares shall be deemed to be the value of such consideration as determined in good faith by the Board of Directors.

(iv) In case of the issuance by the Corporation in any manner of any rights to subscribe for or to purchase shares of Common Stock, or any options for the purchase of shares of Common Stock or stock convertible into Common Stock, all shares of Common Stock or stock convertible into Common Stock to which the holders of such rights or options shall be entitled to subscribe for or purchase pursuant to such rights or options shall be deemed "outstanding" immediately after the issuance or sale of such rights or the granting of such options, as the case may be, and the minimum aggregate consideration named in such rights or options for the shares of Common Stock or stock convertible into Common Stock covered thereby, plus the consideration, if any, received by the Corporation for such rights or options, shall be deemed to be the "consideration actually received" by the Corporation (as of the date of the offering of such rights or the granting of such options, as the case may be) for the issuance of such shares.

(v) In case of the issuance or issuances by the Corporation in any manner of any obligations or of any shares of stock of the Corporation that shall be convertible into or exchangeable for Common Stock, all shares of Common Stock issuable upon the conversion or exchange of such obligations or shares shall be deemed issued immediately after such obligations or shares are issued, and the amount of the "consideration actually received" by the Corporation for such additional shares of Common Stock shall be deemed to be that total of (A) the amount of consideration received by the Corporation upon the issuance of such obligations or shares, as the case may be, plus (B) the minimum aggregate consideration, if any, other than such obligations or shares, receivable by the Corporation upon such conversion or exchange.

(vi) The amount of the "consideration actually received" by the Corporation upon the issuance of any rights or options referred to in Section 7(f)(iv) above or upon the issuance of any obligations or shares which are convertible or exchangeable as described in Section 7(f)(v) above, and the amount of consideration, if any, other than such obligations or shares so convertible or exchangeable, received by the Corporation upon the exercise, conversion or exchange thereof shall be determined in the same manner provided in Sections 7(f)(ii) and (iii) above with respect to the consideration received by the Corporation in case of the issuance of additional shares of Common Stock; provided, however, that if such obligations or shares of stock so convertible or exchangeable are issued in payment or satisfaction of any dividend upon any stock of the Corporation other than Common Stock, the amount of the "consideration actually received" by the Corporation upon the original issuance of such obligations or shares or stock so convertible or exchangeable shall be deemed to be the value of such obligations or shares of stock, as of the date of the adoption of the resolution declaring such dividend, as determined by the Board of Directors at or as of that date. On the expiration of any rights or options referred to in Section 7(f)(iv) above, or the termination of any right of conversion or exchange referred to in Section 7(f)(v) above, or any change in the number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or exchange of such convertible or exchangeable securities, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price that would have been obtained had the adjustments made upon the issuance of such option, right or convertible or exchangeable securities been made upon the basis of the delivery of only the number of shares of Common Stock actually delivered or to be delivered upon the exercise of such rights or options or upon the conversion or exchange of such securities.

(g) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment to a Conversion Price pursuant to this Section 7, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof, and shall prepare and furnish to each holder of Designated Preferred Stock affected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such

adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Designated Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustment or readjustment, (ii) the Conversion Price applicable to such holder of Designated Preferred Stock at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Designated Preferred Stock.

(h) Other Actions. The Corporation will not, by amendment of this Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of Section 6 above and this Section 7.

(i) Notice. All notices, consents, elections, requests, waivers and other communications required or allowed pursuant to this Article Fourth shall be in writing and shall be deemed to have been duly given or made the second business day after the date of mailing, if delivered by registered or certified mail, postage prepaid; upon delivery, if sent by hand delivery; upon delivery, if sent by prepaid courier, with a record of receipt; or the next day after the date of dispatch, if sent by cable, telegram, facsimile or telecopy (with a copy simultaneously sent by registered or certified mail, postage prepaid, return receipt requested). Each such communication shall be transmitted, if to the Corporation, at its principal business address, and if to a holder of Designated Preferred Stock and/or Common Stock, at the address set forth in the shareholder records as maintained by the Corporation, or to such other address as any such shareholder may have designated by like notice forwarded to the Corporation. Notice of any change in any such address shall also be given in the manner set forth above. Whenever the giving of notice is required, the giving of such notice may be waived by the party entitled to receive such notice.

8. PREFERRED STOCK.

The Board of Directors is authorized, subject to limitations prescribed by the Delaware General Corporation Law and the provisions of this Certificate of Incorporation, to provide, by resolution or resolutions from time to time and by filing a certificate of designations pursuant to the Delaware General Corporation Law, for the issuance of the shares of Preferred Stock in series, to establish from time to time the number of shares to be included in each such series, to fix the powers, designations, preferences and relative, participating, optional or other special rights of the shares of each such series and to fix the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following: (1) the number of shares constituting that series and the distinctive designation of that series; (2) the dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series; (3) whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights; (4) whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine; (5) whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; (6) whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund; (7) the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of

priority, if any, of payment of shares of that series; and (8) any other relative powers, preferences, and rights of that series, and qualifications, limitations or restrictions on that series.

FIFTH. The name and mailing address of the incorporator (the "Incorporator") is EdVerify, Inc., 1001 Fleet Street, Baltimore, Maryland 21202. The powers of the Incorporator shall terminate upon the filing of this Certificate of Incorporation.

SIXTH. The following persons, having the following mailing addresses, shall serve as the directors of the Corporation until the first annual meeting of the stockholders of the Corporation or until their successors are elected and qualified:

<i>NAME</i>	<i>ADDRESS</i>
Ernie Anastasio	1001 Fleet Street, Baltimore, MD 21202
Dr. Robert Atwell	1001 Fleet Street, Baltimore, MD 21202
Ed Broida	1001 Fleet Street, Baltimore, MD 21202
B. Lee McGee	1001 Fleet Street, Baltimore, MD 21202
Judith D. Moore	1001 Fleet Street, Baltimore, MD 21202
Nick Puro	1001 Fleet Street, Baltimore, MD 21202
Steve Ritchie	1001 Fleet Street, Baltimore, MD 21202

The number of directors of the Corporation shall be such number as from time to time shall be fixed by, or in the manner provided in, the bylaws of the Corporation. Unless and except to the extent that the bylaws of the Corporation shall otherwise require, the election of directors of the Corporation need not be by written ballot. Except as otherwise provided in this Certificate of Incorporation, each director of the Corporation shall be entitled to one vote per director on all matters voted or acted upon by the Board of Directors.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

SEVENTH. In furtherance of and not in limitation of powers conferred by the Delaware General Corporation Law, it is further provided that the Board of Directors is expressly authorized to adopt, amend or repeal the bylaws of the Corporation.

EIGHTH. To the extent permitted by law, the Corporation shall fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding.

To the extent permitted by law, the Corporation may fully indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that such

person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding.

The Corporation may advance expenses (including attorneys' fees) incurred by a director or officer in defending any action, suit, or proceeding in advance of the final disposition of such action, suit or proceeding upon the receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that such director or officer is not entitled to indemnification. The Corporation may advance expenses (including attorneys' fees) incurred by an employee or agent in defending any action, suit, or proceeding in advance of the final disposition of such action, suit or proceeding upon such terms and conditions, if any, as the Board deems appropriate.

NINTH. No director of the Corporation shall be personally liable to the Corporation or to any stockholders of the Corporation for monetary damages for breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability; provided, however, that to the extent required from time to time by applicable law, this Article Seventh shall not eliminate or limit the liability of a director, to the extent such liability is provided by applicable law, (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 Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

If the Delaware General Corporation Law or any other statute of the State of Delaware hereafter is amended to authorize the further elimination or limitation of the liability of directors of the Corporation, then the liability of a director of the Corporation shall be limited to the fullest extent permitted by the statutes of the State of Delaware, as so amended, and such elimination or limitation of liability shall be in addition to, and not in lieu of, the limitation on the liability of a director provided by the foregoing provisions of this Sixth Article.

In the event that a director of the Corporation who is also a partner or employee of a holder of Preferred Stock or Common Stock, or an entity affiliated with a holder of Preferred Stock or Common Stock (including a management company providing investment or other management services to a holder of Preferred Stock or Common Stock), or who is a person designated by a holder of Preferred Stock or Common Stock under any stockholders agreement to be a director of the Corporation, acquires knowledge of a matter which may be a corporate opportunity for both the Corporation and such holder of Preferred Stock or Common Stock and does not offer such opportunity to the Corporation, such person shall to the fullest extent permitted by law be considered to have fully satisfied and fulfilled his or her fiduciary duty to the Corporation with respect to such corporate opportunity, and the Corporation to the fullest extent permitted by law waives any claim that such matter constituted a corporate opportunity that should have been presented to or reserved for the benefit of the Corporation, if such opportunity was not expressly offered to such person solely in his or her capacity as a director of the Corporation with the explicit condition that such opportunity was intended for the exclusive benefit of the Corporation.

Any repeal of or amendment to this Article Ninth shall be prospective only and shall not adversely affect any limitation on the liability of a director of the Corporation existing at the time of such repeal or amendment.

TENTH. The Corporation reserves the right at any time, and from time to time, to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation, and other

provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences, and privileges of any nature conferred upon stockholders, directors, or any other persons by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article Tenth.

IN WITNESS WHEREOF, the undersigned, being the Incorporator hereinabove named, for the purpose of forming a corporation pursuant to the Delaware General Corporation Law, hereby certifies that the facts hereinabove stated are truly set forth, and accordingly executes this Certificate of Incorporation this __ day of _____, 2003.

EDVERIFY, INC.
Incorporator

By: _____
Judith D. Moore
President and Chief Executive Officer

EXHIBIT D

BYLAWS OF EdVerify Holdings Inc.

ARTICLE I

CERTIFICATE OF INCORPORATION AND PROVISIONS OF LAW

These Bylaws, the powers of the Corporation and of its directors and shareholders and all manners concerning the conduct and regulation of the business of the Corporation shall be subject to such provisions in regard thereto, if any, as are provided by in the General Corporation Law of the State of Delaware (the "DGCL") or set forth in the Certificate of Incorporation. All references herein to the Certificate of Incorporation shall be construed to mean the Certificate of Incorporation of the Corporation as from time to time amended.

ARTICLE II

OFFICES

SECTION 2.01. Offices. The Corporation may have an office or offices at such place or places either as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE III

MEETINGS OF SHAREHOLDERS

SECTION 3.01. Place of Meetings. All meetings of the shareholders of the Corporation shall be held at such place as may be fixed from time to time by the Board of Directors, the Chairman or the President. Notwithstanding the foregoing, the Board of Directors may determine the meeting shall not be held at any place, but may instead be held by means of remote communication.

SECTION 3.02. Annual Meetings. Unless directors are elected by written consent in lieu of an annual meeting, the annual meeting of the shareholders for the election of directors and for the transaction of such other business as may come before the meeting shall be held on such date and at such time as shall be designated from time to time by the Board of Directors, the Chairman or the President. If a written consent electing directors is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action. The purposes for which an annual meeting is to be held, in addition to those prescribed by law or these Bylaws, may be specified by a majority of the Board of Directors, the President or a shareholder or shareholders holding of record at least ten percent (10%) in voting power of the outstanding shares of the Corporation entitled to vote at such meeting.

SECTION 3.03. Special Meetings. A special meeting of the shareholders for any purpose or purposes, unless otherwise prescribed by statute, may be called at any time by the President, by order of the Board of Directors or by a shareholder or shareholders holding of record at least ten percent (10%) in voting power of the outstanding shares of the Corporation entitled to vote at such meeting.

SECTION 3.04. Notice of Meetings. Notice of any meeting of stockholders, stating the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and (if it is a special meeting) the purpose or purposes for which the meeting is called, 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 (except to the extent that such notice is waived or is not required as provided by the DGCL or these Bylaws). Such notice shall be given in accordance with, and shall be deemed effective as set forth in, Sections 222 and 232 (or any successor section or sections) of the DGCL.

SECTION 3.05. Quorum. Stockholders may take action on a matter at a meeting only if a quorum exists with respect to that matter. Except as otherwise provided by statute or by the Certificate of Incorporation, the holders of a majority of the shares entitled to vote at the meeting, and who are present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. Once a share is represented for any purpose at a meeting (other than solely to object (1) to holding the meeting or transacting business at the meeting, or (2) (if it is a special meeting) to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice), it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for the adjourned meeting. The holders of a majority of the voting shares represented at a meeting, whether or not a quorum is present, may adjourn such meeting from time to time.

SECTION 3.06. Voting. Unless otherwise provided in the DGCL or in the Corporation's Certificate of Incorporation, and subject to the other provisions of these Bylaws, each shareholder of the Corporation shall be entitled to one vote on each matter, in person or by proxy, for each share of the Corporation's capital stock that has voting power and that is held by such stockholder. No proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed appointment of proxy shall be irrevocable if the appointment form 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. If authorized by the Board of Directors, and subject to such guidelines as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, participate in a meeting of stockholders and be deemed present in person and vote at such meeting whether such meeting is held at a designated place or solely by means of remote communication, provided that (1) the Corporation implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (2) the Corporation implements reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (3) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action is maintained by the Corporation.

When a quorum is present at any meeting of stockholders, all matters shall be determined, adopted and approved by the affirmative vote (which need not be by ballot) of the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote with respect to the matter, unless the proposed action is one upon which, by express provision of statutes or of the Certificate of Incorporation, a different vote is specified and required, in which case such express provision shall govern and control with respect to that vote on that matter. Where a separate vote by a class or classes is required, the affirmative vote of the holders of a majority of the

shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class. Notwithstanding the foregoing, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

SECTION 3.7. List of Stockholders. After the record date for a meeting of stockholders has been fixed, at least ten (10) days before such meeting, the officer who has charge of the stock ledger of the Corporation shall make a list of all stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder (but not the electronic mail address or other electronic contact information, unless the Board of Directors so directs) and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten(10) days prior to the meeting: (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (2) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then such list shall also, for the duration of the meeting, be produced and kept open to the examination of any stockholder who is present at the time and place of the meeting. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

ARTICLE IV

BOARD OF DIRECTORS

SECTION 4.01. General Powers. The property, affairs and business of the Corporation shall be managed by the Board of Directors, and the Board shall have, and may exercise, all of the powers of the Corporation, subject to any limitation set forth in the Certificate of Incorporation or as otherwise may be provided in the DGCL and except such as are conferred by these Bylaws upon the shareholders.

SECTION 4.02. Number, Qualifications and Term of Office. The number of directors to constitute the Board of Directors shall be such number, not less than one (1) nor more than ten (10) as shall be fixed from time to time by the shareholders at any annual meeting or at any special meeting called for the purpose; provided, however, that between such meetings of shareholders the number so fixed may at any time be increased or decreased, subject to the above-specified limits, by the affirmative vote of a majority of the Board of Directors. The number of directors and the names of the persons constituting the initial Board of Directors shall be as set forth in the Certificate of Incorporation, except (a) any such person who shall decline such office by a writing filed with the Corporation shall not be a director, and (b) until the issuance of any capital stock of the Corporation entitled to vote upon the election of directors, the incorporators may remove any director so named and may elect new directors.

SECTION 4.03. Nomination and Election of Directors. Subject to any provisions in the Certificate of Incorporation, at each meeting of the shareholders for the election of directors at which a quorum is present or by written consent in lieu of a meeting, the persons receiving the greatest number of votes shall be the directors, and each shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, for as many nominees as the number of directors fixed as constituting the Board of Directors and to cast for each such nominee as many votes as the number of shares which such shareholder is entitled to vote.

The Board of Directors shall nominate candidates to stand for election as directors; and other candidates also may be nominated by any Corporation stockholder, provided such other nomination(s) are submitted in writing to the Secretary of the Corporation no later than ninety (90) days prior to the meeting of stockholders at which such directors are to be elected, together with the identity of the nominator and the number of shares of the Corporation's stock owned, directly or indirectly, by the nominator. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 4.13 hereof, and each director elected shall hold office until such director's successor is elected and qualified or until the director's earlier death, resignation or removal. Directors need not be stockholders.

SECTION 4.04. Quorum and Manner of Acting. A majority of the total number of directors at the time in office shall constitute a quorum for the transaction of business at any meeting and, except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may adjourn any meeting from time to time without further notice until a quorum be had. The directors shall act only as a Board, and the individual directors shall have no power as such.

SECTION 4.05. Place of Meetings. The Board of Directors may hold its meetings at any place as it may from time to time determine or shall be specified or fixed in the respective notices or waivers of notice thereof.

SECTION 4.06. Annual Meeting. The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual election of directors on the same day and at the same place at which such election of directors was held. Notice of such meeting need not be given. Such meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors or in a consent and waiver of notice thereof signed by all the directors.

SECTION 4.07. Regular Meetings. Regular meetings of the Board of Directors shall be held at such places and at such times as the Board shall from time to time by vote determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day not a legal holiday. Notice of regular meetings need not be given.

SECTION 4.08. Special Meetings: Notice. Special meetings of the Board of Directors shall be held whenever called by the President or by not less than twenty five percent (25%) of the members of the Board of Directors. Notice of each such meeting shall be given by, or at the order of, the Secretary or the person calling the meeting to each director, either personally or by telephone, express delivery service (so that the scheduled delivery date of the notice is at least one day in advance of the meeting), telegram, facsimile transmission, electronic mail (effective when directed to an electronic mail address of the director), or other electronic transmission, as defined in Section 232(c) (or any successor section) of the DGCL (effective when directed to the director), and on five (5) days' notice by mail (effective upon deposit of such notice in the mail). Every such notice shall describe the time and place of the meeting but need not state the purpose thereof except as otherwise in these Bylaws expressly provided.

SECTION 4.09. Telephone Meetings. Members of the Board of Directors may participate in a meeting of the board by any communication by means of which all participating directors can simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

SECTION 4.10. Removal of Directors. Any director may be removed, either with or without cause, at any time, by the affirmative vote of the holders of record of a majority of the issued and outstanding shares entitled to vote for the election of directors of the Corporation given at a special meeting of the shareholders called and held for the purpose.

SECTION 4.11. Resignation. Any director of the Corporation may resign at any time by giving written notice to the Board of Directors or to the Chairman of the Board or to the Secretary of the Corporation. The resignation of any director shall take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 4.12. Vacancies. Subject to any provisions of the Certificate of Incorporation, any vacancy in the Board of Directors caused by death, resignation, removal, disqualification, an increase in the number of directors, or any other cause, may be filled by a majority vote of the remaining directors then in office, though less than a quorum, at any regular meeting or special meeting, including the meeting at which any such vacancy may arise, or by the shareholders of the Corporation at the meeting at which any such vacancy may arise or the next annual meeting or any special meeting, and each director so elected shall hold office until the next annual election of directors, and until a successor shall have been duly elected and qualified, or until the death or resignation or removal of such director in the manner herein provided.

ARTICLE V

EXECUTIVE COMMITTEE

SECTION 5.01. Appointment. The Board of Directors may designate two or more of its members to constitute an Executive Committee. The designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

SECTION 5.02. Authority. The Executive Committee, when the Board of Directors is not in session, shall have and may exercise all of the authority of the Board of Directors except to the extent, if any, that such authority shall be limited by the resolution appointing the Executive Committee and except also that the Executive Committee shall not have the power or authority in reference to approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval or adopting, amending or repealing any bylaw of the Corporation; and unless the resolution designating the committee, these bylaws or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the DGCL.

SECTION 5.03. Tenure and Qualifications. Each member of the Executive Committee shall hold office until the next regular annual meeting of the Board of Directors following designation and until a successor is designated as a member of the Executive Committee and is elected and qualified or until the death or resignation or removal of such member in the manner herein provided.

SECTION 5.04. Meetings. Regular meetings of the Executive Committee may be held without notice at such times and places as the Executive Committee may fix from time to time by resolution. Special meetings of the Executive Committee may be called by any member thereof upon not less than two (2) days' notice stating the place, date and hour of the meeting, which notice may be written or oral, and if mailed, shall be deemed to be delivered when deposited in the United States mail addressed to the member of the Executive Committee at such member's business address. Any member of the Executive Committee may waive notice of any meeting and no notice of

any meeting need be given to any member thereof who attends in person. The notice of a meeting of the Executive Committee need not state the business proposed to be transacted at the meeting.

SECTION 5.05. Telephone Meetings. Meetings of the Executive Committee may be held by means of a telephone conference shall constitute attendance at such meeting.

SECTION 5.06. Quorum. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the Executive Committee shall be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

SECTION 5.07. Vacancies. Any vacancy in the Executive Committee may be filled by a resolution adopted by a majority of the full Board of Directors.

SECTION 5.08. Resignations and Removal. Any member of the Executive Committee may be removed at any time with or without cause by the Board of Directors. Any member of the Executive Committee may resign from the Executive Committee at any time by giving written notice to the President or Secretary of the Corporation, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5.09. Procedure. The Executive Committee may elect a presiding officer from its members and may fix its own rules of procedure which shall not be inconsistent with these Bylaws. It shall keep regular minutes of its proceedings and report the same to the Board of Directors for its information at the meeting thereof held next after the proceedings shall have been taken.

ARTICLE VI

WAIVER OF NOTICE; WRITTEN CONSENT

SECTION 6.01. Waiver of Notice. Notice of the time, place and purpose of any meeting of the shareholders, Board of Directors or Executive Committee may be waived in writing by any shareholder or director either before or after such meeting. Attendance in person, or in case of a meeting of the shareholders, by proxy, at a meeting of the shareholders, Board of Directors or Executive Committee shall be deemed to constitute a waiver of notice thereof.

SECTION 6.02. Written Consent of Shareholder. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at a meeting of shareholders may be taken without a meeting upon the written consent of less than all of the shareholders entitled to vote thereon, or their proxies, to the extent and in the manner permitted by Section 228 of the DGCL, as amended from time to time.

SECTION 6.03. Written Consent of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or Executive Committee may be taken without a meeting if a consent in writing, setting forth the action so to be taken, shall be signed before or after such action by all of the directors, or all of the members of the Executive Committee, as the case may be. Such written consent shall be filed with the records of the Corporation.

ARTICLE VII

OFFICERS

SECTION 7.01. Number. The officers of the Corporation shall be a Chairman of the Board, President, a Secretary, a Treasurer, and such other officers as the Board of Directors may from time to time appoint, including one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers. One person may hold the offices and perform the duties of any two or more of said officers.

SECTION 7.02. Election, Qualifications and Term of Office. Each officer shall be elected annually by the Board of Directors, or from time to time to fill any vacancy, and shall hold office until a successor shall have been duly elected and qualified, or until the death, resignation or removal of such officer in the manner hereinafter provided.

SECTION 7.03. Removal. Any officer may be removed by the vote of a majority of the whole Board of Directors at a special meeting called for the purpose, whenever in the judgment of the Board of Directors the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

SECTION 7.04. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or the Secretary. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified therein in the acceptance of such resignation shall not be necessary to make it effective.

SECTION 7.05. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

SECTION 7.06. Chairman of the Board. The Chairman of the Board shall be a director and shall preside at all meetings of the Board of Directors and shareholders. Subject to determination by the Board of Directors, the Chairman shall have general executive powers and such specific powers and duties as from time to time may be conferred or assigned by the Board of Directors, with the approval of the Board of Directors. The Chairman may also be designated as a Co-Chief Executive Officer, in which event the Chairman and the President shall share the duties of Chief Executive Officer, subject to the direction of the Board of Directors.

SECTION 7.07. The President and Chief Executive Officers. The Corporation shall have a President. The President shall have general direction of the affairs of the Corporation and shall be the Chief Executive Officer of the Corporation, provided that if the Board has designated the Chairman as a Co-Chief Executive Officer, the President shall share such duties with the Chairman, subject to the direction of the Board of Directors. In addition, the President and Co-Chief Executive Officers shall perform such other duties and have such other responsibilities as the Board of Directors may from time to time determine. In the absence of the Chairman of the Board, the President shall preside at all meetings of the shareholders.

SECTION 7.08. The Vice Presidents. The Vice President, or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

SECTION 7.09. The Secretary. The Secretary shall record or cause to be recorded in books provided for the purpose all the proceedings of the meetings of the Corporation, including the shareholders, the Board of Directors, Executive Committee and all committees of which a Secretary shall not have been appointed; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law; shall be custodian of the records rather than financial) and of the seal of the Corporation; and in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned by the Board of Directors or the President.

SECTION 7.10. The Assistant Secretaries. At the request, or in absence or disability, of the Secretary, the Assistant Secretary designated by the Secretary or the Board of Directors shall perform all the duties of the Secretary and, when so acting, shall have all the powers of the Secretary. The Assistant Secretaries shall perform such other duties as from time to time may be assigned to them by the Board of Directors, the President or the Secretary.

SECTION 7.11. The Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds to the credit of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these Bylaws; disburse the funds of the Corporation under the general control of the Board of Directors, based upon proper vouchers for such disbursements; receive, and give receipts for, moneys due and payable to the corporation from any source whatsoever, render a statement of the condition of the finances of the Corporation at all regular meetings of the Board of Directors, and a full financial report at the annual meeting of the shareholders, if called upon to do so; and render such further statements to the Board of Directors and the President as they may respectively require concerning all transactions as Treasurer of the financial condition of the Corporation. The Treasurer shall also have charge of the books and records of account of the Corporation, which shall be kept at such office or offices of the Corporation as the Board of Directors shall from time to time designate; be responsible for the keeping of correct and adequate records of the assets, liabilities, business and transactions of the Corporation; at all reasonable times exhibit the books and records of account to any of the directors of the Corporation upon application at the office of the Corporation where such books and records are kept; be responsible for the preparation and filing of all reports and returns relating to or based upon the books and records of the Corporation kept under the direction of the Treasurer; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board of Directors or the President.

SECTION 7.12. The Assistant Treasurers. At the request, or in the absence or disability, of the Treasurer, the Assistant Treasurer designated by the Treasurer or the Board of Directors shall perform all the duties of the Treasurer, and when so acting, shall have all the powers of the Treasurer. The Assistant Treasurers shall perform such other duties as from time to time may be assigned to them by the Board of Directors, the President or the Treasurer.

SECTION 7.13. The Chief Operating Officer. The Chief Operating Officer shall be responsible for the operations of the Corporation, and perform such other duties and have such other responsibilities as the Board of Directors may from time to time determine.

SECTION 7.14. General Powers. Each officer shall, subject to these Bylaws, have, in addition to the duties and powers herein set forth, such duties and powers as are commonly incident to the respective office, and such duties and powers as the Board of Directors shall from time to time designate.

SECTION 7.15. Bonding. Any officer, employee, agent or factor shall give such bond with such surety or sureties for the faithful performance of his or her duties as the Board of Directors may, from time to time, require.

ARTICLE VIII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 8.1. Authorization of Indemnification. Each person who was or is a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether by or in the right of the Corporation or otherwise (a "proceeding"), by reason of the fact that he or she, or a person of whom he or she 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, partner (limited or general) or agent of another corporation or of a partnership, joint venture, limited liability company, trust or other enterprise, including service with respect to an employee benefit plan, shall be (and shall be deemed to have a contractual right to be) indemnified and held harmless by the Corporation (and any successor to the Corporation by merger or otherwise) to the fullest extent authorized by, and subject to the conditions and (except as provided herein) procedures set forth in the DGCL, as the same exists or may hereafter be amended (but any such amendment shall not be deemed to limit or prohibit the rights of indemnification hereunder for past acts or omissions of any such person insofar as such amendment limits or prohibits the indemnification rights that said law permitted the Corporation to provide prior to such amendment), against all expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith; provided, however, that the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person (except for a suit or action pursuant to Section 8.2 hereof) only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. Persons who are not directors or officers of the Corporation and are not so serving at the request of the Corporation may be similarly indemnified in respect of such service to the extent authorized at any time by the Board of Directors of the Corporation. The indemnification conferred in this Section 8.1 also shall include the right to be paid by the Corporation (and such successor) the expenses (including attorneys' fees) incurred in the defense of or other involvement in any such proceeding in advance of its final disposition; provided, however, that, if and to the extent the DGCL requires, the payment of such expenses (including attorneys' fees) incurred by a director or officer in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer to repay all amounts so paid in advance if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section 8.1 or otherwise; and provided further, that, such expenses incurred by other employees and agents may be so paid in advance upon such terms and conditions, if any, as the Board of Directors deems appropriate.

SECTION 8.2. Right of Claimant to Bring Action Against the Corporation. If a claim under Section 8.1 is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring an action against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed or is otherwise not entitled to indemnification under Section 8.1, but the burden of proving such defense shall be on the Corporation. The failure of the Corporation (in the manner provided under the DGCL) to have made a determination prior to or after the

commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL shall not be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. Unless otherwise specified in an agreement with the claimant, an actual determination by the Corporation (in the manner provided under the DGCL) after the commencement of such action that the claimant has not met such applicable standard of conduct shall not be a defense to the action, but shall create a presumption that the claimant has not met the applicable standard of conduct.

SECTION 8.3. Non-exclusivity. The rights to indemnification and advance payment of expenses provided by Section 8.1 hereof shall not be deemed exclusive of any other rights to which those seeking indemnification and advance payment of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

SECTION 8.4. Survival of Indemnification. The indemnification and advance payment of expenses and rights thereto provided by, or granted pursuant to, Section 8.1 hereof shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee, partner or agent and shall inure to the benefit of the personal representatives, heirs, executors and administrators of such person.

SECTION 8.5. Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, partner (limited or general) or agent of another corporation or of a partnership, joint venture, limited liability company, trust or other enterprise, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of such person's status as such, and related expenses, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of the DGCL.

ARTICLE IX

EXECUTION OF DOCUMENTS

SECTION 9.01. Contract, etc., How Executed. Unless the Board of Directors shall otherwise determine, the (i) Chairman of the Board, President, any Vice President or the Treasurer and (ii) any other officer of the Corporation, acting jointly, may enter into any contract or execute any contract or other instrument, the execution of which is not otherwise specifically provided for, in the name and on behalf of the Corporation. The Board of Directors, except as in these Bylaws otherwise provided, may authorize any other or additional officer or officers, agent or agents, of the Corporation to enter into any contract or execute and deliver any contract or other instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless authorized so to do by these Bylaws or by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or to render it liable pecuniarily for any purpose or to any amount.

SECTION 9.02. Checks, Drafts, etc. All checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes, or other evidences of indebtedness, bills of lading, warehouse receipts and insurance certificates of the Corporation, shall be signed or endorsed by such officer or officers, employee or employees, of the Corporation as shall from time to time be determined by resolution of the Board of Directors.

ARTICLE X
BOOKS AND RECORDS

SECTION 10.01. Place. The books and records of the Corporation, including the stock record books, shall be kept at such place as may from time to time be determined by the Board of Directors.

SECTION 10.02. Addresses of Shareholders. Each shareholder shall designate to the Secretary of the Corporation an address at which notices of meetings and all other corporate notices may be served upon or mailed, and if any shareholder shall fail to designate such address, corporate notices may be served by mail directed to the shareholder's last known post office address, or by transmitting a notice thereof to such address by telegraph, cable, or telephone.

ARTICLE XI
SHARES AND THEIR TRANSFER

SECTION 11.01. Certificates for Shares. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates, and upon request every holder of uncertificated shares, shall be entitled to have a certificate (representing the number of shares registered in certificate form) signed in the name of the Corporation by the Chairman, President or any Vice President, and by the Treasurer, Secretary or any Assistant Treasurer or Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar whose signature or facsimile signature appears on 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 such person were such officer, transfer agent or registrar at the date of issue.

SECTION 11.02. Record. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, to receive notifications, to vote as such owner, and to exercise all the rights and powers of an owner. The Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise may be provided by the DGCL.

SECTION 11.03. Transfer of Shares. Transfers of shares of the Corporation represented by a certificate shall be made only on the books of the Corporation by the registered holder thereof, or by such holder's attorney thereunto authorized, and on the surrender of the certificate or certificates for such shares properly endorsed or accompanied by a properly executed stock power.

SECTION 11.04. Closing of Transfer Books; Record Dates. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be 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. 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, unless the Board of Directors fixes a new record date for the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by the DGCL, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner prescribed by Section 213(b) of the DGCL. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by the DGCL, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to 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 a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 11.05. Lost, Destroyed or Mutilated Certificates. The Board of Directors, Chairman, President or Secretary may direct a new certificate of stock to be issued in place of any certificate theretofore issued by the Corporation and alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming that the certificate of stock has been lost, stolen or destroyed. When authorizing such issuance of a new certificate, the board or any such officer may, as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or such owner's legal representative, to advertise the same in such manner as the board or such officer shall require and/or to give the Corporation a bond or indemnity, in such sum or on such terms and conditions as the board or such officer may direct, as indemnity against any claim that may be made against the Corporation on account of the certificate alleged to have been lost, stolen or destroyed or on account of the issuance of such new certificate or uncertificated shares.

ARTICLE XII

SEAL

The Board of Directors may provide for a corporate seal, which shall be in the form of a circle and shall bear the name of the Corporation and the state and year of incorporation. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

ARTICLE XIII

FISCAL YEAR

Except as from time to time otherwise provided by the Board of Directors, the fiscal year of the Corporation shall be the year or other fiscal period ending on the last day of December of each year.

ARTICLE XIV
AMENDMENTS

Except as provided otherwise herein, all Bylaws of the Corporation shall be subject to alteration or repeal, and new Bylaws may be adopted either by the vote of a majority of the outstanding shares of the Corporation entitled to vote in respect thereof, or by the vote of the Board of Directors, provided that in each case notice of the proposed alteration or repeal or of the proposed new Bylaws be included in the notice of the meeting at which such alteration, repeal or adoption is acted upon, and provided further that any such action by the Board of Directors may be changed by the shareholders, except that no such change shall affect the validity of any actions theretofore taken pursuant to the Bylaws as altered, repealed or adopted by the Board of Directors.

If authorized by the Certificate of Incorporation, the adoption or amendment of a bylaw that adds, changes or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater. A bylaw that fixes a greater quorum or voting requirement for shareholders may not be adopted, amended or repealed by the Board of Directors.

Action by the Board of Directors to adopt or amend a bylaw that changes the quorum or voting requirement for the Board of Directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.