

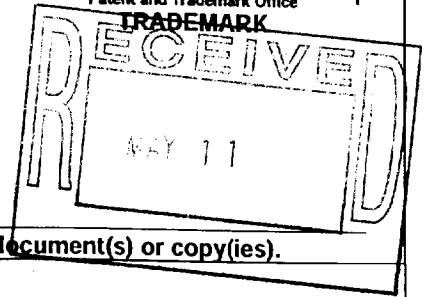
05-19-1999



101039374

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

U.S. Department of Commerce
Patent and Trademark Office



MRD
5-11-99

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
 - Security Agreement Nunc Pro Tunc Assignment
 - Merger Change of Name
 - Other
- Effective Date
Month Day Year

Conveying Party

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

- Individual General Partnership Limited Partnership
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

05/18/1999 JSHABAZZ 00000164 2089165

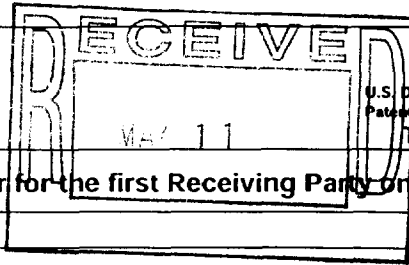
FOR OFFICE USE ONLY

01 FC:481 40.00 OP
02 FC:482 25.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 001898 FRAME: 0001



Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Registration Number(s)

<input type="text" value="2089165"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="2091073"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved. #

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Holly A. Coldiron

Name of Person Signing

Signature

Date Signed



**HUTCHISON
& MASON
PLLC**

May 6, 1999

Via Certified Mail No. Z 263 900 678

Return Receipt Requested

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

Dear Commissioner:

Enclosed please find the following documents:

- (1) Form PTO-1618A;
- (2) Certified copy of Certificate of Merger (name change); and
- (3) a check in the amount of \$65.00 to cover the recordation fees.

Please record this conveyance by SciQuest, Inc. a North Carolina corporation, to SciQuest.com, a Delaware corporation in the PTO records.

Thank you for your attention to this matter.

Very truly yours,

HUTCHISON & MASON PLLC

Holly A. Coldiron

Enclosure

cc: Peyton Anderson
Helga L. Leftwich, Esq.

State of Delaware
Office of the Secretary of State PAGE 1

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

"SCIQUEST, INC.", A NORTH CAROLINA CORPORATION,
WITH AND INTO "SCIQUEST.COM, INC." UNDER THE NAME OF
"SCIQUEST.COM, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIRST DAY OF MARCH, A.D. 1999, AT 9 O'CLOCK A.M.



3005338 8100M

991147796

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

Edward J. Freel, Secretary of State

AUTHENTICATION: 9690451

DATE: 04-16-99

TRADEMARK
REEL: 001898 FRAME: 0004

CERTIFICATE OF MERGER
of
SCIQUEST, INC.
With and Into
SCIQUEST.COM, INC.

The undersigned corporation, organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

FIRST: That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

<u>Name</u>	<u>State of Incorporation</u>
SciQuest.com, Inc.	Delaware
SciQuest, Inc.	North Carolina

SECOND: That an Agreement and Plan of Merger between the constituent corporations has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 252 of the General Corporation law of the State of Delaware.

THIRD: That upon consummation of the merger, the name of the surviving corporation of the merger shall be SciQuest.com, Inc..

FOURTH: That upon consummation of the merger, the Certificate of Incorporation of SciQuest.com, Inc., will be amended and restated to read as set forth on Exhibit A.

FIFTH: That the executed Agreement and Plan of Merger is on file at the principal place of business of the Surviving Corporation. The address of the principal place of business of the Surviving Corporation is 4222 Emperor Blvd., Suite 225, Durham, North Carolina 27703.

SIXTH: That a copy of the Agreement and Plan of Merger will be furnished by the Surviving Corporation on request and without cost to any shareholder/stockholder of any constituent corporation.

SEVENTH: The merger shall be effective at 5:00 p.m. eastern standard time, on March 1, 1999.

EIGHTH: The stock of the non-surviving corporation is as follows:
20,000,000 shares of common stock without par value.
10,000,000 shares of preferred stock without par value.

IN WITNESS WHEREOF, SciQuest.com, Inc. has caused this Certificate of Merger to be executed on the 1st day of March, 1999.

SCIQUEST.COM, INC.

By:



Scott Andrews, President

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
SCIQUEST.COM, INC.**

Pursuant to §242 and §245 of the General Corporation Law of the State of Delaware, the undersigned Corporation hereby submits the following for the purpose of amending and restating its Certificate of Incorporation, and does hereby certify as follows:

1. The name of the Corporation is SciQuest.com, Inc. The Corporation's original Certificate of Incorporation was filed on February 16, 1999.
2. The Corporation's Certificate of Incorporation is hereby amended and restated in its entirety as set forth in the text of the Amended and Restated Certificate of Incorporation attached hereto and incorporated herein by reference.
3. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with §228 and §242 of the General Corporation Law of the State of Delaware by written consent of the sole stockholder of the Corporation.
4. This Amended and Restated Certificate of Incorporation will be effective at 5:00 p.m. eastern standard time, on March 1, 1999.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Scott Andrews, its President as of the 1st day of March, 1999.

SCIQUEST.COM, INC.

By:



Scott Andrews

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SCIQUEST.COM, INC.**

ARTICLE I

The name of the corporation is SciQuest.com, Inc. (the "Corporation").

ARTICLE II

The total number of shares of stock which the Corporation shall have authority to issue is Thirty Million (30,000,000) shares, of which Twenty Million (20,000,000) shares shall be Common Stock, no par value per share (the "Common Stock"), and Ten Million (10,000,000) shares shall be Preferred Stock, no par value per share (the "Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation:

A. COMMON STOCK.

1. **General.** The Common Stock of the Corporation shall consist of 19,749,980 shares of Class A Common Stock (the "Class A Common Stock") and 250,020 shares of Class B Common Stock (the "Class B Common Stock") (collectively the "Common Stock"). All shares of the Common Stock of the Corporation issued between January 1, 1996 and July 30, 1996 shall be designated Class B Common Stock. All other shares of the Common Stock of the Corporation shall be designated Class A Common Stock. Except as otherwise provided in Sections A(4) and A(5) of this Article II, the Class A Common Shares and the Class B Common Shares have identical preferences, limitations and relative rights. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2. **Voting.** The holders of the Class A Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings) and, subject to the rights of the holders of the Preferred Stock, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. There shall be no cumulative voting. Each holder of outstanding shares of Class B Common Stock shall be entitled to the number of votes equal to the number of whole shares of Class A Common Stock into which the shares of Class B Common Stock held by such holder are then convertible (as adjusted from time to time pursuant to Sections A(5) and B(4) hereof), at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) and, subject to the rights of the holders of the Preferred Stock, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, holders of Class B Common Stock shall vote together with the holders of Class A Common Stock as a single class.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

4. Liquidation.

(a) In the event of any voluntary or involuntary liquidation or dissolution of the Corporation, the holders of Class B Common Stock will be entitled to receive, after and subject to the payment in full of all amounts required to be distributed to the holders of Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation prior and in preference to the Class B Common Stock, but before any payment shall be made to the holders of the Class A Common Stock and subject to the provisions contained within Section 4(c) of this Article II, an amount equal to (i) \$0.40 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus (ii) all accrued and unpaid dividends on such shares, if any. If upon any such liquidation, dissolution or winding up of the Corporation, the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Class B Common Stock the full amount to which they shall be entitled, the holders of shares of Class B Common Stock and the holders of any class or series of stock ranking on liquidation on a parity with the Class B Common Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) After the payment of all preferential amounts required to be paid to the holders of the Series B Preferred Stock, the Series A Preferred Stock, the Series C Preferred Stock and the Class B Common Stock and any other class or series of stock of the Corporation ranking on liquidation senior to or on a parity with the Series B Preferred Stock, the Series A Preferred Stock, the Series C Preferred Stock or the Class B Common Stock, any remaining assets available for distribution shall be distributed to the holders of the Class A Common Stock and no further distributions shall be made to the holders of Preferred Stock or Class B Common Stock. Notwithstanding the foregoing, in the event that the amount to be distributed to each holder of Class A Common Stock upon a liquidation or dissolution of the Corporation pursuant to Section A(4)(a) of this Article II is greater than the amount to be distributed to each holder of Class B Common Stock pursuant to such Section A(4)(a), each such holder of Class B Common Stock shall be entitled to receive an additional amount equal to the difference between the amount per share distributed to each holder of the Class B Common Stock pursuant to Section A(4)(a) of the Article II and the amounts distributed to each holder of the Class A Common Stock.

(c) For the purposes of this Section A(4), any merger or consolidation of the Corporation into or with any other corporation or entity, or a sale, conveyance, mortgage, transfer, license, pledge, lease or other disposition of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution, or winding up of the Corporation, unless the stockholders of the Corporation immediately prior thereto shall, immediately thereafter, hold as a group the right to cast at least a majority of the votes of all holders of voting securities of the resulting or surviving corporation or entity on any matter on which any such holders of voting securities shall be entitled to vote.

(d) For purposes of this Section A(4), if any assets distributed to stockholders upon liquidation of the Corporation consist of property other than cash, the amount of such distribution shall be deemed to be the fair market value thereof at the time of such distribution, as determined in good faith by the Board of Directors of the Corporation.

5. Conversion. The Class B Common Stock shall have the same conversion rights and obligations as set forth in Section B(4) of Article II of this Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") with respect to the Series A Preferred Stock as if every reference in such Section B(4) to the "Series A Preferred Stock" were to the "Class B Common Stock," except that each and every reference in such Section B(4) to "\$0.91" shall be to "\$0.40."

B. PREFERRED STOCK.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by Delaware law and this Certificate of Incorporation, and subject to any requirements of the Certificate of Incorporation, to fix or alter the number of shares comprising any such series and the designation thereof Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law.

The Preferred Stock of the Corporation shall consist of (i) Seven Hundred Sixty-Nine Thousand Two Hundred Thirty-One (769,231) shares of Series A Convertible Preferred Stock, no par value per share (the "Series A Preferred Stock"), the powers, preferences, rights, privileges and restrictions, qualifications and limitations of which are set forth below, (ii) Three Million Eight Hundred Thirty-Five Thousand One Hundred Eighty (3,835,180) shares of Series B Preferred Stock, no par value per share (the "Series B Preferred Stock"), the powers, preferences, rights, privileges and restrictions, qualifications and limitations of which are set forth below (iii) Seven Hundred Thousand (700,000) shares of Series C Convertible Preferred Stock, no par value per share (the "Series C Preferred Stock"), the powers, preferences, rights, privileges and restrictions, qualifications and limitations of which are set forth below, and (iv)

Four Million Six Hundred Ninety-Five Thousand Five Hundred Eighty-Nine (4,695,589) shares of undesignated Preferred Stock.

(i) **Terms of Series A Preferred Stock**

1. **Dividends.**

(a) The holders of the outstanding Series A Preferred Stock shall be entitled to receive in any fiscal year, when and if declared by the Board of Directors, out of any assets at the time legally available therefor, dividends of at least 5% of the initial purchase price per share at such times as the Board of Directors may from time to time determine. The right to such dividends shall not be cumulative and no right shall accrue to holders of shares of Series A Preferred Stock if dividends on said shares are not declared in any year, nor shall any undeclared or unpaid dividend bear or accrue interest.

(b) Subject to the provisions of subsection (a) hereof, no dividend or other distribution shall be paid, or declared and set apart for payment on the shares of any class or series of capital stock of the Corporation unless and until there shall also be declared and paid on each share of the Series B Preferred Stock a dividend equivalent to the cash dividend required by subsection (a) hereof.

2. **Liquidation, Dissolution or Winding Up.**

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of the Series B Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation prior and in preference to the Series A Preferred Stock (collectively referred to as "Senior Preferred Stock"), but before any payment shall be made to the holders of the Series C Preferred Stock, the Common Stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock (such Series C Preferred Stock, Common Stock and other stock being collectively referred to as "Junior Stock") by reason of their ownership thereof, an amount equal to (i) \$0.91 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus (ii) all accrued and unpaid dividends on such shares, if any. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock and the holders of any class or series of stock ranking on liquidation on a parity with the Series A Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) After the payment of all preferential amounts required to be paid to the holders of the Series B Preferred Stock and Series A Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation senior to or on a parity with the Series A Preferred

Stock, and the payment of all preferential amounts required to be paid to the holders of the Series C Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation senior to or on a parity with the Series C Preferred Stock, any remaining assets available for distribution shall be distributed to the holders of the Common Stock and no further distributions shall be made to the holders of Preferred Stock.

(c) For the purposes of this Section B(i)(2), any merger or consolidation of the Corporation into or with any other corporation or entity, or a sale, conveyance, mortgage, transfer, license, pledge, lease or other disposition of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution, or winding up of the Corporation, unless the stockholders of the Corporation immediately prior thereto shall, immediately thereafter, hold as a group the right to cast at least a majority of the votes of all holders of voting securities of the resulting or surviving corporation or entity on any matter on which any such holders of voting securities shall be entitled to vote.

(d) For purposes of this Section B(i)(2), if any assets distributed to stockholders upon liquidation of the Corporation consist of property other than cash, the amount of such distribution shall be deemed to be the fair market value thereof at the time of such distribution, as determined in good faith by the Board of Directors of the Corporation.

3. Voting. Each holder of outstanding shares of Series A Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Class A Common Stock into which the shares of Series A Preferred Stock held by such holder are then convertible (as adjusted from time to time pursuant to Section B(i)(4) hereof), at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings), subject to the rights of the holders of the Series B Preferred Stock, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law or by the provisions establishing any other series of Preferred Stock, holders of Series A Preferred Stock and of any other outstanding series of Preferred Stock shall vote together with the holders of Common Stock as a single class.

4. Conversion. The holders of Series A Preferred Stock shall have conversion rights as follows:

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$0.91 by the Conversion Price (as defined below) in effect at the time of conversion. The "Conversion Price" for Series A Preferred Stock shall initially be \$0.91. Such initial Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Class A Common Stock, shall be subject to adjustment as provided below.

(b) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into full shares of Class A Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed for transfer, at the office of the Corporation or any transfer agent of the Corporation and shall give written notice to the Corporation at such office that such holder elects to convert the same, such notice to state the

name or names and addresses to which certificates for Class A Common Stock will be issued. No fractional shares of Class A Common Stock shall be issued upon conversion of Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock or to a third party such holder may designate in writing, a certificate or certificates for the number of shares of Class A Common Stock to which such holder shall be entitled as aforesaid and, a check payable to the holder in the amount of any cash amounts payable as the result of conversion into fractional shares of Class A Common Stock plus unpaid dividends, and if less than all the shares of the Series A Preferred Stock represented by such certificates are converted, a certificate representing the shares of Series A Preferred Stock not converted. 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 Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder surrendering Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Class A Common Stock or other property issuable upon such conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities. Notice of such conversion in connection with an underwritten offering of securities shall be given by the Corporation by mail, postage pre-paid, to the holders of the Series A Preferred Stock at their addresses shown in the Corporation's records, at least twenty (20) days prior to the closing date of the sale of such securities. On or after the closing date as specified in such notice, each holder of Series A Preferred Stock shall surrender his/her/its certificate or certificates representing such Series A Preferred Stock for the number of shares of Class A Common Stock to which such holder is entitled at the office of the Corporation or any transfer agent for the Class A Common Stock. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock a certificate or certificates for the number of shares of Class A Common Stock to which such holder shall be entitled as aforesaid, and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Class A Common Stock and any declared but unpaid dividends. The conversion shall be deemed to have occurred as of the close of business on the actual closing date with respect to the sale of such securities, and, notwithstanding that any certificate representing the Series A Preferred Stock to be converted shall not have been surrendered, each holder of such Series A Preferred Stock shall thereafter be treated for all purposes as the record holder of the number of shares of Class A Common Stock issuable to such holder upon such conversion.

(c) Adjustments to Conversion Price.

(i) Adjustments for Subdivisions, Common Stock Dividends, Combinations or Consolidations of Class A Common Stock. In the event the outstanding shares of Class A Common Stock shall be subdivided or increased, by stock split or stock dividend, into a greater number of shares of Class A Common Stock, the Conversion Price then in effect shall concurrently with the effectiveness of such subdivision or payment of such stock dividend, be

proportionately decreased. In the event the outstanding shares of Class A Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Class A Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(ii) Adjustments for Reclassification, Exchange and Substitution. If the Class A Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Class A Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Class A Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock immediately before that change.

(iii) Adjustments for Merger, Sale, Lease or Conveyance. In the event of any consolidation with or merger of the Corporation with or into another entity, or in case of any sale, lease or conveyance to another entity of the assets of the Corporation as an entirety or substantially as an entirety, the Series A Preferred Stock shall after the date of such consolidation, merger, sale, lease or conveyance be convertible into the number of shares of stock or other securities or property (including cash) to which the Class A Common Stock issuable (at the time of such consolidation, merger, sale, lease or conveyance) upon conversion of the Series A Preferred Stock as the case may be, would have been entitled upon such consolidation, merger, sale, lease or conveyance; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to any shares of stock or other securities or property thereafter deliverable on the conversion of the shares of Series A Preferred Stock.

(d) Mandatory Conversion. Each share of Series A Preferred Stock shall automatically be converted into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$0.91 by the Conversion Price (as defined above) in effect at the time of conversion upon the occurrence of the closing of the sale of shares of Class A Common Stock, at a price of at least \$2.50 per share (subject to appropriate adjustment for stock splits, stock dividends combinations and other similar recapitalizations affecting such shares), in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$5,000,000 of gross proceeds to the Corporation.

All holders of record of shares of Series A Preferred Stock will be given at least twenty (20) days' prior written notice of the date fixed and place designated for mandatory conversion of the Series A Preferred Stock and the event which resulted in the mandatory conversion of the Series A Preferred Stock into Class A Common Stock. Such notice shall be sent by first class mail, postage prepaid, to each holder of record of the Series A Preferred Stock at such holder's address as shown in the records of the Corporation. On or before the date so fixed for conversion, each holder of shares of the Series A Preferred Stock shall surrender his/her/its

certificate or certificates for all such shares to the Corporation at the place designated in such notice and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled. The mechanics for conversion and other provisions relating to conversion of Series A Preferred Stock into Class A Common Stock set forth elsewhere in these Articles of Amendment shall apply to the mandatory conversion of the Series A Preferred Stock.

(e) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this section, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment 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 Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Class A Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Series A Preferred Stock.

(f) Notices of Record Date. In the event that this Cooperation shall propose at any time:

(i) to declare any dividend or distribution (other than by purchase of Class A Common Stock of employees, officers and directors pursuant to the termination of such persons or pursuant to the Corporation's exercise of rights of first refusal with respect to Class A Common Stock held by such persons) upon its Class A Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Class A Common Stock shares outstanding involving a change in the Class A Common Stock; or

(iii) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up; then, in connection with each such event, this Corporation shall send to the holders of the Series A Preferred Stock:

(1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend or distribution (and specifying the date on which the holders of Class A Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (i) and (ii) above; and

(2) in the case of the matters referred to in (ii) and (iii) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Class A Common Stock shall be entitled to exchange their Class A Common Stock for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of Series A Preferred Stock at the address for each such holder as shown on the books of this Corporation.

(g) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action (other than actions taken in good faith), 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 carrying out all the provisions of this Section B(i)(4) and in taking all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

(h) Reservation of Class A Common Stock. The Corporation shall, at all times when the Class B Common Stock and Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Class B Common Stock and Series A Preferred Stock, such number of its duly authorized shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Class B Common Stock and Series A Preferred Stock. Before taking any action which would cause an adjustment reducing the conversion price below the then par value of the shares of Class A Common Stock issuable upon conversion of the Class B Common Stock or Series A Preferred Stock or which would cause the effective purchase price for the Class B Common Stock or Series A Preferred Stock to be less than the par value of the shares of Class B Common Stock or Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of such Class A Common Stock at such adjusted Conversion Price or effective purchase price, as the case may be.

(i) No Adjustment. Upon any voluntary conversion of the Series A Preferred Stock, no adjustment to the conversion rights shall be made for declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Class A Common Stock delivered.

(j) Cancellation of Preferred Stock. All shares of the Class B Common Stock or Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate except only the right of the holders thereof to receive shares of Class A Common Stock in exchange therefor and to receive payment of any declared but unpaid dividends thereon. Any shares of the Class B Common Stock or Series A Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Class B Common Stock or Series A Preferred Stock accordingly.

5. Preemptive Rights. Holders of Class B Common Stock and Series A Preferred Stock shall not be entitled on account of holding such shares to preemptive rights or other rights to acquire or subscribe for additional shares or securities of the corporation authorized to be issued.

(ii) **Terms of Series B Preferred Stock**

There is hereby created a series of 3,835,180 shares of preferred stock, no par value per share, designated "Series B Preferred Stock", having the following powers, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions in addition to those specified elsewhere in this Certificate of Incorporation:

For the purposes of this Subsection B(ii), the following terms shall have the meanings specified below. Other capitalized terms used in this Section B(ii) and not defined below shall have the meanings previously assigned to such terms in this Certificate of Incorporation:

"Authorized Option Plan or Agreement" shall have the meaning provided in Subsection (E)(4)(g)(E)(z) hereof.

"Board of Directors" shall mean the board of directors of the Corporation.

"Conversion Price" shall have the meaning provided in Subsection (E)(4)(g) hereof.

"Conversion Rate" shall have the meaning provided in Subsection (E)(4)(c) hereof.

"Designations" shall mean the preferences, powers, limitations and relative rights of the Series B Preferred Stock established hereby and set forth hereinafter.

"Invested Amount" per share of Series B Preferred Stock shall mean \$2.796194 (as adjusted for changes in the Series B Preferred Stock by stock split, stock dividend, or the like occurring after the Original Issue Date).

"Liquidation" shall have the meaning specified in Subsection (2).

"Original Issue Date" shall mean the date of that certain Stock Purchase Agreement dated about July 30, 1998, between the Corporation, Wakefield Group II LLC, Noro-Moseley Partners IV, L.P. and certain other parties, pursuant to which the initial issuance of shares of Series B Preferred Stock is to occur.

"Qualified Public Offering" shall mean the underwritten offer and sale of Common Stock to the public at a public offering price of not less than three times the Invested Amount and having aggregate net proceeds to the Corporation of not less than \$15,000,000.

"Initial Redemption Exercise Date" shall mean July 30, 2003.

"Sale or Merger" shall have the meaning specified in Subsection (E)(2).

The Designations granted to and imposed upon the Series B Preferred Stock are as follows:

(1) **Dividend Rights.** No dividends may be paid with respect to the Common Stock, the Series A Preferred Stock and the Series C Preferred Stock of the Corporation until equivalent dividends have been declared and paid on all outstanding shares of the Series B Preferred Stock. Except as expressly set forth in Subsection (4), the Corporation shall be under no obligation to pay such dividends unless so declared by the Board of Directors.

(2) **Liquidation Rights.** In the event of (i) the liquidation, dissolution or winding up of the Corporation, or such of the Corporation's subsidiaries the assets of which constitute all or substantially all the assets of the business of the Corporation and its subsidiaries taken as a whole (a "Liquidation") or (ii) a "Sale or Merger" (defined below), unless, in the case of a Sale or Merger, the holders of the Series B Preferred Stock have elected by a vote of at least two-thirds (66 2/3 %) of the total number of shares of such series outstanding, voting separately as a class, to exclude such Sale or Merger from the application of this Subsection (2) (in which case this Subsection (E)(2) shall not apply to such transaction), the holders of the outstanding shares of the Series B Preferred Stock shall, at their election, be entitled to receive in exchange for and in redemption of their Series B Preferred Stock, prior and in preference to the holders of Common Stock, the Series A Preferred Stock and the Series C Preferred Stock, the holders of any currently issued Preferred Stock and the holders of any other class or series of stock of the Corporation ranking junior to the Series B Preferred Stock by reason of their ownership thereof, (i) in the case of a Liquidation, from any funds legally available for distribution to stockholders, and (ii) in the case of a Sale or Merger to which this Subsection (2) applies, from the net proceeds therefrom (defined for these purposes to mean the proceeds, whether cash, securities or property, available for distribution to stockholders or payable to the stockholders by reason of the Sale or Merger), an amount per share equal to the Invested Amount plus all accrued but unpaid dividends (if any) plus an amount that, when taken together with such other amounts, shall equal ten percent (10%) per annum, compounded annually, and prorated for any partial year, of the Invested Amount for the period from the Original Issue Date to the date of the payment in full of the amount described in this Subsection (2).

For purposes of these Designations, a "Sale or Merger" shall mean any of the following: (x) the merger or consolidation of the Corporation into or with another corporation or entity in which the stockholders of the Corporation immediately preceding such merger or consolidation (solely by virtue of their shares or other securities of the Corporation) shall own less than fifty percent (50%) of the voting securities of the surviving corporation; (y) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions or plan, of all or substantially all the assets of the Corporation, which assets shall include for these purposes fifty percent (50%) or more of the outstanding voting capital stock of any subsidiaries of the Corporation, the assets of which constitute all or substantially all the assets of the Corporation and its subsidiaries taken as a whole; or (z) the sale, transfer or lease (but not including a transfer or lease by pledge or mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions, of all or substantially all the assets of the subsidiaries of the Corporation, the assets of which constitute all or substantially all of the assets of the Corporation and such subsidiaries taken as a whole.

To the extent necessary, the Corporation shall cause such actions to be taken by any of its subsidiaries so as to enable the proceeds of a Liquidation or a Sale or Merger to be distributed to the holders of shares of Series B Preferred Stock in accordance with this Subsection (2). All the

H&M: 35776.01

preferential amounts to be paid to the holders of the Series B Preferred Stock under this Subsection (2) shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Corporation to, the holders of the Common Stock, the Series A Preferred Stock, the Series C Preferred Stock and the holders of any currently issued Preferred Stock or any class or series of stock of the Corporation ranking junior to the Series B Preferred Stock in connection with a Liquidation or a Sale or Merger as to which this Subsection (2) applies. Any assets remaining after such preferential amounts have been paid to the holders of the Series B Preferred Stock under this Subsection (2) shall be distributed first to the holders of Series A Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Series A Preferred Stock, in an amount equal to the liquidation preference for each such class or series, then to the holders of the Series C Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Series C Preferred Stock, in an amount equal to the liquidation preference for each such class or series, and then to the holders of Class B Common Stock, in an amount equal to the liquidation preference for such class. Any assets remaining after such preferential distributions shall be distributed on a per share pro rata basis to the holders of the Class A Common Stock.

(3) Voting Rights. Except as set forth specifically below, the holder of each share of the Series B Preferred Stock shall be entitled to the number of votes equal to the number of shares of Class A Common Stock into which such share of Series B Preferred Stock would be convertible under the circumstances described in Subsection (4) hereof on the record date for the vote or consent of stockholders, and shall otherwise have voting rights and powers equal to the voting rights and powers of the Common Stock. The foregoing notwithstanding, with respect to the election of directors, the holders of Series B Preferred Stock shall vote together as a single class to elect two members of the Board of Directors (the "Series B Directors") and one additional member of the Board of Directors appointed by management of the Corporation and reasonably acceptable to the holders of Series B Preferred Stock. The holders of Series B Preferred Stock shall vote together with the holders of Common Stock and other capital stock of the Corporation to elect the remaining members of the Board of Directors as to which the holders of Common Stock, Series A Preferred Stock and Series C Preferred Stock are entitled to vote. In the event the holders of Series B Preferred Stock do not exercise their right to elect two members of the Board of Directors, such holders will be permitted to send at least two non-voting representatives in an observer capacity to all meetings of the Board of Directors of the Corporation, with respect to which reasonable notice shall be provided to such holders, including notice of all written consents taken in lieu of a meeting of the Board of Directors of the Corporation prior to execution of any such consents. Each holder of a share of the Series B Preferred Stock shall be entitled to receive the same prior notice of any stockholders' meeting as provided to the holders of Common Stock, Series A Preferred Stock and Series C Preferred Stock in accordance with the Bylaws of the Corporation, as well as prior notice of all stockholder actions to be taken by legally available means in lieu of meeting, and shall vote with holders of the Common Stock, Series A Preferred Stock and Series C Preferred Stock upon any matter submitted to a vote of stockholders, except those matters required by law, or by the terms hereof, to be submitted to a class vote of the holders of Series B Preferred Stock. Fractional votes shall not, however, be permitted, and any fractions shall be disregarded in computing voting rights.

Any holder of a number of shares of Series B Preferred Stock convertible into at least 350,000 shares of Class A Common Stock in the manner provided in Subsection (4) below, and

H&M: 35776.01

who is not represented on the Board of Directors, will be permitted to send one non-voting representative in an observer capacity to all meetings of the Board of Directors of the Corporation, with respect to which reasonable notice shall be provided to such holder, including notice of all written consents taken in lieu of a meeting of the Board of Directors of the Corporation.

Notwithstanding anything contained in this Subsection (3) to the contrary, should the Corporation fail for any reason (i) to issue Class A Common Stock in conversion of the Series B Preferred Stock as provided in Subsection (4) hereof, (ii) to redeem the Series B Preferred Stock under the conditions and in accordance with the terms of Subsection (5) hereof, (iii) to honor the preemptive rights granted to holders of Series B Preferred Stock in Subsection (6) hereof, or (iv) to comply with the protective provisions of Subsection (7) hereof, and should such failure continue for a period of thirty (30) consecutive days, then, at the end of such period and for so long as said failure remains uncured, the holders of Series B Preferred shall be entitled, at any annual meeting of the stockholders or any special meeting called for such purpose, voting together as a single class, to elect the smallest number of members of the Board of Directors necessary to constitute a majority of the full Board of Directors, including in such majority the Series B Directors, and the holders of Common Stock, Series A Preferred Stock and Series C Preferred Stock, voting as a single class, shall elect the remaining directors. If, prior to the end of the term of any director elected as aforesaid by the holders of shares of the Series B Preferred Stock, a vacancy in the office of such director shall occur by reason of death, resignation, removal or disability, or for any other reason, the right to fill such vacancy shall be vested in the holders of the Series B Preferred Stock unless the right of such holders to elect such director shall have ceased as provided hereafter. At any time after such power to elect a majority of directors shall have so vested in the Series B Preferred Stock, the Secretary of the Corporation may, and, upon the written request of the holders of record of ten percent (10%) or more of the then outstanding shares of the Series B Preferred Stock, addressed to the Secretary at the principal office of the Corporation, shall, call a special meeting of the holders of Series B Preferred Stock for the election of the directors to be elected by them as hereinabove provided, to be held within thirty (30) days after such call and at the place and upon the notice provided by law and in the Bylaws of the Corporation for the holding of meetings of stockholders. If any such special meeting required to be called as above provided shall not be called by the Secretary within thirty (30) days after receipt of any such request, then the holders of record of ten percent (10%) or more in amount of the Series B Preferred Stock then outstanding may designate in writing one of their number to call such meeting, and the person so designated may call such meeting to be held at the place and upon the notice above provided, and for that purpose shall have access to the stock ledger of the Corporation. If any such special meeting shall be called by the Secretary of the Corporation or by the holders of the Series B Preferred Stock as above provided, and if the holders of at least a majority of the Series B Preferred Stock then outstanding and entitled to vote at such meeting shall be present or represented by proxy at such meeting or any adjournment thereof, then, by vote of the holders of at least a majority of such Series B Preferred Stock present or so represented at such meeting, the then authorized number of directors of the Corporation shall be increased to the smallest number necessary so as to ensure that, upon the election of such additional directors so provided for, which additional directors the holders of Series B Preferred Stock shall be entitled to elect (the "Additional Series B Directors"), the Series B Directors plus the Additional Series B Directors constitute a majority of such increased Board of Directors, and such increase in the authorized number of directors shall be deemed at such time to constitute an amendment to Article III, Section 2 of the Bylaws

of the Corporation to permit such increase. Any Additional Series B Directors so elected shall hold office only until their respective successors are duly elected and qualified at the annual meeting of stockholders or special meeting held in place thereof next succeeding their election (giving effect to the foregoing rights of the holders of Series B Preferred). At such time, if any, as the holders of the Series B Preferred Stock shall obtain the redemption referred to in (ii) above, receive the Common Stock specified in (i) above, or obtain rectification of the failure to respect, or restoration of, the rights referenced in (iii) or (iv) above, then the terms of office of all persons elected as Additional Series B Directors shall forthwith terminate, the number of directors shall be reduced accordingly, and the holders of Series B Preferred Stock shall once again have rights with respect to the election of directors as are provided in the second sentence of this Subsection (3). The foregoing remedy shall not be deemed exclusive and shall be in addition to all other rights and remedies available at law or equity to the holders of Series B Preferred Stock.

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

(a) Optional. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series B Preferred Stock, into Class A Common Stock. The number of shares of Class A Common Stock to which a holder of Series B Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the Conversion Rate of the Series B Preferred Stock (determined as provided in Subsection (4)(c) below) by the number of shares of Series B Preferred Stock being converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of the shares of Series B Preferred Stock to be converted in accordance with the procedures described in Subsection (4)(d) below.

(b) Automatic.

(A) Should the holders of at least seventy percent (70%) of the then outstanding shares of Series B Preferred Stock so elect, by delivery of written notice or notices to the Corporation, each and every outstanding share of Series B Preferred Stock held by all the holders of Series B Preferred Stock (whether or not so electing) shall automatically be converted into Class A Common Stock at the then effective Conversion Rate. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of receipt of the written notice described above necessary to effect such conversion. Such conversion shall be automatic, without need for any further action by such holders of shares of Series B Preferred Stock and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Class A Common Stock issuable upon such conversion unless certificates evidencing such shares of Series B Preferred Stock so converted are surrendered to the Corporation in accordance with the procedures described in Subsection (4)(d) below.

(B) The Corporation shall notify each holder of Series B Preferred Stock at least ninety (90) days prior to the anticipated effective date of a registration statement filed by the Corporation under the Federal Securities Act of 1933, as amended, covering a

M&M: 35776.01

Qualified Public Offering. Upon the closing of, but effective immediately prior to, the first sale in a Qualified Public Offering, each and every share of outstanding Series B Preferred Stock held by all holders of Series B Preferred Stock shall automatically be converted into Class A Common Stock at the then effective Conversion Rate. Such conversion shall be automatic, without need for any further action by the holders of shares of Series B Preferred Stock and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Class A Common Stock issuable upon such conversion unless certificates evidencing such shares of Series B Preferred Stock so converted are surrendered to the Corporation in accordance with the procedures described in Subsection (4)(d) below. Upon the conversion of the Series B Preferred Stock pursuant to this Subsection (4)(d)(B), the Corporation shall promptly send written notice thereof, by registered or certified mail return receipt requested and postage prepaid, by hand delivery or by overnight delivery, to each holder of record of Series B Preferred Stock at his or its address then shown on the records of the Corporation, which notice shall state that certificates evidencing shares of Series B Preferred Stock must be surrendered at the office of the Corporation (or of its transfer agent for the Class A Common Stock, if applicable) in the manner described in Subsection (4)(d) below.

(C) No fractional shares of Class A Common Stock shall be issued upon conversion of Series B Preferred Stock, and any shares of Series B Preferred Stock surrendered for conversion that would otherwise result in a fractional share of Class A Common Stock shall be redeemed at the then effective Conversion Price per share, payable as promptly as possible when funds are legally available therefor.

(c) Conversion Rate. Subject to the provisions of this Subsection (4), the conversion rate in effect at any time with respect to the Series B Preferred Stock (the "Conversion Rate") shall be the quotient obtained by dividing \$2.796194 by the Conversion Price, as defined in Subsection (4)(g) hereof.

(d) Mechanics of Conversion. Before any holder of Series B Preferred Stock shall be entitled to receive certificates representing the shares of Class A Common Stock into which shares of Series B Preferred Stock are converted in accordance with Subsections (4)(a) or (4)(b) above, such holder shall surrender the certificate or certificates for such shares of Series B Preferred Stock duly endorsed, at the office of the Corporation or of any transfer agent for the Series B Preferred Stock, and shall give written notice to the Corporation at such office of the name or names in which such holder wishes the certificate or certificates for shares of Class A Common Stock to be issued, if different from the name shown on the books and records of the Corporation. Said conversion notice shall also contain such representations as may reasonably be required by the Corporation to the effect that the shares to be received upon conversion are not being acquired and will not be transferred in any way that might violate the then applicable securities laws. The Corporation shall, as soon as practicable thereafter and in no event later than thirty (30) days after the delivery of said certificates, issue and deliver at such office to such holder of Series B Preferred Stock, or to the nominee or nominees of such holder as provided in such notice, a certificate or certificates for the number of shares of Class A Common Stock to which such holder shall be entitled as aforesaid. The person or persons entitled to receive the shares of Class A Common Stock issuable upon a conversion pursuant to Subsections (4)(a) or (4)(b) shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock as of the effective date of conversion specified in such section. All certificates

H&M: 35776.01

issued upon the exercise or occurrence of the conversion shall contain a legend governing restrictions upon such shares imposed by law or agreement of the holder or his or its predecessors.

(e) Adjustment for Subdivisions or Combinations of Class A Common Stock.

In the event the Corporation at any time or from time to time after the Original Issue Date effects a subdivision or combination of the outstanding Common Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of the outstanding Series B Preferred Stock, then and in each such event the Conversion Price (and the corresponding Conversion Rate) shall be increased or decreased proportionately.

(f) Adjustments for Distributions and Common Stock Equivalents.

In the event that (subject to Subsection (4)(g)(E) hereof) the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into or entitling the holder thereof to receive additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder of such Common Stock Equivalents or the additional shares of Common Stock, and without a proportionate and corresponding dividend or other distribution to holders of Series B Preferred Stock, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents shall be deemed, for purposes of this Subsection (4)(f), to be issued and outstanding as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date. In each such event the Conversion Price shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price by a fraction,

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

(B) the denominator of which shall be the total number of shares of Common Stock (x) issued and outstanding or deemed pursuant to the terms hereof to be issued and outstanding (not including any shares described in clause (y) immediately below), immediately prior to the time of such issuance or the close of business on such record date, plus (y) the number of shares of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents;

provided, however, that (i) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price (and the corresponding Conversion Rate) shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price (and the corresponding Conversion Rate) shall be adjusted pursuant to this Subsection (4)(f) as of the time of actual payment of such dividend or distribution; or (ii) if such Common Stock Equivalents provide,

with the passage of time or otherwise, for any decrease in the number of shares of Common Stock issuable upon conversion or exercise thereof (or upon the occurrence of a record date with respect thereto), the Conversion Price (and the corresponding Conversion Rate) computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall upon any such decrease becoming effective, be recomputed to reflect such decrease insofar as it affects the rights of conversion or exercise of the Common Stock Equivalents then outstanding; or (iii) upon the expiration of any rights of conversion or exercise under any unexercised Common Stock Equivalents, the Conversion Price (and the corresponding Conversion Rate) computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall upon such expiration, be recomputed as if the only additional shares of Common Stock issued were the shares of such stock, if any, actually issued upon the conversion or exercise of such Common Stock Equivalents; or (iv) in the event of issuance of Common Stock Equivalents that expire by their terms not more than sixty (60) days after the date of issuance thereof, no adjustments of the Conversion Price (or the corresponding Conversion Rate) shall be made until the expiration or exercise of all such Common Stock Equivalents, whereupon the adjustment otherwise required by this Subsection (4)(f) shall be made in the manner provided herein.

(g) Adjustment of Conversion Rate for Diluting Issues. Except as otherwise adjusted as provided herein, the "Conversion Price" shall be \$2.796194. Except as otherwise provided in this Subsection (4)(g), in the event, and each time as, the Corporation sells or issues any Common Stock or Common Stock Equivalents following the Original Issue Date, at a per share consideration (as defined below) less than the Conversion Price then in effect, then the Conversion Price shall be adjusted as provided in this Subsection (4)(g), and the Conversion Rate shall be appropriately adjusted. For purposes of the foregoing, the per share consideration with respect to the sale or issuance of a share of Common Stock shall be the price per share received by the Corporation, prior to the payment of any expenses, commissions, discounts and other applicable costs. With respect to the sale or issuance of Common Stock Equivalents that are convertible into or exchangeable for Common Stock without further consideration, the per share consideration shall be determined by dividing the minimum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents. With respect to the issuance of other Common Stock Equivalents, the per share consideration shall be determined by dividing the minimum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents plus the total consideration receivable by the Corporation upon the conversion or exercise of such Common Stock Equivalents. The issuance of Common Stock or Common Stock Equivalents for no consideration shall be deemed to be an issuance at a per share consideration of \$.01. In connection with the sale or issuance of Common Stock and/or Common Stock Equivalents for non-cash consideration, the amount of consideration shall be determined by the Board of Directors of the Corporation in good faith.

As used herein, "Additional Shares of Common Stock" shall mean either shares of Common Stock issued, with respect to such adjustments to be made to the Conversion Price and

H&M: J5776.01

the Conversion Rate, subsequent to the Original Issue Date, or, with respect to the issuance of Common Stock Equivalents, the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for subsequent adjustment of such number) of Common Stock issuable in exchange for, upon conversion of, or upon exercise of such Common Stock Equivalents.

(A) Upon each issuance of Common Stock for a per share consideration less than the Conversion Price as in effect on the date of such issuance, the Conversion Price as in effect on such date shall be adjusted by multiplying it by a fraction:

(x) the numerator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to the issuance of such Additional Shares of Common Stock plus the number of shares of Common Stock that the aggregate net consideration received by the Corporation for the total number of such Additional Shares of Common Stock so issued would purchase at the Conversion Price then in effect; and

(y) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to the issuance of such Additional Shares of Common Stock plus the number of shares of Common Stock so issued.

For the purposes of this Subsection (4)(g)(A), the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (i) the number of shares of Common Stock actually outstanding, (ii) the number of shares of Common Stock into which the then outstanding shares of Series B Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (iii) the number of shares of Common Stock that could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(B) Upon each issuance of Common Stock Equivalents that are exchangeable without further consideration into Common stocks for a per share consideration less than the Conversion Price as in effect on the date of such issuance, the Conversion Price shall be adjusted as provided in paragraph (A) of this Subsection (4)(g) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of the Common Stock Equivalents, and the aggregate consideration received by the Corporation for such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(C) Upon each issuance of Common Stock Equivalents other than those described in paragraph (B) of this Subsection (4)(g) for a per share consideration less than the Conversion Price as in effect on the date of such issuance, the Conversion Price shall be adjusted as provided in paragraph (A) of this Subsection (4)(g) on the basis that the Additional Shares of Common Stock are to be treated as having been issued on the date of issuance of such Common Stock Equivalents, and the aggregate consideration received and receivable by the Corporation on conversion or exercise of such Common Stock Equivalents shall be deemed to have been received for such Additional Shares of Common Stock.

(D) Once any Additional Shares of Common Stock have been treated as having been issued for the purpose of this Subsection (4)(g), they shall be treated as issued and outstanding shares of Common Stock whenever any subsequent calculations must be made pursuant hereto; provided that on the expiration of any options, warrants or rights to purchase Additional Shares of Common Stock, the termination of any rights to convert or exchange for Additional Shares of Common Stock, or the expiration of any options or rights related to such convertible or exchangeable securities on account of which an adjustment in the Conversion Price has been made previously pursuant to this Subsection (4)(g), such Conversion Price shall forthwith be readjusted to the Conversion Price as would have obtained had the adjustment made upon the issuance of such options, warrants, rights, securities or options or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options, warrants or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(E) The foregoing notwithstanding, no adjustment of the Conversion Price and the Conversion Rate shall be made pursuant to this Subsection (4)(g) as a result of the issuance of:

(a) any shares of Common Stock upon the conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(b) any shares of Common Stock pursuant to which the Conversion Price and the Conversion Rate are adjusted under Subsections (e) or (f) of this Subsection (4);

(c) any shares of Common Stock issued pursuant to the exchange, conversion or exercise of any Common Stock Equivalents that have previously been incorporated into computations hereunder on the date when such Common Stock Equivalents were issued;

(d) up to 979,017 shares of Class A Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events), issued pursuant to options, warrants or rights that may be granted at any time after the Original Issue Date to purchase shares of Class A Common Stock in favor of employees, directors, officers or consultants of the Corporation or any subsidiary thereof pursuant to *bona fide* employee stock option plans created in accordance with Section 422 of the Internal Revenue Code of 1986, as amended, or similar subsequent legislation or pursuant to a non-statutory stock option plan or nonstatutory stock option agreements (any such stock option plan or agreement described in this clause (z) being referred to as an "Authorized Option Plan or Agreement");

(e) any shares issued as a dividend on the Series B Preferred Stock or in connection with a subdivision or combination of the Series B Preferred Stock; or

(f) up to 67,160 shares of Class A Common Stock or Series B Preferred Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events), issued pursuant to the exercise of warrants issued prior to the date hereof.

(h) De Minimis Adjustments. No adjustment to the Conversion Price (and, thereby, the Conversion Rate) shall be made if such adjustment would result in a change in the Conversion Price of less than \$.01. Any adjustment of less than \$.01 that is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment that, on a cumulative basis, amounts to an adjustment of \$.01 or more in the Conversion Price.

(i) No Impairment. Except as provided in Subsection (7) hereof, the Corporation shall not, by amendment of its Certificate of Incorporation or Bylaws 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 shall at all times in good faith assist in the carrying out of all the provisions of this Subsection (4) and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series B Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Subsection (4), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and cause independent public accountants selected by the Corporation to verify such computation and prepare and furnish to each holder of Series B Preferred Stock 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 Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price and the Conversion Rate at that time in effect, and (iii) the number of shares of Class A Common Stock and the amount, if any, of other property that at that time would be received upon the conversion of Series B Preferred Stock.

(k) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities other than Series B Preferred Stock for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any Class A Common Stock Equivalents or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series B Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or rights, and the amount and character of such dividend, distribution or rights.

(1) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series B Preferred Stock such number of its shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall be insufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purpose.

(5) Redemption of Preferred Stock. The Corporation shall at any time on or after the Initial Redemption Exercise Date, upon the receipt of written notice or notices delivered to the Corporation by any holders of Series B Preferred Stock electing to cause a redemption of such holders' shares of Series B Preferred Stock (the "Electing Holders") and assuming that neither a Sale or Merger of the Corporation nor a Qualified Public Offering has been effected prior to such date, redeem all of the then outstanding shares of Series B Preferred Stock held by such Electing Holders by paying in cash to the holders thereof in respect of each such share the Redemption Price (defined below), in three (3) equal installments over three (3) years, with the initial payment due ninety (90) days after receipt of such notice of redemption. The price payable for each redeemed share of Series B Preferred Stock (the "Redemption Price") shall be equal to the greater of (i) the Appraised Value (as defined below) of each such share as of the date of the request for redemption or (ii) the Invested Amount plus a per annum amount for the period such share has been issued and outstanding equal to (a) ten percent (10%), compounded annually, of the Invested Amount, prorated for any partial year, less (b) the aggregate amount of all dividends actually paid on such share from the date of issuance thereof; and no accrued dividends shall be payable with respect to such share.

The Appraised Value shall be the fair market value of such shares, as established by the Board of Directors in good faith following such request for redemption (which Appraised Value shall not include a discount for minority ownership interest or illiquidity), and each Electing Holder shall be notified in writing of such value upon receipt by the Corporation of a request for redemption. If, however, the holders of at least two-thirds of the shares as to which the Electing Holders have given notice of election to redeem shall give the Corporation written notice prior to the scheduled redemption that he, it or they disagree with the value placed upon the Series B Preferred Stock, then the Electing Holders and the Corporation shall attempt to agree upon an Appraised Value. Should the Electing Holders and the Corporation be unable to agree during the twenty (20)-day period immediately following the giving of the written notice of such disagreement as to the Appraised Value without the employment of appraisers, then they shall each select an appraiser experienced in the business of evaluating or appraising the market value of stock. The two (2) appraisers so selected (the "Initial Appraisers") shall, on or prior to the scheduled redemption, appraise such shares to be redeemed as of the date of the scheduled redemption. The appraisers shall not discount the shares of Series B Preferred Stock for minority ownership interest or illiquidity. If the difference between the resulting appraisals is not greater than ten percent (10%), then the average of the appraisals shall be deemed the Appraised Value; otherwise, the Initial Appraisers shall select an additional appraiser (the "Additional Appraiser"), who shall be experienced in a manner similar to the Initial Appraisers. If they fail to select such Additional Appraiser as provided above, then either the Electing Holders or the Corporation may

apply, after written notice to the other, to any judge of any court of general jurisdiction for the appointment of such Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of the Series B Preferred Stock, and such value shall be the Appraised Value. The Additional Appraiser shall forthwith give written notice of his determination to the Corporation and the Electing Holders. Each party shall pay the expenses and fees of the appraiser selected by him or it, and, if an Additional Appraiser is employed, the party who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

On or before the date of a scheduled redemption, each holder of shares required to be redeemed shall surrender the certificate representing such shares to the Corporation and shall receive payment of the Redemption Price in cash. If less than all the shares represented by a surrendered certificate are redeemed, the Corporation shall issue a new certificate representing the unredeemed shares.

The right to redemption established by this Subsection (5) shall be deemed absolute and vested upon the occurrence of the conditions specified herein; however, actual redemption under this Subsection (5) shall be subject to the legal availability of funds and, to the extent delayed, shall occur as soon thereafter as and when funds are legally available therefor, with interest at the per annum rate announced by NationsBank of North Carolina, N.A., as its prime lending rate plus two percent (2%) per annum for the period of each delay.

(6) Preemptive Rights. The holders of Series B Preferred Stock shall have the right of first refusal to purchase any New Securities (as defined in this Subsection (6)) that the Corporation may, from time to time, propose to sell and issue. This right shall be subject to the following provisions:

(a) New Securities Defined. "New Securities" shall mean any Common Stock or Preferred Stock of the Corporation, whether now authorized or not, and rights, options or warrants to purchase said Common Stock or Preferred Stock, and securities of any type whatsoever that are, or may become, convertible into said common stock or preferred stock; provided that "New Securities" does not include (A) any shares of Class A Common Stock issuable upon the conversion of shares of Preferred Stock or upon the conversion of any equity or debt security of the Corporation issued on or prior to the date hereof; (B) up to 979,017 shares of Class A Common Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events), issued pursuant to options, warrants or rights that may be granted at any time after the Original Issue Date to purchase shares of Class A Common Stock in favor of employees, directors, officers or consultants of the Corporation or any subsidiary thereof pursuant to an Authorized Option Plan or Agreement; (C) up to 67,160 shares of Class A Common Stock or Series B Preferred Stock (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events), issuable upon exercise of warrants issued prior to the date hereof; (D) securities offered to the public pursuant to a registration statement under the federal Securities Act of 1933, as amended; (E) securities issued pursuant to the acquisition by the Corporation of any product, technology, know-how or another corporation or entity by merger, purchase of all or substantially all of the assets, or any other reorganization whereby the Corporation owns over fifty percent (50%) of the voting power of such corporation or entity; (F) shares of the Class A Common Stock or the

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Preferred Stock issued in connection with any stock split, stock dividend or recapitalization by the Corporation or (G) any shares or other securities issued or issuable in connection with any borrowings by the Corporation or any of its subsidiaries from, or indebtedness of the Corporation or its subsidiaries to, any institutional lenders.

(b) In the event the Corporation proposes to undertake an issuance of New Securities, it shall give each holder of Series B Preferred Stock written notice of its intention, describing the type of New Securities, the price, the closing date of the offering thereof, and the general terms upon which the Corporation proposes to issue the same (the "Corporation Notice"). Upon receipt of the Corporation Notice, each holder of Series B Preferred Stock shall have the right to elect to purchase some or all of his or its *pro rata* portion of such New Securities, at the price and on the terms stated in the Corporation Notice. Such election is to be made by each holder of Series B Preferred Stock by giving written notice to the Corporation (the "Election Notice") within ten (10) days after receiving the Corporation Notice. Each holder of Series B Preferred Stock shall also have the option, exercisable by so specifying in the Election Notice, to purchase such holder's *pro rata* portion of any remaining New Securities not purchased by other holders of Series B Preferred Stock pursuant to this Section 6, in which case the holders of Series B Preferred Stock exercising such further option shall be deemed to have elected to purchase such holder's *pro rata* portion of such remaining New Securities, up to an aggregate maximum number of New Securities which such holder of Series B Preferred Stock shall have specified in the Election Notice. The Corporation may offer and sell any remaining New Securities not elected to be purchased as evidenced by Election Notices timely received by the Corporation, at a price and upon terms not more favorable than those stated in the Corporation Notice. For purposes of this Section (6), each holder's *pro rata* portion of New Securities shall be equal to a fraction, the numerator of which is the sum of

(i) the number of shares of Class A Common Stock into which shares of Series B Preferred Stock held by such holder immediately prior to such issuance have been converted since the Original Issuance Date, and

(ii) the number of shares of Class A Common Stock into which such holders shares of Series B Preferred Stock could be converted if fully converted immediately prior to such issuance

and the denominator of which is the sum of

(x) the number of shares of Class A Common Stock actually outstanding immediately prior to such issuance,

(y) the number of shares of Class A Common Stock into which the then outstanding shares of Series B Preferred Stock could be converted if fully converted immediately prior such issuance, and

(z) the number of shares of Class A Common Stock that could be obtained through the exercise or conversion of all other rights, options and convertible securities immediately prior to such issuance that are then currently exercisable or convertible.

(c) Any offer by the Corporation of securities in addition to those specified in the Corporation Notice, whether on the same or different terms as are specified therein, shall again require compliance by the Corporation with the terms of this Subsection (6).

(d) The rights granted in this Subsection (6) shall terminate immediately prior to, and shall not apply to, a Qualified Public Offering.

(7) Protective Provisions.

(a) Actions Requiring Majority Approval of Series B Preferred Stock. In addition to any other rights provided by law so long as any shares of Series B Preferred Stock are then outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, without first obtaining the affirmative vote or written consent of the holders of a majority of the total number of shares of Series B Preferred Stock outstanding, voting together as a single class, the Corporation shall not:

(i) create, incur, assume or suffer to exist any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance (including the lien or security title of a conditional vendor) of any nature (other than ad valorem taxes) in excess of \$50,000, upon or with respect to any of its or any subsidiary's properties or notes receivable, other than such mortgages, deeds, pledges, liens, security interests, charges and encumbrances as presently exist and those approved hereafter unanimously by the Board of Directors;

(ii) assume, guarantee, endorse or otherwise become directly or contingently liable for any obligation or indebtedness of the Corporation or any subsidiary other than such liabilities as presently exist or are incurred in the ordinary course of business;

(iii) sell, assign, lease or otherwise dispose of any of its assets or those of any subsidiary, including its receivables, other than (a) sales, assignments, leases or other dispositions in the ordinary course of business or (b) sales, assignments, leases or other dispositions to wholly owned subsidiaries of the Corporation or one of such subsidiaries;

(iv) make any loan or advance to any employee of the Corporation or any subsidiary thereof except (a) advances for reasonable travel and other normal business expenses in connection with the business, (b) the acceptance of promissory notes approved in advance by the Board of Directors given for the purchase of the Corporation's capital stock, and (c) loans not in excess of \$2,000 to officers and employees approved in advance by the Board of Directors;

(v) own, or permit any subsidiary of the Corporation to own, any stock or other securities of any company, partnership, association or other form of business entity except the securities of wholly owned subsidiaries of the Corporation or one of such subsidiaries;

(vi) pay any dividends with respect to the Series A Preferred Stock, the Series C Preferred Stock or Common Stock of the Corporation; provided, however, this restriction shall terminate effective upon a Qualified Public Offering; or

(vi) amend the provisions of this Subsection (7)(a).

(b) Actions Requiring Super-Majority Approval of Series B Preferred Stock.

In addition to any other rights provided by law, so long as any shares of Series B Preferred Stock are then outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, without first obtaining the affirmative vote or written consent of the holders of at least seventy percent (70%) of the total number of shares of the Series B Preferred Stock outstanding, voting as a separate class, the Corporation shall not:

(i) amend or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws, or file any articles of amendment, preferences, limitations and relative rights of any series of preferred stock, if such action would alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series B Preferred Stock;

(ii) create or authorize the creation or increase the authorized amount of any additional class or series of shares of stock, unless the same ranks junior to the Series B Preferred Stock as to dividends, redemption and the distribution of assets on the liquidation, dissolution or winding up of the Corporation; increase the authorized amount of any additional class or series of shares of stock unless the same ranks junior to the Series B Preferred Stock as to dividends, redemption and the distribution of assets on the liquidation, dissolution or winding up of the Corporation; or create or authorize any obligation or security convertible into shares of Common Stock, Series B Preferred Stock or any other class or series of stock, whether voting or non-voting; regardless of whether any such creation, authorization or increase shall be by means of amendment to the Articles of Incorporation, or by merger, consolidation or otherwise;

(iii) increase or decrease the authorized number of shares of the Series A Preferred Stock or Series B Preferred Stock;

(iv) enter into any agreement, commitment or plan regarding a Liquidation or a Sale or Merger; or

(E) amend the provisions of this Subsection (7)(b).

(c) Termination. The rights granted in Subsections (7)(a) and (7)(b) shall terminate immediately prior to, and shall not apply to, a Qualified Public Offering.

(8) Notices. Any notice required by the provisions hereof to be given to the holders of shares of Series B Preferred Stock shall be deemed given on the third business day following (and not including) the date on which such notice is deposited in the United States Mail first-class, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation. Notice by any other means shall not be deemed effective until actually received.

(iii) Terms of Series C Preferred Stock

1. Dividends.

No dividend or other distribution shall be paid, or declared and set apart for payment on any share of Common Stock or Series C Preferred Stock unless and until there shall also be declared and paid on each share of the Series A Preferred Stock a cash dividend as required by Section B(i)(1) of Article II (the "Series A Dividend") and on each share of the Series B Preferred Stock a dividend equivalent to the Series A Dividend. The Corporation shall be under no obligation to pay such dividends unless so declared by the Board of Directors.

2. Liquidation, Dissolution or Winding Up.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series C Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of the Series B Preferred Stock, the Series A Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation prior and in preference to the Series C Preferred Stock, but before any payment shall be made to the holders of the Common Stock or any other class or series of stock ranking on liquidation junior to the Series C Preferred Stock by reason of their ownership thereof, an amount equal to (i) \$2.796194 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus (ii) all accrued and unpaid dividends on such shares, if any. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series C Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series C Preferred Stock and the holders of any class or series of stock ranking on liquidation on a parity with the Series C Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) After the payment of all preferential amounts required to be paid to the holders of the Series B Preferred Stock, Series A Preferred Stock and Series C Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation senior to or on a parity with the Series C Preferred Stock, any remaining assets available for distribution shall be distributed to the holders of the Common Stock and no further distributions shall be made to the holders of Preferred Stock.

(c) For the purposes of this Section B(iii)(2), any merger or consolidation of the Corporation into or with any other corporation or entity, or a sale, conveyance, mortgage, transfer, license, pledge, lease or other disposition of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution, or winding up of the Corporation, unless the stockholders of the Corporation immediately prior thereto shall, immediately thereafter, hold as a group the right to cast at least a majority of the votes of all holders of voting securities of the resulting or surviving corporation or entity on any matter on which any such holders of voting securities shall be entitled to vote.

(d) For purposes of this Section B(iii)(2), if any assets distributed to stockholders upon liquidation of the Corporation consist of property other than cash, the amount of such distribution shall be deemed to be the fair market value thereof at the time of such distribution, as determined in good faith by the Board of Directors of the Corporation.

3. Voting. Each holder of outstanding shares of Series C Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Class A Common Stock into which the shares of Series C Preferred Stock held by such holder are then convertible (as adjusted from time to time pursuant to Section B(iii)(4) hereof), at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings), subject to the rights of the holders of the Series B Preferred Stock, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law or by the provisions establishing any other series of Preferred Stock, holders of Series C Preferred Stock and of any other outstanding series of Preferred Stock shall vote together with the holders of Common Stock as a single class.

4. Conversion. The holders of Series C Preferred Stock shall have conversion rights as follows:

(a) Right to Convert. Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$2.796194 by the Conversion Price (as defined below) in effect at the time of conversion. The "Conversion Price" for Series C Preferred Stock shall initially be \$2.796194. Such initial Conversion Price, and the rate at which shares of Series C Preferred Stock may be converted into shares of Class A Common Stock, shall be subject to adjustment as provided below.

(b) Mechanics of Conversion. Before any holder of Series C Preferred Stock shall be entitled to convert the same into full shares of Class A Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed for transfer, at the office of the Corporation or any transfer agent of the Corporation and shall give written notice to the Corporation at such office that such holder elects to convert the same, such notice to state the name or names and addresses to which certificates for Class A Common Stock will be issued. No fractional shares of Class A Common Stock shall be issued upon conversion of Series C Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series C Preferred Stock or to a third party such holder may designate in writing, a certificate or certificates for the number of shares of Class A Common Stock to which such holder shall be entitled as aforesaid and, a check payable to the holder in the amount of any cash amounts payable as the result of conversion into fractional shares of Class A Common Stock plus unpaid dividends, and if less than all the shares of the Series C Preferred Stock represented by such certificates are converted, a certificate representing the shares of Series C Preferred Stock not converted. 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 Series C Preferred Stock to be converted, and the person or persons entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of

such shares of Class A Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder surrendering Series C Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Class A Common Stock or other property issuable upon such conversion of the Series C Preferred Stock shall not be deemed to have converted such Series C Preferred Stock until immediately prior to the closing of such sale of securities. Notice of such conversion in connection with an underwritten offering of securities shall be given by the Corporation by mail, postage pre-paid, to the holders of the Series C Preferred Stock at their addresses shown in the Corporation's records, at least twenty (20) days prior to the closing date of the sale of such securities. On or after the closing date as specified in such notice, each holder of Series C Preferred Stock shall surrender his/her/its certificate or certificates representing such Series C Preferred Stock for the number of shares of Class A Common Stock to which such holder is entitled at the office of the Corporation or any transfer agent for the Class A Common Stock. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series C Preferred Stock a certificate or certificates for the number of shares of Class A Common Stock to which such holder shall be entitled as aforesaid, and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Class A Common Stock and any declared but unpaid dividends. The conversion shall be deemed to have occurred as of the close of business on the actual closing date with respect to the sale of such securities, and, notwithstanding that any certificate representing the Series C Preferred Stock to be converted shall not have been surrendered, each holder of such Series C Preferred Stock shall thereafter be treated for all purposes as the record holder of the number of shares of Class A Common Stock issuable to such holder upon such conversion.

(c) Adjustments to Conversion Price.

(i) Adjustments for Subdivisions, Common Stock Dividends, Combinations or Consolidations of Class A Common Stock. In the event the outstanding shares of Class A Common Stock shall be subdivided or increased, by stock split or stock dividend, into a greater number of shares of Class A Common Stock, the Conversion Price then in effect shall concurrently with the effectiveness of such subdivision or payment of such stock dividend, be proportionately decreased. In the event the outstanding shares of Class A Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Class A Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(ii) Adjustments for Reclassification, Exchange and Substitution. If the Class A Common Stock issuable upon conversion of the Series C Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series C Preferred Stock shall be convertible into, in lieu of the number of shares of Class A Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of

shares of Class A Common Stock that would have been subject to receipt by the holders upon conversion of the Series C Preferred Stock immediately before that change.

(iii) Adjustments for Merger, Sale, Lease or Conveyance. In the event of any consolidation with or merger of the Corporation with or into another entity, or in case of any sale, lease or conveyance to another entity of the assets of the Corporation as an entirety or substantially as an entirety, the Series C Preferred Stock shall after the date of such consolidation, merger, sale, lease or conveyance be convertible into the number of shares of stock or other securities or property (including cash) to which the Class A Common Stock issuable (at the time of such consolidation, merger, sale, lease or conveyance) upon conversion of the Series C Preferred Stock as the case may be, would have been entitled upon such consolidation, merger, sale, lease or conveyance; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the holders of the Series C Preferred Stock shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to any shares of stock or other securities or property thereafter deliverable on the conversion of the shares of Series C Preferred Stock.

(d) Mandatory Conversion. Each share of Series C Preferred Stock shall automatically be converted into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$2.796194 by the Conversion Price (as defined above) in effect at the time of conversion upon the occurrence of the closing of the sale of shares of Class A Common Stock, in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended.

All holders of record of shares of Series C Preferred Stock will be given at least twenty (20) days' prior written notice of the date fixed and place designated for mandatory conversion of the Series C Preferred Stock and the event which resulted in the mandatory conversion of the Series C Preferred Stock into Class A Common Stock. Such notice shall be sent by first class mail, postage prepaid, to each holder of record of the Series C Preferred Stock at such holder's address as shown in the records of the Corporation. On or before the date so fixed for conversion, each holder of shares of the Series C Preferred Stock shall surrender his/her/its certificate or certificates for all such shares to the Corporation at the place designated in such notice and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled. The mechanics for conversion and other provisions relating to conversion of Series C Preferred Stock into Class A Common Stock set forth elsewhere in these Articles of Amendment shall apply to the mandatory conversion of the Series C Preferred Stock.

(e) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this section, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series C Preferred Stock 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 Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Class A Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Series C Preferred Stock.

(f) Notices of Record Date. In the event that this Cooperation shall propose at any time:

(i) to declare any dividend or distribution (other than by purchase of Class A Common Stock of employees, officers and directors pursuant to the termination of such persons or pursuant to the Corporation's exercise of rights of first refusal with respect to Class A Common Stock held by such persons) upon its Class A Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Class A Common Stock shares outstanding involving a change in the Class A Common Stock; or

(iii) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up; then, in connection with each such event, this Corporation shall send to the holders of the Series C Preferred Stock:

(1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend or distribution (and specifying the date on which the holders of Class A Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (i) and (ii) above; and

(2) in the case of the matters referred to in (ii) and (iii) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Class A Common Stock shall be entitled to exchange their Class A Common Stock for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of Series C Preferred Stock at the address for each such holder as shown on the books of this Corporation.

(g) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action (other than actions taken in good faith), 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 carrying out all the provisions of this Section B(iii)(4) and in taking all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series C Preferred Stock against impairment.

(h) Reservation of Class A Common Stock. The Corporation shall, at all times when the Series C Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series C Preferred Stock, such number of its duly authorized shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series C Preferred Stock. Before taking any action which would cause an adjustment reducing the conversion price

H&M: 35776.01

below the then par value of the shares of Class A Common Stock issuable upon conversion of the Series C Preferred Stock or which would cause the effective purchase price for the Series C Preferred Stock to be less than the par value of the shares of Series C Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of such Class A Common Stock at such adjusted Conversion Price or effective purchase price, as the case may be.

(i) No Adjustment. Upon any voluntary conversion of the Series C Preferred Stock, no adjustment to the conversion rights shall be made for declared but unpaid dividends on the Series C Preferred Stock surrendered for conversion or on the Class A Common Stock delivered.

(j) Cancellation of Preferred Stock. All shares of the Series C Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate except only the right of the holders thereof to receive shares of Class A Common Stock in exchange therefor and to receive payment of any declared but unpaid dividends thereon. Any shares of the Series C Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series C Preferred Stock accordingly.

5. Preemptive Rights. Holders of Series C Preferred Stock shall not be entitled on account of holding such shares to preemptive rights or other rights to acquire or subscribe for additional shares or securities of the corporation authorized to be issued.

ARTICLE III

The address of the registered office of Corporation in the State of Delaware is 1013 Centre Road, Wilmington, New Castle County, Delaware 19805, and the name of the registered agent is Corporation Service Company.

ARTICLE IV

The purpose for which Corporation is organized 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.

ARTICLE V

The number of Directors of Corporation may be fixed by the Bylaws.

ARTICLE VI

Subject to the provisions set forth herein, the Board of Directors of Corporation shall have the power to adopt, amend or repeal the Bylaws of Corporation.

H&M: 35776.01

ARTICLE VII

Elections of directors may be, but shall not be required to be, by written ballot.

ARTICLE VIII

No director of Corporation shall have personal liability arising out of an action whether by or in the right of Corporation or otherwise for monetary damages for breach of fiduciary duty as a director; provided, however, that the foregoing shall not limit or eliminate the liability of a director (i) for any breach of the director's duty of loyalty to Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of Delaware or any successor provision, (iv) for any transaction from which such director derived an improper personal benefit, or (v) acts or omissions occurring prior to the date of the effectiveness of this provision.

Furthermore, notwithstanding the foregoing provision, in the event that the General Corporation Law of Delaware is amended or enacted to permit further limitation or elimination of the personal liability of the director, the personal liability of Corporation's directors shall be limited or eliminated to the fullest extent permitted by the applicable law.

This provision shall not affect any provision permitted under General Corporation Law of Delaware in the certificate of incorporation, Bylaws or contract or resolution of the Corporation indemnifying or agreeing to indemnify a director against personal liability. Any repeal or modification of this provision shall not adversely affect any limitation hereunder on the personal liability of the director with respect to acts or omissions occurring prior to such repeal or modification.