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U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
7842.0999  
Attorney Docket No.

To the Honorable Commissioner of Patents and Trademarks, please return the attached original documents or copy thereof.

1. Name(s) of conveying party(ies):

WedCom, Inc.

- Individual(s)
- General Partnership
- A Delaware Corporation

- Association
- Limited Partnership

Other: \_\_\_\_\_

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Merger
- Change of Name

Other: Merger and Change of Name

Execution Date: April 24, 2000

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

Name: WeddingChannel.com, Inc.

Address: 888 South Figueroa Street, Suite 700  
Los Angeles, CA 90017

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- A Delaware Corporation
- Other:

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No

(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached?  Yes  No

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

A. Trademark Application No.(s)

75/843,552  
75/864,720  
75/882,927

B. Trademark Registration No.(s)

Additional numbers attached?  Yes  No

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

Name: Monica A. Riva, Esq.

Address: Finnegan, Henderson, Farabow,

Garrett & Dunner, L.L.P.

1300 I Street, N.W.

Washington, D.C. 20005-3315

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41): \$ 90.00

- Enclosed
- Authorized to be charged to deposit account
- Authorized to be charged to deposit account only if fee is deficient

8. Deposit account number:

06-0916

DO NOT USE THIS SPACE

9. Statement and signature.

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

Monica A. Riva  
Name of Person Signing

[Signature]  
Signature

September 26, 2000  
Date

Total number of pages including cover sheet, attachments, and document: 22



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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:

"DELLA.COM, INC.", A CALIFORNIA CORPORATION,  
WITH AND INTO "WEDCOM INC." UNDER THE NAME OF "  
WEDDINGCHANNEL.COM, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-FOURTH DAY OF APRIL, A.D. 2000, AT 5:15 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



*Edward J. Freel*  
Edward J. Freel, Secretary of State

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AUTHENTICATION: 0397970

DATE: 04-24-00

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**CERTIFICATE OF MERGER  
OF  
DELLA.COM, INC.  
INTO  
WEDCOM INC.**

Pursuant to Section 252 of the General  
Corporation Law of the State of Delaware

Wedcom Inc., a Delaware corporation, does hereby certify:

**FIRST:** The names and states of incorporation of the constituent corporations to this merger are as follows:

Della.com, Inc.	California
Wedcom Inc.	Delaware

**SECOND:** An Agreement and Plan of Merger and Reorganization (the "Agreement") has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with Section 252(c) of the General Corporation Law of the State of Delaware.

**THIRD:** The name of the corporation surviving the merger is Wedcom Inc., except that at the effective time of the merger its name shall be changed to WeddingChannel.com, Inc.

**FOURTH:** The Amended and Restated Certificate of Incorporation of Wedcom Inc. shall be amended to read in its entirety as set forth in Exhibit A attached hereto.

**FIFTH:** The executed Agreement is on file at the office of Wedcom Inc., 888 S. Figueroa Street, Suite 700, Los Angeles, CA 90017. A copy will be provided, upon request and without cost, to any stockholder of either constituent corporation.

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
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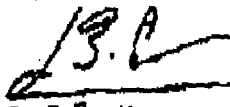
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SIXTH. The authorized capital stock of Delta.com, Inc. consists of 43,700,000 shares of common stock each having a par value of \$0.001 and 30,300,000 shares of preferred stock each having a par value of \$0.001.

IN WITNESS WHEREOF, Wedcom Inc. has caused this Certificate of Merger to be executed in its corporate name this 24<sup>th</sup> day of April, 2000.

Wedcom Inc.

By:   
Name: Lee B. Essner  
Title: Vice President, General Counsel  
and Secretary

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EXHIBIT A

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
WEDDINGCHANNEL.COM, INC.

ARTICLE I

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

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 9 East Lockerman Street, Dover, County of Kent, Delaware 19901. The name of its registered agent at such address is National Corporate Research, Ltd.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

A. Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Two Hundred Seventy-Three Million Nine Hundred Forty-Six Thousand Seven Hundred Thirty-Eight (273,946,738) shares, each with a par value of \$0.0001 per share. One Hundred Seventy-Five Million (175,000,000) shares shall be Common Stock, par

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value \$.0001 per share, and Ninety-Eight Million, Nine Hundred Forty-Six Thousand Seven Hundred Thirty-Eight (98,946,738) shares shall be Preferred Stock, par value \$.0001 per share.

**R. Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series.

The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of 3,000,000 shares.

The second series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of 1,300,000 shares.

The third series of Preferred Stock shall be designated "Series C Preferred Stock" and shall consist of 9,010,029 shares.

The fourth series of Preferred Stock shall be designated "Series D Preferred Stock" and shall consist of 9,000,000 shares.

The fifth series of Preferred Stock shall be designated "Series E Preferred Stock" and shall consist of 12,397,483 shares.

The sixth series of Preferred Stock shall be designated "Series F Preferred Stock" and shall consist of 16,365,778 shares.

The seventh series of Preferred Stock shall be designated "Series G Preferred Stock" and shall consist of 3,500,000 shares.

The eighth series of Preferred Stock shall be designated "Series H Preferred Stock" and shall consist of 4,451,857 shares.

The ninth series of Preferred Stock shall be designated "Series I Preferred Stock" and shall consist of 10,016,678 shares.

The tenth series of Preferred Stock shall be designated "Series J Preferred Stock" and shall consist of 10,676,445 shares.

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The eleventh series of Preferred Stock shall be designated "Series K Preferred Stock" and shall consist of 21,696,811 shares.

The twelfth series of Preferred Stock shall be designated "Series L Preferred Stock" and shall consist of 3,531,657 shares.

The rights, preferences, privileges, and restrictions granted to and imposed on the Series A, Series B, Series C, Series D, Series E, Series F, Series G, Series H, Series I, Series J, Series K and Series L Preferred Stock are as set forth below in this Article IV.B.

Subject to the rights of holders of outstanding shares of Preferred Stock, the Board of Directors of this Corporation (the "Board") is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for such class or series such voting powers, full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in resolution or resolutions adopted by the Board providing for the issuance of such class or series and as may be permitted by the General Corporation Law of the State of Delaware, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, or upon any distribution of the assets of, the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments, all as may be stated in such resolution or resolutions.

1. Dividend Rights. The holders of the Preferred Stock shall be entitled to receive, when and as declared by the Board, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board.

2. Liquidation Preferences.

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a. **Preference.** In the event of any liquidation, dissolution or winding up of this Corporation, either voluntarily or involuntarily, the holders of the Series A, Series B, Series C, Series D, Series E, Series F, Series G, Series H, Series I, Series J, Series K and Series L Preferred Stock (collectively, the "Preferred Stock") on a pari passu basis, shall be entitled to receive prior and in preference to any distribution of any of the assets or surplus funds of this Corporation to the holders of the Common Stock of this Corporation, an amount equal to:

(i) \$0.075 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series A Preferred Stock then held by them,

(ii) \$0.2314 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series B Preferred Stock then held by them,

(iii) \$0.3289 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series C Preferred Stock then held by them,

(iv) \$0.4868 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series D Preferred Stock then held by them,

(v) \$1.0486 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series E Preferred Stock then held by them,

(vi) \$1.0486 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series F Preferred Stock then held by them,

(vii) \$3.00 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series G Preferred Stock then held by them,

(viii) \$0.2246 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series H Preferred Stock then held by them,



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(ix) \$0.4493 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series I Preferred Stock then held by them,

(x) \$2.1339 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series J Preferred Stock then held by them,

(xi) \$2.1339 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series K Preferred Stock then held by them,

(xii) \$2.9471 per share (as adjusted for stock splits, stock dividends, recapitalizations and the like) for each share of Series L Preferred Stock then held by them, and,

in addition, an amount equal to all declared but unpaid dividends on each such share of Preferred Stock.

If upon such liquidation, dissolution or winding up of this Corporation, the assets of this Corporation distributable pursuant to the preceding sentence are insufficient to provide for the cash payments described above in full to the holders of the Preferred Stock, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Preferred Stock in proportion to the full preferential amount to which such holder is entitled.

After the payment or setting apart of payment to the holders of the Preferred Stock of the preferential amounts so payable to them, each share of Common Stock shall be entitled to receive *pro rata* the remaining assets of the Corporation.

b. Consolidation or Merger. A merger, consolidation, reorganization or acquisition of this Corporation with or into any other entity or entities (other than a wholly owned subsidiary corporation), or a sale, conveyance or disposal of all or substantially all of the property, business or assets of this Corporation in a single transaction or a series of related transactions, in any such case where the holders of the voting power of this Corporation immediately following the consummation of such event(s) hold less than 50% of the voting power of the surviving

entity, shall be deemed to be a liquidation, dissolution or winding up within the meaning of this Section 2.

c. Netcash Distributions. If any of the assets of this Corporation are to be distributed other than in cash under this Section 2 or for any purpose, then the Board shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of Preferred Stock or Common Stock. This Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of shares of Preferred Stock or Common Stock of the appraiser's valuation.

3. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Right"):

a. Right to Convert. Subject to Section 3.c each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share into such manner of fully paid and nonassessable shares of Common Stock as is determined by dividing

- (i) \$0.075 in the case of Series A Preferred Stock,
- (ii) \$0.2314 in the case of Series B Preferred Stock,
- (iii) \$0.3289 in the case of Series C Preferred Stock,
- (iv) \$0.4868 in the case of Series D Preferred Stock,
- (v) \$1.0486 in the case of Series E Preferred Stock,
- (vi) \$1.0486 in the case of Series F Preferred Stock,
- (vii) \$3.00 in the case of Series G Preferred Stock,
- (viii) \$0.2246 in the case of Series H Preferred Stock,
- (ix) \$0.4493 in the case of Series I Preferred Stock,
- (x) \$2.1339 in the case of Series J Preferred Stock,

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- (xi) \$2.1339 in the case of Series K Preferred Stock, and
- (xii) \$2.9471 in the case of Series L Preferred Stock

by the Conversion Prices applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion.

The Initial Conversion Price per share shall be

- (A) \$0.075 for shares of Series A Preferred Stock,
- (B) \$0.2314 for shares of Series B Preferred Stock,
- (C) \$0.3289 for shares of Series C Preferred Stock,
- (D) \$0.4868 for shares of Series D Preferred Stock,
- (E) \$1.0486 for shares of Series E Preferred Stock,
- (F) \$1.0486 for shares of Series F Preferred Stock,
- (G) \$3.00 for shares of Series G Preferred Stock,
- (H) \$0.2246 for shares of Series H Preferred Stock,
- (I) \$0.4493 for shares of Series I Preferred Stock,
- (J) \$2.1339 for shares of Series J Preferred Stock,
- (K) \$2.1339 for shares of Series K Preferred Stock,

and

- (L) \$2.9471 for shares of Series L Preferred Stock.

Such initial Conversion Price shall be subject to adjustment as set forth in Section 3.d below.

b. Automatic Conversion

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(i) Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the consummation of the Corporation's sale of its Common Stock in a firm commitment underwritten public offering of not less than \$25 million (before deduction of underwriters commissions and expenses) pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act").

(ii) In the event that holders of in excess of 70% of the outstanding shares of Preferred Stock so elect, all outstanding shares of Preferred Stock shall be converted into shares of Common Stock at the Conversion Prices at the time in effect for such shares.

c. Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section 3.a and in order to receive certificates for Common Stock following an automatic conversion pursuant to Section 3.b, such holder shall (i) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, together with written instructions as to the name or names in which the certificate or certificates for shares of Common Stock are to be issued, and (ii) in the case of conversion pursuant to Section 3.a, give written notice to the Corporation at its principal corporate office, of the election to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Any conversion pursuant to Section 3.a shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date.

d. Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) Issuance of Additional Stock below Purchase Price. If the Corporation shall issue, after April 24, 2000 (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per

Common Stock equivalent share less than the respective Conversion Price for any series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for any such series of Preferred Stock in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 3.d(i), unless otherwise provided in this Section 3.d(i).

(A) Adjustment Formula. Whenever the Conversion Price of any series of Preferred Stock is adjusted pursuant to this Section 3.d(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 3.d(i)(E) below.

(B) Definition of "Additional Stock". "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 3.d(i)(E) by the Corporation after the Purchase Date) other than:

(1) Common Stock issued pursuant to a transaction described in Section 3.d(ii) hereof,

(2) Common Stock issuable or issued to employees, consultants, officers or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan, or other similar arrangements related to compensation for services either (a) in effect on the Purchase Date, or (b) thereafter approved by a majority vote of the members of the Board that are not employees or officers or designees of employees or officers of the Corporation,

(3) capital stock issued upon conversion or exercise of warrants, options or other securities,

(4) capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board.

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(5) Common Stock issued or issuable upon conversion of the Preferred Stock, and

(6) capital stock issued in connection with equipment leasing or debt financing approved by a majority vote of the members of the Board.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for any series of Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board irrespective of any accounting treatment.

(E) Deemed Issuance of Common Stock. In the case of the issuance (whether before, on or after the Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 3.d(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to

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the consideration (determined in the manner provided in Section 3.d(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 3.d(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of

shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Section 3.d(i)(E)(1) and 3.d(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 3.d(i)(E)(3) or 3.d(i)(E)(4).

(F) No Increased Conversion Price. Notwithstanding any other provisions of this Section 3.d(i), except to the limited extent provided for in Sections 3.d(i)(E)(3) and 3.d(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 3.d(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) Stock Splits and Dividends. In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or 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 directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 3.d(i)(E).

(iii) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a



combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price of each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

e. Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 3.d(ii), then, in each such case for the purpose of this Section 3.e, holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

f. Recapitalization. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 3 or Section 2), provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 3 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

g. No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 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 Preferred Stock against impairment.

h. No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Section 3, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such 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 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

i. Notices of Record Date. In the event of any taking by this Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stocks of any class or any other securities or property or to receive any other rights, this Corporation shall mail to each holder of Preferred Stock at least thirty (30) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution or right, and the amount and character of such dividend, distribution or right.

j. Reservation of Stock Issuable Upon Conversion. This 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 Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but

unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

k. Notice. Any notice required by the provisions of this Section 3 to be given to the holder of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this Corporation.

4. Redemption. The Preferred Stock is not redeemable.

5. Voting Rights. Except as otherwise required by law, each holder of Common Stock shall have one vote for each share of Common Stock so held, and each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock so held could be converted at the record date for determination of the stockholders entitled to vote, or, if no such record date is established, at the date such vote is taken or any written consents of stockholders is solicited. Except as required by law or as otherwise set forth in this Certificate of Incorporation, all shares of Preferred Stock and all shares of Common Stock shall vote together as a single class on all matters to come before the stockholders of this Corporation. Fractional votes by the holders of Preferred Stock shall not, however, be permitted, and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be disregarded.

6. Protective Provisions. In addition to any class vote of the Preferred Stock otherwise available under state law, so long as at least 20% of the total shares of Preferred Stock outstanding on the date hereof remain outstanding (as adjusted for stock splits, stock dividends or recapitalization), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 62.5% of the aggregate outstanding shares of Preferred Stock:

a. amend, alter or repeal any provision of, or add any provision to, this Certificate of Incorporation or the Bylaws of the Corporation that would alter, modify or change any right, preference, privilege or restriction provided for the benefit of the holders of the Preferred Stock;

b. effect a liquidation, dissolution or winding up of this Corporation or a transaction described in Article IV.B.2.b;

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c. redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements approved by a majority vote of the members of the Board under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

d. declare or pay any dividend or distribution in respect of shares of Common Stock or Preferred Stock of the Corporation;

e. distribute any capital stock if such distribution would constitute a "deemed dividend distribution" within the meaning of Section 105 of the Internal Revenue Code of 1986, as amended;

f. increase or decrease (other than by redemption or conversion or as a result of a stock split or combination) the total number of authorized shares of Common Stock, Preferred Stock or any individual series of Preferred Stock;

g. authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with any outstanding series of Preferred Stock, with respect to voting, payment or distribution of dividends, redemption, antidilution, conversion or upon liquidation or winding up or other distribution of this Corporation's assets or increase the authorized or designated number of any such new class or series;

h. effect or validate any agreement by the Corporation or its stockholders regarding any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred, or a sale, lease or other disposition of all or substantially all of the assets of this Corporation; and

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j. increase or decrease the number of members of the Board.

**C. Common Stock**

1. Dividend Rights. The holders of the Common Stock shall be entitled to receive, when and as declared by the Board, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board.

2. Liquidation of Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV.B.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

**ARTICLE V**

The Board of the Corporation is expressly authorized to make, alter or repeal the Bylaws of the Corporation, subject to the voting rights of certain holders of Preferred Stock described in Article IV.B.6.

**ARTICLE VI**

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

**ARTICLE VII**

A. To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

B. The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his vestator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

C. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

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