

05-16-2001



Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)

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TRADEMARKS ONLY

ET U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Tab settings ⇨ ⇨ ⇨ ▼ ▼ ▼ ▼ ▼ ▼ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

DryRock Corporation **5-7-01**

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State - California
- Other _____

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

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other _____

Execution Date: May 19, 2000

2. Name and address of receiving party(ies)

Name: Juniper Financial Corp.

Internal

Address: _____

Street Address: 100 South West Street **MAY - 7 2001**

City: Wilmington State: DE Zip: 19801

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State - Delaware
- Other _____

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

76-028083

76-028082

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Joseph J. Serritella, Esquire

Internal Address: Pepper Hamilton LLP

3000 Two Logan Square

Street Address: Eighteenth and Arch Streets

City: Philadelphia State: PA Zip: 19103-2799

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41).....\$ 65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: _____

(Attach duplicate copy of this page if paying by deposit account)

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.

Joseph J. Serritella

May 4, 2001

Name of Person Signing

Signature

Date

19

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

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

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40.00 DP
25.00 DP

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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 OF "JUNIPER FINANCIAL CORP.", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF MAY, A.D. 2000, AT 4 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE FIRST DAY OF JUNE, A.D. 2000.



Edward J. Freel

Edward J. Freel, Secretary of State

0577430

AUTHENTICATION:

07-24-00

DATE:

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STATE OF DELAWARE
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
FILED 04:00 PM 05/31/2000
001275745 - 3227869

CERTIFICATE OF MERGER

MERGING

DRYROCK CORPORATION

INTO

JUNIPER FINANCIAL CORP.

Pursuant to Section 252 of the
Delaware General Corporation Law

The undersigned corporation, organized and existing
under and by virtue of the Delaware General Corporation Law,

DOES HEREBY CERTIFY:

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

<u>Name</u>	<u>State of Incorporation</u>
DryRock Corporation	California
Juniper Financial Corp.	Delaware

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

THIRD: That Juniper Financial Corp. shall be
the surviving corporation.

FOURTH: That the certificate of incorporation of
Juniper Financial Corp. shall be amended in and as a
result of the merger to read in its entirety as set
forth in Exhibit A hereto.

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FIFTH: That the executed Agreement and Plan of Merger is on file at an office of the surviving corporation, the address of which is 1007 Orange Street, Suite 1514, Wilmington, DE 19801.

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 stockholder of any constituent corporation.

SEVENTH: That the authorized capital stock of DryRock Corporation consists of (a) Forty Million (40,000,000) shares of Common Stock, par value \$.001 per share, of which Thirty Four Million Twenty Four Thousand (34,024,000) are classified as Class A Common Stock and Five Million Nine Hundred Seventy Six Thousand (5,976,000) are classified as Class B Common Stock; and (b) Ten Million (10,000,000) shares of Preferred Stock, par value \$.001 per share, of which Four Million Twenty Four Thousand (4,024,000) are designated as Series A Preferred Stock and Five Million Nine Hundred Seventy Six Thousand (5,976,000) are designated as Series A Prime Preferred Stock.

EIGHTH: That the merger shall be effective at 12:01 a.m. on June 1, 2000.

In witness whereof, Juniper Financial Corp. has caused this Certificate of Merger to be executed by its duly authorized officer this 19 day of May, 2000.

JUNIPER FINANCIAL CORP.

By: 

Name: Clifton Walker
Title: President

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EXHIBIT A**CERTIFICATE OF INCORPORATION****OF****JUNIPER FINANCIAL CORP.****ARTICLE I**

The name of the corporation (hereinafter called the "Corporation") is Juniper Financial Corp.

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1201 North Market Street, Post Office Box 1347, in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is Delaware Corporation Organizers, Inc.

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. This Corporation is authorized to issue two classes of shares to be designated respectively Preferred Stock ("Preferred Stock") and Common Stock ("Common Stock"). The total number of shares of capital stock that the corporation is authorized to issue is Fifty Million (50,000,000). The total number of shares of Preferred Stock this Corporation shall have authority to issue is Ten Million (10,000,000). The total number of shares of Common Stock this Corporation shall have authority to issue is Forty Million (40,000,000). The Preferred Stock shall have a par value of \$.001 per share and the Common Stock shall have a par value of \$.001 per share. The Common Stock shall be divided into two series, designated respectively Class A Common Stock and Class B Common Stock. Of the Common Stock, Thirty Four Million Twenty Four Thousand (34,024,000) shares shall initially be classified as Class A Common Stock (the "Class A Common Stock") and Five Million Nine hundred Seventy Six Thousand (5,976,000) shares shall initially be classified as Class B Common Stock (the "Class B Common Stock").

B. Of the Preferred Stock Four Million Twenty Four Thousand (4,024,000) shares shall initially be designated as

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Series A Preferred Stock (the "Series A Preferred Stock") and Five Million Nine Hundred Seventy Six Thousand (5,976,000) shares shall initially be designated as Series A Prime Preferred Stock (the "Series A Prime Preferred Stock", and together with the Series A Preferred Stock, the "Series A Preferred and Series A Prime Preferred Stock").

C. The powers, preferences, rights, restrictions, and other matters relating to the Series A Preferred and Series A Prime Preferred Stock are as follows:

1. Dividends.

a. The holders of the Series A Preferred and Series A Prime Preferred Stock shall be entitled to receive dividends at the rate of \$0.16 per share (as adjusted for any stock dividends, combinations, recapitalizations or splits with respect to such shares) per annum, respectively, payable out of funds legally available therefor. Such dividends shall be payable only when, as, and if declared by the Board of Directors and shall be non-cumulative. No dividends (other than those payable solely in the Common Stock of the Corporation) shall be declared or paid on any Common Stock of the Corporation during any fiscal year of the Corporation until dividends in the total amount of \$0.16 per share (as adjusted for any stock dividends, combinations, recapitalizations or splits with respect to such shares) on the Series A Preferred and Series A Prime Preferred Stock shall have been paid or declared and set apart during that fiscal year and any prior year in which dividends were declared but remain unpaid.

b. 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 to purchase any such securities or evidences of indebtedness, then, in each such case the holders of the Series A Preferred Stock and Series A Prime Preferred Stock shall be entitled to a proportionate share of any such distribution as though the holders of the Series A Preferred Stock and Series A Prime Preferred Stock were the holders of the number of shares of Common Stock of the Corporation into which their respective shares of Series A Preferred Stock and Series A Prime 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.

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2. Liquidation Preference.

a. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series A Preferred Stock and Series A Prime Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, the amount of \$2.00 per share (as adjusted for any stock dividends, combinations, recapitalizations or splits with respect to such shares), plus all declared but unpaid dividends, if any, on such share for each share of Series A Preferred Stock and Series A Prime Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock and Series A Prime Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series A Prime Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

b. After payment to the holders of the Series A Preferred Stock and Series A Prime Preferred Stock of the amounts set forth in Section C.2(a) above, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed among the holders of the Common Stock pro rata based on the number of shares of Common Stock held by each.

c. For purposes of this Section C.2, (i) any acquisition of the Corporation by means of merger or other form of corporate consolidation or reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary (other than a mere reincorporation transaction for the sole purpose of changing the state of incorporation of the Corporation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this Corporation, or (ii) a sale of all or substantially all of the assets of the Corporation, shall be treated as a liquidation, dissolution or winding up of the Corporation and shall entitle the holders of Series A Preferred and Series A Prime Preferred Stock to receive at the closing in cash, securities or other property (valued as provided in

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Section C.2(c)(i) below) amounts as specified in Sections C.2(a) above.

(i) Whenever the distribution provided for in this Section C.2 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(ii) In the event the requirements of this subsection 2(c) are not complied with, this Corporation shall forthwith either:

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(A) cause such closing to be postponed until such time as the requirements of this Section C.2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock and Series A Prime Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection C.2(c)(iii) hereof.

(iii) The Corporation shall give each holder of record of Series A Preferred and Series A Prime Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section C.2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

3. Redemption. The Series A Preferred and Series A Prime Preferred Stock is not redeemable.

4. Voting Rights; Directors.

a. Except as described in paragraph 4(b) below, or as otherwise required by law or this Certificate of Incorporation, each holder of shares of the Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Class A Common Stock into which such shares of Series A Preferred Stock could be converted and shall have voting rights and powers equal to the voting rights and powers of the Class A Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the

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Common Stock as a single class) and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). Each holder of Class A Common Stock shall be entitled to one (1) vote for each share of Class A Common Stock held.

b. The Board of Directors shall consist of five (5) members. The holders of the Series A Preferred Stock, voting together as a class, shall be entitled to designate one (1) member of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of the Class A Common Stock, voting together as a class, shall be entitled to designate four (4) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors.

c. In the case of any vacancy in the office of a director and occurring among the directors elected by the holders of the Series A Preferred Stock and/or Class A Common Stock pursuant to Section C.4(b) hereof, the remaining director or directors so elected by the holders of the Series A Preferred Stock and/or Class A Common Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one, or if there is no such director remaining, by the affirmative vote of the holders of a majority of the shares of that class or series) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of the Series A Preferred Stock and/or Class A Common Stock or any director so elected as provided in the preceding sentence hereof, may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of the Series A Preferred Stock and/or Class A Common Stock, as the case may be.

d. The Preferred Stock referred to as Series A Prime Preferred Stock shall have all of the same rights and privileges of the Series A Preferred Stock, except (i) with respect to Section 5 hereof and (ii) that the holders of Series A Prime Preferred Stock shall not be entitled to vote upon any

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matter submitted to the stockholders; provided, however, that the holders of Series A Prime Preferred Stock shall be entitled to vote pursuant to Section 6 hereof or as required by law.

5. Conversion. The holders of the Series A Preferred and Series A Prime Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

a. Right to Convert. Each share of Series A 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 such stock, into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing \$2.00 (as adjusted for any stock splits, stock dividends, recapitalizations or the like) by the Series A Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. Each share of Series A Prime 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 such stock, into a share of Series A Preferred Stock or into such number of fully paid and nonassessable shares of Class B Common Stock as is determined by dividing \$2.00 (as adjusted for any stock splits, stock dividends, recapitalizations or the like) by the Series A Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Class A Common Stock and Class B Common Stock shall be deliverable upon conversion of shares of the Series A Preferred and Series A Prime Preferred Stock (the "Series A Conversion Price") shall initially be \$2.00 per share of Class A Common Stock and Class B Common Stock. Such initial Series A Conversion Price shall be adjusted as hereinafter provided.

b. Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Class A Common Stock at the then-effective Series A Conversion Price, upon the earlier, of (i) the date specified by written consent or agreement of holders of more than fifty percent (50%) of the shares of Series A Preferred Stock then outstanding, or (ii) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act") other than a registration relating solely to a transaction under Rule 145

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under such Act (or any successor thereto) or to an employee benefit plan of the Corporation, and with aggregate proceeds to the Corporation (after deduction for underwriters' discounts and expenses relating to the issuance, including without limitation fees of the Corporation's counsel) in excess of \$20,000,000 (a "Qualified Public Offering"). Each share of Series A Prime Preferred Stock shall automatically be converted into shares of Class B Common Stock at the then-effective Series A Conversion Price, upon the earlier of (i) the date specified by written consent or agreement of holders of more than fifty percent (50%) of the shares of Series A Preferred Stock then outstanding, or (ii) immediately upon the closing of a Qualified Public Offering.

c. Mechanics of Conversion.

(i) Before any holder of Series A Preferred Stock or Series A Prime Preferred Stock shall be entitled to convert the same into shares of Class A Common Stock, Series A Preferred Stock or Class B Common Stock, as the case may be, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Class A Common Stock, Series A Preferred Stock or Class B Common Stock, as the case may be, to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock or Series A Prime Preferred Stock, a certificate or certificates for the number of shares of Class A Common Stock, Series A Preferred Stock or Class B Common Stock, as the case may be, to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock or Series A Prime Preferred Stock to be converted, and the person or persons entitled to receive the shares of Class A Common Stock, Series A Preferred Stock or Class B 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, Series A Preferred Stock or Class B Common Stock on such date.

(ii) If the conversion is in connection with a Qualified Public Offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A Preferred and Series A Prime

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Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Class A Common Stock or Class B Common Stock, as the case may be, upon conversion of the Series A Preferred and Series A Prime Preferred Stock shall not be deemed to have converted such Series A Preferred and Series A Prime Preferred Stock until immediately prior to the closing of such sale of securities.

d. Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that this Corporation at any time or from time to time after any shares of Series A Preferred Stock or Series A Prime Preferred Stock were first issued shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Series A Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that this Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

e. Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series A Preferred and Series A Prime 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 in Section C.5(d) above or a merger or other reorganization referred to in Section C.2(c) above), the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately

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adjusted so that the Series A Preferred and Series A Prime Preferred Stock shall be convertible into, in lieu of the number of shares of 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 Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred and Series A Prime Preferred Stock immediately before that change.

f. No Impairment. Without the consent of the holders of the then outstanding shares of Series A and Series A Prime Preferred Stock as required, if at all, pursuant to Section 6 hereof, the Corporation will not, by amendment of its Restated Articles or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section C.5 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 A Preferred and Series A Prime Preferred Stock against impairment.

g. Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Series A Conversion Price pursuant to this Section C.5, 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 Series A Preferred and Series A Prime Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer 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 and Series A Prime Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series A Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred and Series A Prime Preferred Stock.

h. Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in

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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 offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up;

Then, in connection with each such event, the Corporation shall send to the holders of Series A Preferred and Series A Prime Preferred Stock: (1) at least twenty (20) days prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and (2) in the case of the matters referred to in (iii) and (iv) 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 Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

i. Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Series A Preferred and Series A Prime Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

j. 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 A 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 A Preferred Stock and shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock and Series A Preferred Stock, solely for the purpose of effecting the conversion of the shares of the Series A Prime Preferred Stock, such number of its shares of

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Class B Common Stock and Series A Preferred Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Prime Preferred Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock, Series A Preferred Stock or Class B Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock and Series A Prime Preferred Stock, as the case may be, the Corporation will 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, Series A Preferred Stock and Class B Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate.

k. Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Series A Preferred and Series A Prime Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred and Series A Prime Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

l. Notice. Any notice required by the provisions of this Section C.5 to be given to the holders of shares of Series A Preferred and Series A Prime 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 the Corporation.

6. Restrictions and Limitations.

a. So long as any shares of Series A Preferred and Series A Prime Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of the Series A Preferred and Series A Prime Preferred Stock, voting together as a single class:

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(i) Authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) senior to or on a parity with the Series A Preferred Stock as to dividend rights or redemption rights, voting rights or liquidation preferences;

(ii) Sell, convey or otherwise dispose of or encumber all or substantially all of the assets of the Corporation or consolidate or merge into any other Corporation (other than a wholly-owned subsidiary Corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of;

(iii) Increase (other than by conversion) the total number of authorized shares of Preferred Stock, Series A Preferred Stock, or Series A Prime Preferred Stock;

(iv) Amend its Certificate of Incorporation or Bylaws if such amendment would change any of the rights, preferences or privileges provided for herein for the benefit of holders of Series A Preferred Stock;

(v) Increase the authorized number of directors of the Corporation;

(vi) Pay or declare a dividend on the Common Stock (other than a dividend payable in shares of Common Stock); or

(vii) Redeem, repurchase, or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Common Stock, other than upon the termination of an employee pursuant to agreements under which the Corporation has the option to repurchase such shares at cost.

7. No Reissuance of Series A Preferred and Series A Prime Preferred Stock. No share or shares of Series A Preferred Stock or Series A Prime Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

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D. Common Stock. Except as expressly provided in this Article IV, Class A Common Stock and Class B Common Stock shall have the same rights and privileges and shall rank equally, share ratably and be identical in all respects as to all matters. The holders of Class A Common Stock and Class B Common Stock shall have the following rights and preferences:

1. Dividends.

The holders of shares of Class A Common Stock and Class B Common Stock shall be entitled to receive such dividends as from time to time may be declared by the Board of Directors of the Corporation, subject to the provisions of Section C.1 of this Article IV with respect to the rights of holders of the Preferred Stock.

2. Liquidation.

In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment shall have been made to holders of Preferred Stock of the full amounts to which they shall respectively be entitled as stated and expressed herein or as may be stated and expressed pursuant hereto, the holders of Common Stock shall be entitled to share ratably according to the number of shares of Common Stock held by them in all remaining assets of the Corporation available for distribution to its stockholders.

3. Voting.

Except as otherwise provided by law, at any meetings at which stockholders are entitled to vote, each share of Class A Common Stock shall entitle the holder thereof to one vote per share and each share of Class B Common Stock shall not be entitled to vote.

4. Subdivisions and Combinations of Shares.

If the Corporation in any manner subdivides or combines the outstanding shares of one series of Common Stock, the outstanding shares of the other series of Common Stock will be likewise subdivided or combined.

5. Conversion.

a. Right to Convert. Each share of Class B Common Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share,

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at the office of the Corporation or any transfer agent for such stock, into a share of Class A Common Stock.

b. Mechanics of Conversion. Before any holder of Class B Common Stock shall be entitled to convert the same into shares of Class A Common, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Class A Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Class B Common Stock, a certificate or certificates for the number of shares of Class A Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Class B Common 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 on such date.

ARTICLE V

The personal liability of the directors of this Corporation to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director shall be and hereby is eliminated to the fullest extent permissible under Delaware law.

ARTICLE VI

The name and mailing address of the incorporator is as follows:

Delaware Corporation Organizers, Inc.
P.O. Box 1347
Wilmington, Delaware 19899

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