FORM PTO-1618A
Expires 06/30/99
OMB 0651-0027

06-05-2001

101740250

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

2-9-01

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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
- [X] Merger — Effective Date Month Day Year
- [ ] Change of Name
- [ ] Other

Conveying Party

[ ] Mark if additional names of conveying parties attached

Name: Taylor Group Solutions Integrator, Inc., The

Execution Date Month Day Year: 03 08 00

Formerly:

- [ ] Individual
- [ ] General Partnership
- [ ] Limited Partnership
- [ ] Corporation
- [ ] Association
- [ ] Other
- [X] Citizenship/State of Incorporation/Organization: Delaware

Receiving Party

[ ] Mark if additional names of receiving parties attached

Name: ManagedOps.com, Inc.

DBA/AKA/TA:

Composed of:

Address (line 1): 8 Commerce Drive

Address (line 2):

Address (line 3): Bedford (City) New Hampshire (State/Country) 03110 (Zip Code)

- [ ] Individual
- [ ] General Partnership
- [ ] Limited Partnership
- [ ] 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.)*
- [X] Corporation
- [ ] Association
- [ ] Other
- [X] Citizenship/State of Incorporation/Organization: Delaware

FOR OFFICE USE ONLY

40E

02/20/2001 DBYRNE 00000067 2399360

01 FC:481 40.00 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

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name: John Polgrean, Esquire

Address (line 1): ManagedOps.com, Inc.

Address (line 2): 8 Commerce Drive

Address (line 3): Bedford, NH 03110

Address (line 4):

Correspondent Name and Address

Area Code and Telephone Number: 603-621-7100

Name: Vasiliki Canotas, Esquire

Address (line 1): Cook, Little, Rosenblatt & Manson, pllc

Address (line 2): 650 Elm Street

Address (line 3): Manchester, NH 03101

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)			Registration Number(s)		
			2,399,360		

Number of Properties

Enter the total number of properties involved. #

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): $ 40.00

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.

Daniel Taylor
Name of Person Signing

Signature

1/15/01
Date Signed

State of New Hampshire

OFFICE OF SECRETARY OF STATE

I, ROBERT P. AMBROSE, Deputy Secretary of State of the State of New Hampshire, do hereby certify that the following and hereto attached is a true copy of the Articles of Merger, all Amendments thereto, for MANAGEDOPS.COM, INC. (formerly The Taylor Group Solutions Integrator, Inc.) as filed in this office and held in the custody of the Secretary of State.

In Testimony Whereof, *I hereto set my hand and cause to be affixed the Seal of the State, at Concord, this* ~~15th~~ *day of* ~~May~~ *A.D.* ~~2001~~

Deputy Secretary of State

FC37569

STATE OF NEW HAMPSHIRE

Filing fee: $35.00
Use black print or type.
Leave 1" margins both sides.

Form No. 42
RSA 293-A:15.04

FILED
MAR 13 2000
WILLIAM ... ER
NEW HAMPSHIRE
SECRETARY OF STATE

APPLICATION FOR AMENDED CERTIFICATE OF AUTHORITY FOR FOREIGN PROFIT CORPORATION OF THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR AN AMENDED CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN NEW HAMPSHIRE AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:

332969

FIRST: The name of the corporation is: **The Taylor Group Solutions Integrator, Inc.**

SECOND: The name the corporation is currently using in the state of New Hampshire is: **The Taylor Group Solutions Integrator, Inc.**

THIRD: The state or country of incorporation is: **Delaware.**

FOURTH: The date the corporation was authorized to transact business in the state of New Hampshire is: **February 2, 2000.**

FIFTH: This application is filed for the following reason (complete all applicable terms)

a. The corporation has changed its corporate name to: **ManagedOps.com, Inc.**

b. The name of the corporation will hereafter use in the state of New Hampshire is changed to: **ManagedOps.com, Inc.**

c. The corporation has changed its period of duration to: **n/a.**

d. The corporation has changed the state or country of its incorporation to: **n/a.**

Dated: March 9, 2000

MANAGEDOPS.COM, INC.

By: Daniel P. Taylor
Daniel P. Taylor, President

Mail fee and ORIGINAL AND ONE EXACT OR CONFORMED COPY WITH A CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION (Note 4) to: Secretary of State, State House, Room 204, 107 North Main Street, Concord, NH 03301-4989.

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "MANAGEDOPS.COM, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE NINTH DAY OF MARCH, A.D. 2000.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID IS THE NINTH DAY OF MARCH, A.D. 2000.

Edward J. Freel, Secretary of State

3167252 8300

001118829

AUTHENTICATION: 0307189

DATE: 03-10-00

STATE OF NEW HAMPSHIRE

Filing fee: $ 35.00
Use black print or type
Leave 1" margins both sides

Form No. 26
RSA 293-A:11.05

ARTICLE OF MERGER OF DOMESTIC AND FOREIGN CORPORATIONS

The Taylor Group Solutions Integrator, Inc.

(surviving corporation)

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED DOMESTIC AND FOREIGN CORPORATIONS ADOPT THE FOLLOWING ARTICLES OF MERGER FOR THE PURPOSE OF MERGING THEM INTO ONE OF SUCH CORPORATIONS:

FIRST: The plan of merger was approved by each of the undersigned corporations in the manner prescribed by the New Hampshire Business Corporation Act. THE PLAN OF EXCHANGE IS ATTACHED. (Note 1)

Name of Domestic Corporation **The Taylor Group Solutions Integrator, Inc.**.

(Check one) A. ____ Shareholder approval was not required

B. X Shareholder approval was required. (Note 2)

Designation (class or series) of voting group	No. of shares outstanding	Total no. of votes entitled to be cast	Total no. of votes cast FOR	AGAINST	OR	Total no. of undisputed votes FOR
Common Stock	16,320,700	16,320,700				16,320,700

FILED
FEB - 2 2000
WILLIAM M. GARDNER
NEW HAMPSHIRE
SECRETARY OF STATE

SECOND: The number of votes cast for the plan by each voting group was sufficient for approval by each voting group.

****

Name of Foreign Corporation **The Taylor Group Solutions Integrator, Inc.**.

State of Incorporation **Delaware**

THIRD: The laws of the state under which the foreign corporation was organized permit such a merger and the foreign corporation has complied with the laws of that state in effecting the merger.

NH022 - C T System Online

TRADEMARK
REEL: 002308 FRAME: 0202

373

ARTICLES OF MERGER
INTO The Taylor Group Solutions Integrator, Inc.

Form No. 26
(Cont.)

FOURTH: The aggregate number of shares, which the surviving corporation has authority to issue as a result of the merger is: (Note 3)

Dated February 1, ~~19xx~~ 2000

THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC. (Note 4)
(a New Hampshire corporation)

By _____ (Note 5)
Signature of its ~~President~~

Daniel P. Taylor
Print or type name

****

THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.
~~(a Delaware corporation)~~ (Note 4)

By _____ (Note 5)
Signature of its President

Daniel P. Taylor
Print or type name

Notes:
1. The Plan of Merger must be submitted with this form.
2. All sections under "B." must be completed. If any voting group is entitled to vote separately, give respective information for each voting group. (See RSA 293-A:1.40 for definition of voting group.)
3. Complete this section if surviving corporation is a domestic corporation.
4. Exact corporate names of respective corporations executing the Articles.
5. Signature and title of person signing for the corporation. Must be signed by Chairman of the Board of Directors, President or other officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee and ORIGINAL (INCLUDING PLAN OF MERGER) and ONE EXACT OR CONFORMED COPY to: Secretary of State, State House, Room 204, 107 North Main Street, Concord, NH 03301-4989.

NH022 - CT System Online

TRADEMARK
REEL: 002308 FRAME: 0203

PLAN AND AGREEMENT OF MERGER

This PLAN AND AGREEMENT OF MERGER dated as of February /, 2000 (this "Agreement") is between The Taylor Group Solutions Integrator, Inc., a Delaware corporation ("Taylor DE") and The Taylor Group Solutions Integrator, Inc., a New Hampshire corporation ("Taylor NH").

Introduction

The Directors of Taylor NH, the parent corporation, have determined that it is desirable for, and in the best interest of, their respective companies (Taylor DE is a wholly-owned subsidiary of Taylor NH) that Taylor NH merge with and into Taylor DE (the "Merger"), pursuant to the terms and conditions of this Agreement and in accordance with the Section 293-A:11.01 of Revised Statutes Annotated of New Hampshire and Section 252 of the General Corporation Law of the State of Delaware. Accordingly, in consideration of the respective agreements hereinafter set forth, and in order to set forth the terms and conditions of the Merger and the mode of carrying the same into effect, the parties hereby agree as follows:

1. Merger Organization.

1.1. The Merger. As of the Effective Time (as defined in subsection 1.2 hereof), (a) Taylor NH shall be merged with and into Taylor DE, and the separate existence of Taylor NH shall thereupon cease, and (b) Taylor DE, as the surviving corporation in the Merger (the "Surviving Corporation"), shall continue its corporate existence and be organized under and governed by the General Corporation Law of the State of Delaware with the corporate purposes specified in its Certificate of Incorporation. The Merger is intended to be treated as a transfer to a controlled corporation under Section 351 of the Internal Revenue Code.

1.2. Effective Time. As soon as practicable after the Merger has been approved by the shareholders of Taylor NH and by Taylor NH as the sole shareholder of Taylor DE, the parties shall cause to be filed the appropriate Article of Merger of Domestic and Foreign Corporations with the Secretary of the State of New Hampshire and an appropriate Certificate of Merger with the Secretary of the State of Delaware. The Merger shall become effective on the date and at the time when such Certificate of Merger is so filed (the "Effective Time").

1.3 Corporate Name: The name of the surviving corporation shall be The Taylor Group Solutions Integrator, Inc.

1.4. Amended and Restated Certificate of Incorporation and By-Laws. As of the Effective Time, the Certificate of Incorporation of Taylor DE shall be amended and restated set forth on Exhibit A hereto and, as so amended and restated, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended as provided therein. As of the Effective Time, the By-Laws of Taylor DE shall be the By-Laws of the Surviving Corporation until thereafter amended as provided therein.

TRADEMARK 02/01/00 10:21 AM P002 #27
REEL: 002308 FRAME: 0204

1.5. Directors and Officers. The directors and officers of Taylor NH immediately prior to the Effective Time shall be the directors officers of the Surviving Corporation, to hold office in accordance with the Certificate of Incorporation and the By-Laws of the Surviving Corporation.

1.6. Assets and Liabilities. From and after the Effective Time, all of the assets of Taylor NH and Taylor DE (including, without limitation, all of their respective contractual rights, goodwill, accounts and other tangible and intangible assets) shall become the property of the Surviving Corporation and the Surviving Corporation shall succeed to all of the liabilities of Taylor NH and Taylor DE. The Surviving Corporation, in the name of Taylor NH and Taylor DE, shall have full power and authority, from and after the Effective Time, to execute such instruments of assignment and other documents necessary to vest in the Surviving Corporation all of the assets of Taylor NH and Taylor DE.

1.7. Capital Stock. The total number of shares and par value of the capital stock which the Surviving Corporation shall be authorized to issue shall be: 50,000,000 shares of Common Stock, $0.01 par value per share (the "Surviving Corporation Common Stock"), 4,490,104 shares of Series A Convertible Preferred Stock, $0.01 par value per share, and 9,256,060 shares of Series B Convertible Preferred Stock, $0.01 par value per share.

2. Conversion of Common Stock. Each share of the Common Stock, no par value, of Taylor NH ("Taylor NH Common Stock") issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one (1) validly issued, fully paid and non-assessable share of Surviving Corporation Common Stock. All shares of the Common Stock, $0.01 par value per share, of Taylor DE issued and outstanding prior to the Effective Time shall, by virtue of the Merger, and without any action on the part of the holder thereof, shall be cancelled.

3. Stock Option Plan. The Taylor Group Solutions Integrator, Inc. Employee Stock Option Plan (the "NH Option Plan") shall, from and after the Effective Time, remain in full force and effect as the stock option plan of the Surviving Corporation. Each option granted and, at the Effective Time, outstanding under the NH Option Plan (a "NH Option") shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into an option to purchase an identical number of shares of Surviving Corporation Common Stock at the same price and on the same terms as provided in such NH Option.

4. Conditions to Closing. The respective obligations of Taylor DE and Taylor MA to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Effective Time, of each of the following conditions: (a) Taylor DE and Taylor NH shall have obtained the requisite shareholder approvals, (b) no injunction or preliminary restraining order shall be in effect preventing the consummation of the transactions contemplated by this Agreement, and (c) no litigation shall have been commenced and be pending which either Taylor DE or Taylor NH in good faith believes makes it undesirable or inadvisable to consummate the Merger.

R-96%

TRADEMARK AM P003 #27
REEL: 002308 FRAME: 0205

5. General Provisions.

5.1. Expenses. If the Merger is not consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses. If the Merger is consummated, all such costs and expenses incurred in connection herewith shall be borne by the Surviving Corporation.

5.2. Waiver. No failure to exercise and no delay in exercising, on the part of either party, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights provided are cumulative and not exclusive of any rights provided by law.

5.3. Amendments. This Agreement may be modified or amended only by a writing signed by each party hereto. No waiver of any term or provision hereof shall be effective unless in writing signed by the party waiving such term or provision.

5.4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of New Hampshire, except to the extent the General Corporation Law of the State of Delaware applies for Taylor DE.

5.5. Headings. The descriptive headings of the several sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

5.6. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, provided that no party may assign its rights hereunder without the prior written consent of the nonassigning party.

5.7. Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties with respect to this transaction and supersedes all prior discussions, understandings and agreements concerning the matters covered hereby.

5.8. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

5.9. Specific Performance. The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that any party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specifically enforce the terms and provisions of this Agreement.

TRADEMARK
REEL: 002308 FRAME: 0206

THIS PLAN AND AGREEMENT OF MERGER IS EXECUTED as a sealed instrument as of the date first above written.

The TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.
(a New Hampshire corporation)

By: _____
Daniel P. Taylor
President

THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.
(a Delaware corporation)

By: _____
Daniel P. Taylor
President

PABOS2:BAM:347948_1

TRADEMARK
REEL: 002308 FRAME: 0207

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.

The original Certificate of Incorporation by The Taylor Group Solutions Integrator, Inc. (the "Corporation") was filed with the Secretary of State of Delaware on January 28, 2000. This Amended and Restated Certificate of Incorporation has been duly adopted by the Corporation in accordance with Sections 242 and 245 of the General Corporation Laws of the State of Delaware.

ARTICLE I

The name of the corporation is The Taylor Group Solutions Integrator, Inc.

ARTICLE II

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

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Laws of the State of Delaware.

ARTICLE IV

The total number of shares of capital stock which the Corporation shall have authority to issue is 63,746,164, of which (a) 13,746,164 shares shall be preferred stock, par value $.01 per share ("Preferred Stock"), consisting of 4,490,104 shares of Series A Convertible Participating Preferred Stock (as hereinafter defined) and 9,256,060 shares of Series B Convertible Participating Preferred Stock (as hereinafter defined), and (b) 50,000,000 shares shall be common stock, par value $.01 per share ("Common Stock").

Except as otherwise restricted by this Amended and Restated Certificate of Incorporation, the Corporation is authorized to issue, from time to time, all or any portion of the capital stock of the Corporation which may have been authorized but not issued, to such

TRADEMARK
REEL: 002308 FRAME: 0208

person or persons and for such lawful consideration as it may deem appropriate, and generally in its absolute discretion to determine the terms and manner of any disposition of such authorized but unissued capital stock.

Any and all such shares issued for which the full consideration has been paid or delivered shall be deemed fully paid shares of capital stock, and the holder of such shares shall not be liable for any further call or assessment or any other payment thereon.

The voting powers, designations, preferences, privileges and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions of each class of capital stock of the Corporation, shall be as provided in this Article IV.

A. SERIES A CONVERTIBLE PREFERRED STOCK

1. Designation. A total of 4,490,104 shares of the Corporation's Preferred Stock shall be designated as a series known as Series A Convertible Preferred Stock, par value $.01 per share (the "Series A Convertible Preferred Stock"). All of the preferential amounts to be paid to the holders of the Series A Convertible Preferred Stock as provided in this Section A 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 property of the Corporation to, the holders of any other equity securities of the Corporation, whether now or hereafter authorized, other than the Series B Convertible Preferred Stock (as defined in Section B.1) which shall rank on a parity with the Series A Convertible Preferred Stock in connection with any event referred to in Sections A.3, A.4 or A.5.

TRADEMARK
REEL: 002308 FRAME: 0209

2. Election of Directors; Voting.

(a) Election of Directors. The holders of outstanding shares of Series A Convertible Preferred Stock shall, voting together with the Series B Convertible Preferred Stock as a separate class, be entitled to jointly elect two (2) Directors of the Corporation. Such Directors shall be the candidates receiving the greatest number of affirmative votes of the outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock (the "Convertible Preferred Stock Director Designees"), with votes cast against such candidates and votes withheld having no legal effect. The election of the Convertible Preferred Stock Director Designees by the holders of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock shall occur (i) at the annual meeting of holders of the Corporation's capital stock, (ii) at any special meeting of holders of the Corporation's capital stock, (iii) at any special meeting of holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock called by holders of a majority of the outstanding shares of either the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock, or (iv) by the written consent of holders of not less than sixty-six and two-thirds percent (66 2/3%) of the voting power (a "Two-Thirds Interest") of the total outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock. If at any time when any shares of either Series A Convertible Preferred Stock or Series B Convertible Preferred Stock are outstanding any Convertible Preferred Stock Director Designee should cease to be a Director for any reason, the vacancy shall only be filled by the vote or written consent of the holders of the outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, voting together as a separate class, in the manner and on the basis specified above or as otherwise provided by law. The holders of outstanding shares of Series A Convertible Preferred Stock shall also be entitled to vote for all other Directors of the Corporation together with holders of all other shares of the Corporation's outstanding capital stock entitled to vote thereon, voting as a single class, with each outstanding share of Series A Convertible Preferred Stock entitled to the same number of votes specified in Section A.2(b). Notwithstanding the foregoing, the holders of outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock may, in their sole discretion, determine to elect fewer than two (2) Convertible Preferred Stock Director Designees from time to time, and during any such period the Board of Directors nonetheless shall be deemed duly constituted.

(b) Voting Generally. Each share of Series A Convertible Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which such share of Series A Convertible Preferred Stock could be converted pursuant to Section A.6 hereof on the record date for the vote or written consent of stockholders, if applicable, with fractional votes for fractional shares and appropriate adjustments for stock splits, stock dividends, recapitalizations and the like. Each holder of shares of Series A Convertible Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and

TRADEMARK
REEL: 002308 FRAME: 0210

shall vote with holders of the Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders, excluding those matters required to be submitted to a class or series vote pursuant to the terms hereof (including, without limitation, Sections A.2(a) and A.8) or by law.

3. Dividends. Except as otherwise provided in Sections A.6(a) and A.6(b), the holders of outstanding shares of Series A Convertible Preferred Stock shall be entitled to receive, out of any funds legally available therefor, cumulative compounding dividends on the Series A Convertible Preferred Stock payable in cash or, at the option of the Corporation, in additional shares of Series A Convertible Preferred Stock of equivalent value (based upon the Series A Conversion Price at the time of payment of such dividend), at the per share rate of eight percent (8%) per annum on the Series A Convertible Preferred Liquidation Preference Amount (as hereafter defined), adjusted appropriately for stock splits, stock dividends, recapitalizations and the like, subject to proration for partial years on the basis of a 365-day year (the "Series A Convertible Cumulative Dividend"). Such dividends shall accumulate quarterly in arrears commencing as of the date of issuance of the Series A Convertible Preferred Stock, shall be cumulative, to the extent unpaid, whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment therefor, and shall compound on February 1 of each year. Accrued and unpaid Series A Convertible Cumulative Dividends may be paid from time to time when and if declared by the Corporation; provided, however, that such dividend shall become due and payable with respect to all outstanding shares of Series A Convertible Preferred Stock as provided in Sections A.4, A.5 and A.6(a). Dividends paid in an amount less than the total amount of dividends at the time accumulated and payable on all outstanding shares of Series A Convertible Preferred Stock shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. Notwithstanding any of the foregoing, (i) no dividend may be declared or paid on any shares of Series A Convertible Preferred Stock unless at the same time a dividend is declared or paid on all outstanding shares of Series B Convertible Preferred Stock, with holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock sharing in any such dividends as if they constituted a single class of stock; and (ii) unless and until the Series A Convertible Cumulative Dividends have been paid in full, and except as otherwise contemplated by Section 6.3 of that certain Stock Purchase and Redemption Agreement, dated as of February 2, 2000 by and between the Corporation and the other parties named therein (the "Purchase Agreement"), (a) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any Common Stock or other capital stock of the Corporation ranking junior to the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock with respect to rights upon a dividend, rights upon a Liquidation Event (as hereafter defined) or Extraordinary Transaction (as hereafter defined), or rights upon a redemption ("Junior Capital Stock"); and (b) no shares of Junior Capital Stock shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof (except for the repurchase of shares of Common Stock from employees or directors of, or consultants to, the Corporation pursuant to agreements under the Stock Option Plan (as hereafter defined) or pursuant to stock restriction agreements executed in connection with

shares granted under such Stock Option Plan). All numbers relating to the calculation of dividends pursuant to this Section A.3 shall be subject to equitable adjustment in the event of any stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the Series A Convertible Preferred Stock. If and to the extent such Series A Convertible Cumulative Dividends have been paid in full, the holders of Series A Convertible Preferred Stock shall be entitled to receive additional dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion, provided, however, that no such dividend may be declared or paid on any shares of Series A Convertible Preferred Stock unless at the same time a dividend is declared or paid on all outstanding shares of Series B Convertible Preferred Stock and Common Stock, and vice versa, with holders of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Common Stock sharing in any such additional dividends as if they constituted a single class of stock and with each holder of shares of Series A Convertible Preferred Stock entitled to receive such dividends based on the number of shares of Common Stock into which such shares of Series A Convertible Preferred Stock are then convertible hereunder, as contemplated by Section A.6 of this Article IV.

TRADEMARK
REEL: 002308 FRAME: 0212

4. Liquidation.

(a) Liquidation Preference. Upon any liquidation, dissolution or winding up of the Corporation and its subsidiaries, whether voluntary or involuntary (a "Liquidation Event"), each holder of outstanding shares of Series A Convertible Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to stockholders, whether such assets are capital, surplus or earnings, and before any amount shall be paid or distributed to the holders of Common Stock or of any other Junior Capital Stock, an amount in cash equal to (i) $2.7839 per share of Series A Convertible Preferred Stock held by such holder (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like), plus (ii) any accumulated but unpaid dividends to which such holder of outstanding shares of Series A Convertible Preferred Stock is then entitled, if any, pursuant to Sections A.3 and A.5(f) hereof, plus (iii) any interest accrued pursuant to Section A.5(e) hereof to which such holder of Series A Convertible Preferred Stock is entitled, if any (the sum of clauses (i), (ii) and (iii) being referred to herein as the "Series A Convertible Preferred Liquidation Preference Amount"); provided, however, that if upon any Liquidation Event the amounts available for distribution to holders of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and any other class or series of capital stock of the Corporation ranking on liquidation on a parity with the Series A Convertible Preferred Stock are not sufficient to pay all amounts due to such holders upon such Liquidation Event, then such holders shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled; and provided further, however, that if upon any Liquidation Event the holders of the outstanding shares of Series A Convertible Preferred Stock would receive more than the Series A Convertible Preferred Liquidation Preference Amount in the event all of their shares were voluntarily converted into shares of Common Stock immediately prior to such Liquidation Event and such shares of Common Stock received a liquidating distribution or distributions from the Corporation, then each holder of Series A Convertible Preferred Stock shall receive as a distribution from the Corporation in connection with such Liquidation Event, in lieu of the Series A Convertible Preferred Liquidation Preference Amount, an amount equal to the amount that would be paid if such holder's shares of Series A Convertible Preferred Stock were voluntarily converted into Common Stock immediately prior to such Liquidation Event (including with respect to any accrued but unpaid dividends on the Series A Convertible Preferred Stock). The provisions of this Section A.4 shall not in any way limit the right of the holders of Series A Convertible Preferred Stock to elect to convert their shares of Series A Convertible Preferred Stock into shares of Common Stock pursuant to Section A.6 prior to or in connection with any Liquidation Event.

(b) Notice. Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Series A Convertible Preferred Stock notice in accordance with Section A.9 hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail the facts of such Liquidation

TRADEMARK
REEL: 002308 FRAME: 0213

Event, stating in detail the amount(s) per share of Series A Convertible Preferred Stock each holder of Series A Convertible Preferred Stock would receive pursuant to the provisions of Section A.4(a) hereof (both with respect to the amount a holder would receive pursuant to clauses (i), (ii) and (iii) of Section A.4(a) and the amount a holder would receive pursuant to the second proviso of Section A.4(a)) and stating in detail the facts upon which such amounts were determined.

5. Redemption; Preferential Payment in Extraordinary Transactions.

(a) Redemption Events.

(i) Time Based. On Febraury 2, 2005, upon the election of a holder of outstanding shares of Series A Convertible Preferred Stock, the Corporation shall, no later than 120 days after the date of such election, redeem all (but not less than all, other than pursuant to Section A.5(e) below) of such holder's outstanding shares of Series A Convertible Preferred Stock at the Series A Convertible Preferred Redemption Price specified in Section A.5(d); provided, however, that to the extent the Corporation cannot legally effectuate the redemption on such date, the redemption shall take place as soon as practicable thereafter as legally permitted, and the terms of Section A.5(e) herein shall apply to such period during which the redemption is legally prohibited. The foregoing election shall be made by a holder by giving the Corporation written notice of such election. After receipt of such written notice, the Corporation shall as soon as practicable, but in no case more than ten (10) days after its receipt of notice of such election, provide to the holder written notice setting forth the anticipated date for such redemption and the amount the holder will be entitled to receive pursuant to the provisions of Section A.5(d).

(ii) Extraordinary Transactions. Subject to Section A.6(b)(ii), upon the election of a holder of outstanding shares of Series A Convertible Preferred Stock to have such shares redeemed or otherwise to participate in connection with: (A) a merger or consolidation of the Corporation with or into another entity with respect to which less than a majority of the outstanding voting power of the surviving or consolidated entity is held directly or indirectly by stockholders of the Corporation immediately prior to such event, (B) the sale, lease or other disposition (whether in one transaction or in a series of related transactions) of all or substantially all of the properties and assets of the Corporation and its subsidiaries, (C) any purchase by any party (or group of affiliated parties) other than an Investor (as defined in the Purchase Agreement), of shares of capital stock of the Corporation (either through a negotiated stock purchase or a tender for such shares), the effect of which is that such party (or group of affiliated parties) that did not beneficially own a majority of the voting power of the outstanding shares of capital stock of the Corporation immediately prior to such purchase beneficially owns at least a majority of such voting power

TRADEMARK
REEL: 002308 FRAME: 0214

majority of such voting power immediately after such purchase, (D) the redemption or repurchase of shares representing a majority of the voting power of the outstanding shares of capital stock of the Corporation, or (E) a public offering not constituting a "QPO" (as defined in Section A.6(b)) (each an "Extraordinary Transaction"), then, as a part of and as a condition to the effectiveness of such Extraordinary Transaction, except with respect to holders of Series A Convertible Preferred Stock that have elected to convert their shares of Series A Convertible Preferred Stock into shares of Common Stock in accordance with the voluntary conversion provisions of Section A.6 prior to the effective date of such Extraordinary Transaction, the Corporation shall, on the effective date of such Extraordinary Transaction either (x) if redemption is elected, on the effective date of such Extraordinary Transaction, redeem all (but not less than all) of the outstanding shares of Series A Convertible Preferred Stock of the electing holder for an amount equal to the aggregate Series A Convertible Preferred Liquidation Preference Amount, such amount to be payable in cash or, at the request of the electing holder, in the same form of consideration as is paid to the holders of Common Stock in such Extraordinary Transaction, and no payment shall be made to the holders of any shares of Junior Capital Stock unless such amount is paid in full or (y) if such holder elects to participate in the relevant transaction (such as a merger) on terms acceptable to it, take such actions as shall be sufficient to facilitate such participation (including executing a merger agreement including an exchange ratio reflecting the provisions hereof) on terms giving effect to such holder's right to the aggregate Series A Convertible Liquidation Preference Amount, in which event such amount shall be paid in cash or, at the election of such holder, in the same form of consideration as is paid to the holders of Common Stock in such Extraordinary Transaction, but in preference to and before any amount is paid or otherwise distributed to the holders of any shares of Junior Capital Stock, in which event such preferential amount shall be deemed to have been distributed to the holder of the Series A Convertible Preferred Stock as if in a Liquidation Event.

Notwithstanding any of the foregoing, if upon any Extraordinary Transaction in which a holder of outstanding shares of Series A Convertible Preferred Stock elects to be redeemed or participate, a holder of outstanding shares of Series A Convertible Preferred Stock would receive more than the Series A Convertible Liquidation Preference Amount in the event its shares were voluntarily converted into Common Stock immediately prior to such Extraordinary Transaction and such shares of Common Stock were purchased or otherwise participated in such Extraordinary Transaction, then such holder of Series A Convertible Preferred Stock shall instead receive from the Corporation or the relevant purchaser, as applicable, upon such holder's election to redeem or otherwise participate in such Extraordinary Transaction, an amount equal to the amount per share that would be paid if the shares of Common Stock

TRADEMARK
REEL: 002308 FRAME: 0215

receivable upon voluntary conversion (including, if applicable, any accrued but unpaid dividends in accordance with Section A.6(a)) of the Series A Convertible Preferred Stock were being acquired in the Extraordinary Transaction at the same price per share as is paid for other shares of Common Stock, which amount shall be paid in the same form of consideration as is paid to holders of Common Stock, as if such holder's shares of Series A Convertible Preferred Stock had been converted into the number of shares of Common Stock issuable upon the conversion of such share of Series A Convertible Preferred Stock immediately prior to such Extraordinary Transaction.

The foregoing election shall be made by a holder by giving the Corporation prior written notice thereof within ten (10) days of its receipt of written notice from the Corporation as provided in Section A.5(c). The provisions of this Section A.5 shall not in any way limit the right of the holders of Series A Convertible Preferred Stock to elect to convert their shares into shares of Common Stock pursuant to Section A.6 prior to or in connection with any Extraordinary Transaction.

(b) Valuation of Distribution Securities. Any securities or other consideration to be delivered to the holders of the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock if so elected in connection with a redemption or upon any Extraordinary Transaction in accordance with the terms hereof shall be valued as follows:

(i) If traded on a nationally recognized securities exchange or inter-dealer quotation system, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30 calendar day period ending three (3) business days prior to the closing of such Extraordinary Transaction;

(ii) If traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30 calendar day period ending three (3) business days prior to the closing of such Extraordinary Transaction; and

(iii) 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 not less than a Two Thirds Interest of the outstanding shares of Series A Convertible Preferred Stock, provided that if the Corporation and the holders of not less than a Two Thirds Interest of the outstanding shares of Series A Convertible Preferred Stock are unable to reach agreement, then by independent appraisal by a mutually agreed to investment banker, the fees of which shall be paid by the Corporation.

TRADEMARK
REEL: 002308 FRAME: 0216

(c) Notice by Corporation. Prior to the occurrence of any Extraordinary Transaction, the Corporation will furnish each holder of outstanding shares of Series A Convertible Preferred Stock notice in accordance with Section A.9 hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail all material terms of such Extraordinary Transaction, including without limitation the consideration to be delivered in connection with such Extraordinary Transaction, the valuation of the Corporation at the time of such Extraordinary Transaction and the identities of the parties to the Extraordinary Transaction.

(d) Purchase Date and Price. Any date upon which a redemption is to occur in accordance with Section A.5(a) shall be referred to as a "Series A Convertible Preferred Redemption Date." The price for each share of Series A Convertible Preferred Stock redeemed or acquired pursuant to this Section A.5 shall be the per share Series A Convertible Preferred Liquidation Preference Amount or such greater per share amount as may be payable pursuant to the second paragraph of Section A.5(a)(ii), if applicable (the "Series A Convertible Preferred Redemption Price"); provided, however, that if at a Series A Convertible Preferred Redemption Date shares of Series A Convertible Preferred Stock are unable to be redeemed (as contemplated by Section A.5(e) below), then holders of Series A Convertible Preferred Stock that have requested redemption pursuant to Section A.5(a) shall also be entitled to interest and dividends pursuant to Sections A.5(e) and (f) below. The aggregate applicable redemption price elected to be payable in cash pursuant to Section A.5(a) shall be payable in cash in immediately available funds to the respective holders of the Series A Convertible Preferred Stock on the Series A Convertible Preferred Redemption Date (subject to Section A.5(e)), except as otherwise contemplated by Section A.5(a)(ii). Upon any redemption or purchase of the Series A Convertible Preferred Stock as provided herein, holders of fractional shares shall receive proportionate amounts in respect thereof. Until the aggregate applicable redemption price has been paid for all shares of Series A Convertible Preferred Stock for which a request for redemption has been made: (A) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any capital stock of the Corporation; and (B) except as permitted by Section A.8(k), no shares of capital stock of the Corporation (other than the Series A Convertible Preferred Stock in accordance with this Section A.5 and the Series B Convertible Preferred Stock in accordance with Section B.5) shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

(e) Redemption Prohibited. If, at a Series A Convertible Preferred Redemption Date, the Corporation is prohibited under the General Corporation Laws of the State of Delaware from redeeming such shares of Series A Convertible Preferred Stock for which redemption is required hereunder, then it shall redeem such shares on a pro-rata basis among the requesting holders of Series A Convertible Preferred Stock in proportion to the full respective redemption amounts to which such holders are entitled

TRADEMARK
REEL: 002308 FRAME: 0217

hereunder to the extent possible and shall redeem the remaining shares to be redeemed as soon as the Corporation is not prohibited from redeeming some or all of such shares under the General Corporation Laws of the State of Delaware, subject to the last paragraph of Section A.8; provided, that in the event that on a proposed Series A Convertible Preferred Redemption Date there exist shares of Series B Convertible Preferred Stock required to be redeemed under Sections B.5, then the shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, as applicable, to be redeemed shall be redeemed by the Corporation on a pro-rata basis among the holders of such shares in proportion to the aggregate redemption amounts to which they are entitled with respect to such shares and, as to which each such holder's shares shall be redeemed, relative to such holder's holdings of shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock. Any shares of Series A Convertible Preferred Stock not redeemed shall remain outstanding and entitled to all of the rights and preferences provided in this Article IV. The Corporation shall take such action as shall be necessary or appropriate to review and promptly remove any impediment to its ability to redeem shares of Series A Convertible Preferred Stock under the circumstances contemplated by this Section A.5(e). In the event that the Corporation fails to redeem shares for which redemption is required pursuant to this Section A.5, then (i) if such failure is due to a prohibition of such redemption under the General Corporation Laws of the State of Delaware, then during the period from the applicable Series A Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable per share dividend on such shares shall be adjusted to twelve percent (12%) per annum, with such dividend to increase to fifteen percent (15%) on the date which is 365 days following the Series A Convertible Preferred Redemption Date or (ii) if such failure is due to any reason other than that described in subclause (i) above, then during the period from the applicable Series A Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable redemption price and any dividend accrued but unpaid on the Series A Convertible Preferred Stock shall bear interest at the rate of twelve percent (12%) per annum, with such interest to accrue daily in arrears and to be compounded annually and to increase by one percent (1%) upon the expiration of each 180 day period that such shares remain outstanding; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "Maximum Permitted Rate"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess.

(f) Dividend After Series A Convertible Preferred Redemption Date. From and after a Series A Convertible Preferred Redemption Date, no shares of Series A Convertible Preferred Stock subject to redemption shall be entitled to dividends, if any, as contemplated by Section A.3; provided, however, that in the event that such shares of Series A Convertible Preferred Stock are unable to be redeemed and continue to be outstanding in accordance with Section A.5(e), such shares shall continue to be entitled

TRADEMARK
REEL: 002308 FRAME: 0218

to dividends and interest thereon as provided in Sections A.3 and A.5(e) until the date on which such shares are actually redeemed by the Corporation.

(g) Surrender of Certificates. Upon receipt of the applicable Series A Convertible Preferred Redemption Price by certified check or wire transfer (in the event such price is to be paid in cash), each holder of shares of Series A Convertible Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, duly assigned or endorsed for transfer (or accompanied by duly executed stock powers relating thereto), or, in the event the certificate or certificates are lost, stolen or missing, shall deliver an affidavit or agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith (an "Affidavit of Loss") with respect to such certificates at the principal executive office of the Corporation or the office of the transfer agent for the Series A Convertible Preferred Stock or such office or offices in the continental United States of an agent for redemption as may from time to time be designated by notice to the holders of Series A Convertible Preferred Stock, and each surrendered certificate shall be canceled and retired; provided, however, that if the Corporation is prohibited from redeeming any shares of Series A Convertible Preferred Stock as provided in Section A.5(e), a holder whose shares are not so redeemed in full shall not be required to surrender said certificate(s) to the Corporation until said holder has received a new stock certificate for those shares of Series A Convertible Preferred Stock not so redeemed.

TRADEMARK
REEL: 002308 FRAME: 0219

6. Conversion. The holders of the Series A Convertible Preferred Stock shall have the following conversion rights:

(a) Conversion Upon Election of Holders. Any holder of shares of Series A Convertible Preferred Stock shall be entitled at any time, without the payment of any additional consideration, to cause all or part of such holder's outstanding shares of Series A Convertible Preferred Stock to be converted into the number of fully paid and nonassessable shares of Common Stock (including any resulting fractional shares) which results from multiplying the number of shares of Series A Convertible Preferred Stock which are being converted by a fraction, the numerator of which is the per share Series A Conversion Value (as defined in this Section A.6(a)) of the Series A Convertible Preferred Stock, and the denominator of which is the per share Series A Conversion Price (as defined in this Section A.6(a)) in effect for the Series A Convertible Preferred Stock at the time of conversion (which fraction shall hereinafter be referred to as the "Series A Common Stock Conversion Rate"), with fractional shares treated proportionally as provided above (the "Series A Conversion Shares"). Upon the filing of this Amended and Restated Certificate of Incorporation with the office of the Secretary of State of the State of Delaware, the "Series A Conversion Price" per share of Series A Convertible Preferred Stock shall be $2.7839, and the per share "Series A Conversion Value" of Series A Convertible Preferred Stock shall be $2.7839. The Series A Conversion Price per share of Series A Convertible Preferred Stock and the Series A Common Stock Conversion Rate (as defined in this Section A.6(a)) shall be subject to adjustment from time to time as provided in Section A.7 hereof. If a holder of shares of Series A Convertible Preferred Stock elects to convert any outstanding shares of Series A Convertible Preferred Stock at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such accumulated but unpaid dividends and other amounts shall be paid in full by the Corporation in connection with such conversion, in cash, or at the election of the Corporation, in additional shares of Common Stock. For purposes of effecting the foregoing, in the event the Corporation elects to pay any accumulated but unpaid dividends in the form of additional shares of Common Stock, then with respect to such dividends the holder of such shares of Series A Convertible Preferred Stock shall receive the number of fully paid and nonassessable shares of Common Stock (including any resulting fractional shares) which results from dividing the accumulated but unpaid Series A Convertible Cumulative Dividend, as the numerator, by the Series A Conversion Price, as the denominator, with fractional shares treated proportionately as provided above.

(b) Automatic Conversion. The following provisions of this Section A.6(b) shall terminate and be of no further force and effect after February 2, 2005.

(i) Upon a Qualified Public Offering. Each share of Series A Convertible Preferred Stock shall automatically be converted, without the payment of any additional consideration, into shares of Common Stock as of,

and in all cases subject to, the closing of the Corporation's first underwritten offering to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, provided that (i) such registration statement covers the offer and sale of Common Stock of which the aggregate gross proceeds attributable to sales for the account of the Corporation exceed $30,000,000, at a price per share equal to at least $8.00 (as appropriately adjusted for any stock split, combination, reorganization, recapitalization, stock dividend, or similar event); (ii) such offering is underwritten by a nationally recognized investment banking firm reasonably acceptable to the holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock; and (iii) such Common Stock is listed for trading on either the New York Stock Exchange or the Nasdaq National Market (a "QPO" or a "Qualified Public Offering"); provided, that if a closing of a QPO occurs, all outstanding shares of Series A Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior to such closing at the Series A Common Stock Conversion Rate. Any such conversion shall be at the Series A Common Stock Conversion Rate in effect upon the closing of a QPO. If the holders of shares of Series A Convertible Preferred Stock are required to convert the outstanding shares of Series A Convertible Preferred Stock pursuant to this Section A.6(b)(i) at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall not be paid and the rights of a holder to such dividends shall be deemed to have expired in connection with such conversion.

(ii) Upon a Qualified Extraordinary Transaction. Each share of Series A Convertible Preferred Stock shall automatically be converted, without the payment of any additional consideration, into shares of Common Stock as of, and in all cases subject to, the closing of the Corporation's first QET (as defined below); provided, that if a closing of a QET occurs, all outstanding shares of Series A Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock as provided herein immediately prior to such closing. Any such conversion shall be at the Series A Common Stock Conversion Rate in effect upon the closing of the QET. "QET" or "Qualified Extraordinary Transaction" shall mean any of the transactions set forth in subparagraphs (A) through (D) below, provided that (i) at the closing of such transaction the holders of Series A Conversion Shares (the "Conversion Holders") receive per share consideration with a value (as determined in Section A.5(b) with respect to securities) greater than or equal to $8.00 (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like), and (ii) such consideration is in the form of cash and/or unrestricted equity securities of a corporation and, if in the form of unrestricted equity securities, then such securities to be issued to the Conversion Holders in connection with such closing are traded on either the New York Stock Exchange or the Nasdaq National Market. The following transactions (each an Extraordinary

TRADEMARK
REEL: 002308 FRAME: 0221

Transaction) shall be deemed a QET if the conditions set forth in clauses (i) and (ii) of the immediately preceding sentence are satisfied:

(A) the sale, lease or other disposition of (whether in one transaction or a series of related transactions) all or substantially all of the properties and assets of the Corporation and its subsidiaries;

(B) a merger or consolidation of the Corporation with or into another entity with respect to which less than a majority of the outstanding voting power of the surviving or consolidated corporation is held directly or indirectly by stockholders of the Corporation immediately prior to such event;

(C) any purchase by any party (or group of affiliated parties) other than an Investor of shares of capital stock of the Corporation (either through a negotiated stock purchase or a tender for such shares), the effect of which is that such party (or group of affiliated parties) that did not beneficially own a majority of the voting power of the outstanding shares of capital stock of the Corporation immediately prior to such purchase beneficially owns at least a majority of such voting power immediately after such purchase; or

(D) the redemption or repurchase of shares representing a majority of the voting power of the outstanding shares of capital stock of the Corporation.

If the holders of shares of Series A Convertible Preferred Stock are required to convert their outstanding shares of Series A Convertible Preferred Stock pursuant to this Section A.6(b)(ii) at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall not be paid and the rights of a holder to such dividends shall be deemed to have expired in connection with such conversion.

(c) Procedure for Voluntary Conversion. Upon election to convert pursuant to Section A.6(a), a holder of Series A Convertible Preferred Stock shall surrender the certificate or certificates representing its Series A Convertible Preferred Stock being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the Series A Convertible Preferred Stock or such office or offices in the continental United States of an agent for conversion as may from time to time be designated by notice to the holders of the Series A Convertible Preferred Stock by the Corporation, or shall deliver an Affidavit of Loss with respect to such certificates. The issuance by the Corporation of Common Stock upon a conversion of Series A Convertible Preferred Stock pursuant to Section A.6(a) hereof shall be effective as of the surrender of the certificate or certificates for the Series A Convertible Preferred Stock to be converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating

TRADEMARK
REEL: 002308 FRAME: 0222

thereto), or as of the delivery of an Affidavit of Loss. Upon surrender of a certificate representing Series A Convertible Preferred Stock for conversion, or delivery of an Affidavit of Loss, the Corporation shall issue and send by hand delivery, by courier or by first class mail (postage prepaid) to the holder thereof or to such holder's designee, at the address designated by such holder, certificates for the number of shares of Common Stock to which such holder shall be entitled upon conversion, plus a cash payment in the amount of any accumulated but unpaid dividends, if applicable, and other amounts as contemplated by Section A.6(a) in respect of the shares of Series A Convertible Preferred Stock. The issuance of certificates for Common Stock upon conversion of Series A Convertible Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such Common Stock. If a conversion of Series A Convertible Preferred Stock upon a Liquidation Event or an Extraordinary Transaction occurs and a holder of Common Stock issued upon such conversion elects to participate, then such holder's outstanding shares of Series A Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior thereto, provided that the Corporation shall make appropriate provisions for the Common Stock issued upon such conversion to be treated on the same basis as all other Common Stock in such Liquidation Event or Extraordinary Transaction. In the event of an automatic conversion upon a QPO or QET, the provisions of Section A.6(d) shall apply.

(d) Procedure for Automatic Conversion. As of, and in all cases subject to, the closing of a QPO or QET (the "Automatic Conversion Date"), all outstanding shares of Series A Convertible Preferred Stock shall be converted automatically into shares of Common Stock at the Series A Common Stock Conversion Rate and without any further action by the holders of such shares and whether or not the certificates representing such shares of Series A Convertible Preferred Stock are surrendered to the Corporation or its transfer agent; provided, however, that all holders of Series A Convertible Preferred Stock shall be given prior written notice of the occurrence of a QPO or QET in accordance with Section A.9 hereof; and provided further, that in the event of a QET, such holders shall be given an opportunity to exercise the rights provided in Section A.5(a)(ii) by giving the Corporation written notice thereof. On the Automatic Conversion Date, all rights with respect to the Series A Convertible Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an Affidavit of Loss thereof to receive certificates for the number of shares of Common Stock into which such Series A Convertible Preferred Stock has been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. Upon surrender of such certificates or Affidavit of Loss the Corporation shall issue and deliver to such holder, promptly (and in any event in such time as is sufficient to enable such holder to participate in such QPO or QET) at such

TRADEMARK
REEL: 002308 FRAME: 0223

office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series A Convertible Preferred Stock surrendered are convertible on the Automatic Conversion Date.

(e) 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 Series A Convertible 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 Series A Convertible 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 Series A Convertible Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(f) No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Series A Convertible Preferred Stock in any manner which would interfere with the timely conversion of any shares of Series A Convertible Preferred Stock.

7. Adjustments. The Series A Conversion Price of the Series A Convertible Preferred Stock in effect from time to time shall be subject to adjustment from and after February 2, 2000 and regardless of whether any shares of Series A Convertible Preferred Stock are then issued and outstanding as follows:

(a) Dividends and Stock Splits. If the number of shares of Common Stock (which term for purposes of this Section A.7 shall include all common stock of the Corporation) outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the date such payment is made or such change is effective, the Series A Conversion Price of the Series A Convertible Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Series A Convertible Preferred Stock shall be increased in proportion to such increase of outstanding shares of Common Stock.

(b) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination or reverse split of the outstanding shares of Common Stock, then, on the effective date of such combination or reverse split, the Series A Conversion Price of the Series A Convertible Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of any shares of Series A Convertible Preferred

TRADEMARK 11 AM P011 #27
REEL: 002308 FRAME: 0224

Stock shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

(c) Other Adjustments. In the event the Corporation 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 securities of the Corporation other than shares of Common Stock, then and in each such event lawful and adequate provision shall be made so that the holders of Series A Convertible Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities of the Corporation which they would have received had their Series A Convertible Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section A.7 as applied to such distributed securities.

(d) Reorganization, etc. If the Common Stock issuable upon the conversion of the Series A Convertible Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section A.7), then and in each such event the holder of each share of Series A Convertible Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the number of shares of Common Stock into which such shares of Series A Convertible Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(e) Mergers and Other Reorganizations. Unless such transaction is an Extraordinary Transaction in which all of the holders of Series A Convertible Preferred Stock elect redemption or otherwise to participate (in which case Section A.5(a)(ii) shall apply and this subsection shall not apply), if at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section A.7) or a merger or consolidation of the Corporation with or into another corporation or the sale of all or substantially all of the Corporation's properties and assets to any other person, then, as part of and as a condition to the effectiveness of such reorganization, merger, consolidation or sale, lawful and adequate provision shall be made so that the holders of the Series A Convertible Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Convertible Preferred Stock the number of shares of stock or other securities or property of the Corporation or of the successor corporation resulting from such merger or consolidation or sale, to which a

TRADEMARK
REEL: 002308 FRAME: 0225

holder of Common Stock would have been entitled in connection with such capital reorganization, merger, consolidation, or sale. In any such case, appropriate provisions shall be made with respect to the rights of the holders of the Series A Convertible Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section A.7 (including, without limitation, provisions for adjustment of the applicable Series A Conversion Price and the number of shares purchasable upon conversion of the Series A Convertible Preferred Stock) shall thereafter be applicable, as nearly as may be, with respect to any shares of stock, securities or assets to be deliverable thereafter upon the conversion of the Series A Convertible Preferred Stock.

(f) Sale of Common Stock. In the event the Corporation shall at any time, or from time to time, issue, sell or exchange any shares of Common Stock (including treasury shares held by the Corporation but excluding the Excluded Shares (as such term is defined below)), for a consideration per share less than the Series A Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares, then, and thereafter successively upon each such issuance, sale or exchange, the Series A Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares shall forthwith be reduced to an amount determined by multiplying such Series A Conversion Price by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such additional shares of Common Stock (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than the Series A Convertible Preferred Stock) that are then vested and in the money), plus (B) the number of shares of Common Stock which the net aggregate consideration received by the Corporation for the total number of such additional shares of Common Stock so issued would purchase at the Series A Conversion Price (prior to adjustment), and

(ii) the denominator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such additional shares of Common Stock (excluding any unvested shares and any treasury shares held by the Corporation but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series A Convertible Preferred Stock) that are then vested and in the money), plus (B) the number of such additional shares of Voting or Nonvoting Common Stock so issued.

The term "Excluded Shares" shall mean (A) up to an aggregate of 7,027,800 shares of Common Stock (as appropriately adjusted for any stock split, combination, reorganization, recapitalization, reclassification, stock distribution, stock dividend or

TRADEMARK
REEL: 002308 FRAME: 0226

similar event) issued or issuable in connection with, or upon the exercise of, options or other awards granted or to be granted to employees, officers or directors of the Corporation pursuant to The Taylor Group Solutions Integrator, Inc. Employee Stock Option Plan (the "Stock Option Plan"), including shares of Common Stock issued in replacement of shares of such Common Stock repurchased or issuable upon the exercise of options granted in replacement, exchange, or reissuance of options to purchase shares of such Common Stock, to the extent permitted under the Stock Option Plan, (B) securities issued as a result of any stock split, stock dividend, reclassification or reorganization or similar event with respect to the Common Stock, or (C) shares of Common Stock issued upon conversion of, or as a dividend on, the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock.

(g) Sale of Options, Rights or Convertible Securities. In the event the Corporation shall at any time or from time to time issue options, warrants or rights to subscribe for shares of Common Stock, or issue any securities convertible into or exchangeable for shares of Common Stock (other than any options or warrants for Excluded Shares), for a consideration per share (determined by dividing the Net Aggregate Consideration (as determined below) by the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible or exchangeable securities were exercised or converted to the fullest extent permitted by their terms) less than the Series A Conversion Price in effect immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities, the Series A Conversion Price in effect immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities shall be reduced to an amount determined by multiplying such Series A Conversion Price by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series A Convertible Preferred Stock) that are vested and in the money), plus (B) the number of shares of Common Stock which the total amount of consideration received by the Corporation for the issuance of such options, warrants, rights or convertible or exchangeable securities plus the minimum amount set forth in the terms of such security as payable to the Corporation upon the exercise, conversion or exchange thereof (the "Net Aggregate Consideration") would purchase at the Series A Conversion Price prior to adjustment, and

(ii) the denominator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities

TRADEMARK
REEL: 002308 FRAME: 0227

(excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series A Convertible Preferred Stock) that are vested and in the money), plus (B) the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible or exchangeable securities were exercised, converted or exchanged.

(h) Expiration or Change in Price. If the consideration per share provided for in any options, warrants or rights to subscribe for shares of Common Stock, or any securities convertible into or exercisable or exchangeable for shares of Common Stock (other than with respect to any Excluded Shares), changes at any time other than as a result of any event described in Section A.7(a) or (b) above, the Series A Conversion Price in effect at the time of such change shall be readjusted to the Series A Conversion Price which would have been in effect at such time had such options, warrants, rights or convertible or exchangeable securities provided for such changed consideration per share (determined as provided in Section A.7(g)), at the time initially granted, issued or sold; provided, that such adjustment of the Series A Conversion Price will be made only as and to the extent that the Series A Conversion Price effective upon such adjustment remains less than or equal to the Series A Conversion Price that would be in effect if such options, warrants, rights or convertible or exchangeable securities had not been issued. No adjustment of the Series A Conversion Price shall be made under this Section A.7 upon the issuance of any additional shares of Common Stock which are issued pursuant to the exercise of any options, warrants or other subscription or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities if an adjustment shall previously have been made upon the issuance of such options, warrants, rights or convertible or exchangeable securities. Any adjustment of the Series A Conversion Price shall be recomputed if, as, and when the rights to acquire shares of Common Stock upon exercise, conversion or exchange of the options, warrants, rights or convertible or exchangeable securities which gave rise to such adjustment expire or are canceled without having been exercised, converted or exchanged, so that the Series A Conversion Price effective immediately upon such cancellation or expiration shall be equal to the Series A Conversion Price in effect immediately before the time of the issuance of the expired or canceled options, warrants, rights or convertible or exchangeable securities, with such additional adjustments as would have been made to that Series A Conversion Price had the expired or canceled options, warrants, rights or convertible or exchangeable securities not been issued.

(i) Calculations. All calculations under this Section A.7 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(j) Certificate. Upon the occurrence of each adjustment or readjustment pursuant to this Section A.7, the Corporation at its expense shall promptly compute

TRADEMARK
REEL: 002308 FRAME: 0228

such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Convertible 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 written request at any time of any holder of Series A Convertible Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Series A Conversion Prices before and after such adjustment or readjustment, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Series A Convertible Preferred Stock.

8. Covenants. So long as any shares of Series A Convertible Preferred Stock and/or Series B Convertible Preferred Stock shall be outstanding, the Corporation shall not, without first having provided written notice of such proposed action to each holder of outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock and having obtained the affirmative vote or written consent of either (i) both of the Convertible Preferred Stock Director Designees or (ii) the holders of a majority in interest of the total outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, voting together as a separate class, with each share of outstanding Series A Convertible Preferred Stock and Series B Convertible Preferred Stock entitling the holder thereof to one vote per share of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock held by such holder:

(a) amend, alter or repeal any provision of, or add any provision to, Article IV of this Amended and Restated Certificate of Incorporation, or otherwise amend, alter or repeal any provision of, or add any provision to, this Amended and Restated Certificate of Incorporation if such latter action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any of the Series A Convertible Preferred Stock or the Series B Convertible Preferred Stock;

(b) except to the extent contemplated under the Corporation's Stock Option Plan, authorize or issue, or obligate itself to issue, any shares of capital stock of the Corporation, including but not limited to any convertible debt or other debt with any equity participation or any other equity security senior to or on a parity with the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock in any respect, or otherwise issue any other capital stock of the Corporation;

(c) form for any purpose a new subsidiary of the Corporation, or permit any existing subsidiary of the Corporation to issue any capital stock, other than to the Corporation

(d) effect any Liquidation Event or any Extraordinary Transaction;

TRADEMARK
REEL: 002308 FRAME: 0229

(e) create, incur, assume, become liable for, or permit to exist any indebtedness for borrowed money in excess of $15,000,000;

(f) make any material investment in another business entity, enter into any joint venture or similar arrangement, or make or permit any loans or advances to, or guarantees for the benefit of, any person, except for reasonable advances to employees in the ordinary course of business consistent with past practice;

(g) enter into any business which is substantially different than the business conducted by the Corporation on the date of filing of this Amended and Restated Certificate of Incorporation or not reasonably compatible therewith, and which business constitutes a material change in the Corporation's line of business;

(h) enter into or become subject to any agreement or arrangement (including, without limitation, by way of amendment or modification), or take any other action, that eliminates, amends, restricts or otherwise adversely affects the rights of the holders of the Series A Convertible Preferred Stock or the Series B Convertible Preferred Stock or the Corporation's ability to perform its obligations hereunder or;

(i) adopt any new or amend any existing stock plan (including, without limitation, the Stock Option Plan);

(j) enter into any transaction involving payments to be made to or by the Corporation from or for the benefit of any of its stockholders, Directors, officers, key management employees or any person controlling, controlled by, under common control with or otherwise affiliated with, or a member of a family of, any such person (an "Affiliate"), other than (A) compensation paid to a Director in his or her capacity as a Director or a member of a committee of the Board of Directors; (B) compensation authorized by the Corporation's compensation committee of the Board of Directors (and approved by the Board of Directors) to be paid to an officer, employee or Affiliate for services performed by such officer, employee or Affiliate; (C) amounts paid in connection with that certain First Amended and Restated Lease Agreement, dated as of April 1, 2000, by and between the Corporation and Royal Troon, LLC; or (D) amounts paid in connection with the Corporation's indemnification obligations set forth in Section 6 of the Purchase Agreement;

(k) directly or indirectly redeem, purchase, or otherwise acquire for consideration any shares of its Common Stock or any other class of its capital stock, except for (i) the redemption of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock pursuant to and as provided in this Amended and Restated Certificate of Incorporation, (ii) the repurchase of shares of Common Stock from employees or directors of, or consultants to, the Corporation, pursuant to agreements under the Stock Option Plan under which the Corporation has the option or obligation to repurchase such shares upon the occurrence of certain events, including termination

TRADEMARK
REEL: 002308 FRAME: 0230

of employment, or (iii) the redemption of shares of Common Stock as contemplated by and provided for in the Purchase Agreement;

(l) declare or pay any dividends or make any distributions of cash, property or securities of the Corporation with respect to any shares of its Common Stock or any other class of its capital stock; other than (A) dividends payable by the Corporation solely in Common Stock; (B) dividends payable to the holders of Series A Convertible Preferred Stock or Series B Convertible Preferred Stock; or (C) payments made in accordance with Section 6.3 of the Purchase Agreement; or

(m) enter into any agreement to do any of the foregoing.

Further, the Corporation shall not, by amendment of this Amended and Restated Certificate of Incorporation or through any Extraordinary Transaction or other reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, agreement 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 Article IV and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series A Convertible Preferred Stock and the Series B Convertible Preferred Stock against impairment. Without limitation of the foregoing, the Corporation shall take such action as shall be necessary or appropriate, to the extent reasonably within its control, to remove promptly any impediments to its ability to redeem Series A Convertible Preferred Stock and/or Series B Convertible Preferred Stock under the circumstances contemplated by Section A.5(e) and B.5(e). Any successor to the Corporation shall agree, as a condition to such succession, to carry out and observe the obligations of the Corporation hereunder with respect to the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock.

TRADEMARK
REEL: 002308 FRAME: 0231

9. Notice.

(a) Liquidation Events, Extraordinary Transactions, Etc. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any of the transactions identified in clause (ii) hereof, or (ii) any Liquidation Event (as defined in Section A.4), any Extraordinary Transaction (as defined in Section A.5), or any QPO (as defined in Section A.6), the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Series A Convertible Preferred Stock at least twenty (20) business days prior to such record date specified therein or the expected effective date of any such transaction, whichever is earlier, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event, Extraordinary Transaction, or QPO is expected to become effective, (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event, and (D) in the event of a QET, a description of the rights provided to the holder's of shares of Series A Convertible Preferred Stock to make an election under Section A.5(b)(ii), including the time period within which such election must be made.

(b) Waiver of Notice. The holder or holders of not less than a Two Thirds Interest of the outstanding shares of Series A Convertible Preferred Stock may, at any time upon written notice to the Corporation, waive any notice provisions specified herein for the benefit of such holders, and any such waiver shall be binding upon all holders of such securities.

(c) General. In the event that the Corporation provides any notice, report or statement to any holder of Common Stock the Corporation shall at the same time provide a copy of any such notice, report or statement to each holder of outstanding shares of Series A Convertible Preferred Stock.

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

11. Contractual Rights of Holders. The various provisions set forth herein for the benefit of the holders of the Series A Convertible Preferred Stock shall be deemed contract rights enforceable by them, including without limitation, one or more actions for specific performance.

TRADEMARK
REEL: 002308 FRAME: 0232

B. SERIES B CONVERTIBLE PREFERRED STOCK

1. Designation. A total of 9,256,060 shares of the Corporation's Preferred Stock shall be designated as a series known as Series B Convertible Preferred Stock, par value $.01 per share (the "Series B Convertible Preferred Stock"). All of the preferential amounts to be paid to the holders of the Series B Convertible Preferred Stock as provided in this Section B 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 property of the Corporation to, the holders of any other equity securities of the Corporation, whether now or hereafter authorized, other than the Series A Convertible Preferred Stock which shall rank on a parity with the Series B Convertible Preferred Stock in connection with any event referred to in Sections B.3, B.4 or B.5.

2. Election of Directors: Voting.

(a) Election of Directors. The holders of outstanding shares of Series B Convertible Preferred Stock shall, voting together with the Series A Convertible Preferred Stock as a separate class, be entitled to jointly elect two (2) Directors of the Corporation. Such Directors shall be the candidates receiving the greatest number of affirmative votes of the outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock (the "Convertible Preferred Stock Director Designees"), with votes cast against such candidates and votes withheld having no legal effect. The election of the Convertible Preferred Stock Director Designees by the holders of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock shall occur (i) at the annual meeting of holders of the Corporation's capital stock, (ii) at any special meeting of holders of the Corporation's capital stock, (iii) at any special meeting of holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock called by holders of a majority of the outstanding shares of either the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock, or (iv) by the written consent of holders of not less than a Two-Thirds Interest of the total outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock. If at any time when any shares of either Series A Convertible Preferred Stock or Series B Convertible Preferred Stock are outstanding any Convertible Preferred Stock Director Designee should cease to be a Director for any reason, the vacancy shall only be filled by the vote or written consent of the holders of the outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, voting together as a separate class, in the manner and on the basis specified above or as otherwise provided by law. The holders of outstanding shares of Series B Convertible Preferred Stock shall also be entitled to vote for all other Directors of the Corporation together with holders of all other shares of the Corporation's outstanding capital stock entitled to vote thereon, voting as a single class, with each outstanding share of Series B Convertible Preferred Stock entitled to the same number of votes specified in Section B.2(b). Notwithstanding the foregoing, the holders of outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock may, in their sole discretion, determine to elect fewer than

TRADEMARK
REEL: 002308 FRAME: 0233

two (2) Convertible Preferred Stock Director Designees from time to time, and during any such period the Board of Directors nonetheless shall be deemed duly constituted.

(b) Voting Generally. Each share of Series B Convertible Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which such share of Series B Convertible Preferred Stock could be converted pursuant to Section B.6 hereof on the record date for the vote or written consent of stockholders, if applicable, with fractional votes for fractional shares and appropriate adjustments for stock splits, stock dividends, recapitalizations and the like. Each holder of shares of Series B Convertible Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the by-laws of the Corporation and shall vote with holders of the Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders, excluding those matters required to be submitted to a class or series vote pursuant to the terms hereof (including, without limitation, Sections A.8 and B.2(a)) or by law.

3. Dividends. Except as otherwise provided in Sections B.6(a) and B.6(b), the holders of outstanding shares of Series B Convertible Preferred Stock shall be entitled to receive, out of any funds legally available therefor, cumulative compounding dividends on the Series B Convertible Preferred Stock payable in cash or, at the option of the Corporation, in additional shares of Series B Convertible Preferred Stock of equivalent value (based upon the Series B Conversion Price at the time of payment of such dividend), at the per share rate of eight percent (8%) per annum on the Series B Convertible Preferred Liquidation Preference Amount (as hereafter defined), adjusted appropriately for stock splits, stock dividends, recapitalizations and the like, subject to proration for partial years on the basis of a 365-day year (the "Series B Convertible Cumulative Dividend"). Such dividends shall accumulate quarterly in arrears commencing as of the date of issuance of the Series B Convertible Preferred Stock, shall be cumulative, to the extent unpaid, whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment therefor, and shall compound on February 1 of each year. Accrued and unpaid Series B Convertible Cumulative Dividends may be paid from time to time when and if declared by the Corporation; provided, however, that such dividends shall become due and payable with respect to all outstanding shares of Series B Convertible Preferred Stock as provided in Sections B.4, B.5 and B.6(a). Dividends paid in an amount less than the total amount of dividends at the time accumulated and payable on all outstanding shares of Series B Convertible Preferred Stock shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. Notwithstanding any of the foregoing, (i) no dividend may be declared or paid on any shares of Series B Convertible Preferred Stock unless at the same time a dividend is declared or paid on all outstanding shares of Series A Convertible Preferred Stock, with holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock sharing in any such dividends as if they constituted a single class of stock; and (ii) unless and until the Series B Convertible Cumulative Dividends have been paid in full, and except as otherwise contemplated by Section 6.3 of the Purchase Agreement, then (a) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any Junior

TRADEMARK
REEL: 002308 FRAME: 0234

Capital Stock; and (b) no shares of Junior Capital Stock shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof (except for the repurchase of shares of Common Stock from employees or directors of, or consultants to, the Corporation pursuant to agreements under the Stock Option Plan or pursuant to stock restriction agreements executed in connection with shares granted under such Stock Option Plan). All numbers relating to the calculation of dividends pursuant to this Section B.3 shall be subject to equitable adjustment in the event of any stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the Series B Convertible Preferred Stock. If and to the extent such Series B Convertible Cumulative Dividends have been paid in full, the holders of Series B Convertible Preferred Stock shall be entitled to receive additional dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion, provided, however, that no such dividend may be declared or paid on any shares of Series B Convertible Preferred Stock unless at the same time a dividend is declared or paid on all outstanding shares of Series A Convertible Preferred Stock and Common Stock, and vice versa, with holders of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Common Stock sharing in any such additional dividends as if they constituted a single class of stock and with each holder of shares of Series B Convertible Preferred Stock entitled to receive such dividends based on the number of shares of Common Stock into which such shares of Series B Convertible Preferred Stock are then convertible hereunder, as contemplated by Section B.6 of this Article IV.

TRADEMARK
REEL: 002308 FRAME: 0235

4. Liquidation.

(a) Liquidation Preference. Upon any Liquidation Event, each holder of outstanding shares of Series B Convertible Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to stockholders, whether such assets are capital, surplus or earnings, and before any amount shall be paid or distributed to the holders of Common Stock or of any other Junior Capital Stock, an amount in cash equal to (i) $4.0514 per share of Series B Convertible Preferred Stock held by such holder (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like), plus (ii) any accumulated but unpaid dividends to which such holder of outstanding shares of Series B Convertible Preferred Stock is then entitled, if any, pursuant to Sections B.3 and B.5(f) hereof, plus (iii) any interest accrued pursuant to Section B.5(e) hereof to which such holder of Series B Convertible Preferred Stock is entitled, if any (the sum of clauses (i), (ii) and (iii) being referred to herein as the "Series B Convertible Preferred Liquidation Preference Amount"); provided, however, that if upon any Liquidation Event the amounts available for distribution to holders of Series B Convertible Preferred Stock, Series A Convertible Preferred Stock and any other class or series of capital stock of the Corporation ranking on liquidation on a parity with the Series B Convertible Preferred Stock are not sufficient to pay all amounts due to such holders upon such Liquidation Event, then such holders shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled; and provided further, however, that if upon any Liquidation Event the holders of the outstanding shares of Series B Convertible Preferred Stock would receive more than the Series B Convertible Preferred Liquidation Preference Amount in the event all of their shares were voluntarily converted into shares of Common Stock immediately prior to such Liquidation Event and such shares of Common Stock received a liquidating distribution or distributions from the Corporation, then each holder of Series B Convertible Preferred Stock shall receive as a distribution from the Corporation in connection with such Liquidation Event, in lieu of the Series B Convertible Preferred Liquidation Preference Amount, an amount equal to the amount that would be paid if such holder's shares of Series B Convertible Preferred Stock were voluntarily converted into Common Stock immediately prior to such Liquidation Event (including with respect to any accrued but unpaid dividends on the Series B Convertible Preferred Stock). The provisions of this Section B.4 shall not in any way limit the right of the holders of Series B Convertible Preferred Stock to elect to convert their shares of Series B Convertible Preferred Stock into shares of Common Stock pursuant to Section B.6 prior to or in connection with any Liquidation Event.

(b) Notice. Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Series B Convertible Preferred Stock notice in accordance with Section B.9 hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail the facts of such Liquidation Event, stating in detail the amount(s) per share of Series B Convertible Preferred Stock

TRADEMARK
REEL: 002308 FRAME: 0236

each holder of Series B Convertible Preferred Stock would receive pursuant to the provisions of Section B.4(a) hereof (both with respect to the amount a holder would receive pursuant to clauses (i), (ii) and (iii) of Section B.4(a) and the amount a holder would receive pursuant to the second proviso of Section B.4(a)) and stating in detail the facts upon which such amounts were determined.

5. Redemption; Preferential Payment in Extraordinary Transactions.

(a) Redemption Events.

(i) Time Based. On February 2, 2005, upon the election of a holder of outstanding shares of Series B Convertible Preferred Stock, the Corporation shall, no later than 120 days after the date of such election, redeem all (but not less than all, other than pursuant to Section B.5(e) below) of such holder's outstanding shares of Series B Convertible Preferred Stock at the Series B Convertible Preferred Redemption Price specified in Section B.5(d); provided, however, that to the extent the Corporation cannot legally effectuate the redemption on such date, the redemption shall take place as soon as practicable thereafter as legally permitted, and the terms of Section B.5(e) herein shall apply to such period during which the redemption is legally prohibited. The foregoing election shall be made by a holder by giving the Corporation written notice of such election. After receipt of such written notice, the Corporation shall as soon as practicable, but in no case more than ten (10) days after its receipt of notice of such election, provide to the holder written notice setting forth the anticipated date for such redemption and the amount the holder will be entitled to receive pursuant to the provisions of Section B.5(d).

(ii) Extraordinary Transactions. Subject to Section B.6(b)(ii), upon the election of a holder of outstanding shares of Series B Convertible Preferred Stock to have such shares redeemed or otherwise to participate in connection with an Extraordinary Transaction, then, as a part of and as a condition to the effectiveness of such Extraordinary Transaction, except with respect to holders of Series B Convertible Preferred Stock that have elected to convert their shares of Series B Convertible Preferred Stock into shares of Common Stock in accordance with the voluntary conversion provisions of Section B.6 prior to the effective date of such Extraordinary Transaction, the Corporation shall, on the effective date of such Extraordinary Transaction either (x) if redemption is elected, on the effective date of such Extraordinary Transaction, redeem all (but not less than all) of the outstanding shares of Series B Convertible Preferred Stock of the electing holder for an amount equal to the aggregate Series B Convertible Preferred Liquidation Preference Amount, such amount to be payable in cash or, at the request of the electing holder, in the same form of consideration as is paid to the holders of Common Stock in such Extraordinary Transaction, and no payment shall be made to the holders of any shares of

TRADEMARK
REEL: 002308 FRAME: 0237

Junior Capital Stock unless such amount is paid in full or (y) if such holder elects to participate in the relevant transaction (such as a merger) on terms acceptable to it, take such actions as shall be sufficient to facilitate such participation (including executing a merger agreement including an exchange ratio reflecting the provisions hereof) on terms giving effect to such holder's right to the aggregate Series B Convertible Liquidation Preference Amount, in which event such amount shall be paid in cash or, at the election of such holder, in the same form of consideration as is paid to the holders of Common Stock in such Extraordinary Transaction, but in preference to and before any amount is paid or otherwise distributed to the holders of any shares of Junior Capital Stock, in which event such preferential amount shall be deemed to have been distributed to the holder of the Series B Convertible Preferred Stock as if in a Liquidation Event.

Notwithstanding any of the foregoing, if upon any Extraordinary Transaction in which a holder of outstanding shares of Series B Convertible Preferred Stock elects to be redeemed or participate, a holder of outstanding shares of Series B Convertible Preferred Stock would receive more than the Series B Convertible Liquidation Preference Amount in the event its shares were voluntarily converted into Common Stock immediately prior to such Extraordinary Transaction and such shares of Common Stock were purchased or otherwise participated in such Extraordinary Transaction, then such holder of Series B Convertible Preferred Stock shall instead receive from the Corporation or the relevant purchaser, as applicable, upon such holder's election to redeem or otherwise participate in such Extraordinary Transaction, an amount equal to the amount per share that would be paid if the shares of Common Stock receivable upon voluntary conversion (including, if applicable, any accrued but unpaid dividends in accordance with Section B.6(a)) of the Series B Convertible Preferred Stock were being acquired in the Extraordinary Transaction at the same price per share as is paid for other shares of Common Stock, which amount shall be paid in the same form of consideration as is paid to holders of Common Stock, as if such holder's shares of Series B Convertible Preferred Stock had been converted into the number of shares of Common Stock issuable upon the conversion of such share of Series B Convertible Preferred Stock immediately prior to such Extraordinary Transaction.

The foregoing election shall be made by a holder by giving the Corporation prior written notice thereof within ten (10) days of its receipt of written notice from the Corporation as provided in Section B.5(c). The provisions of this Section B.5 shall not in any way limit the right of the holders of Series B Convertible Preferred Stock to elect to convert their shares into shares of Common Stock pursuant to Section B.6 prior to or in connection with any Extraordinary Transaction.

TRADEMARK
REEL: 002308 FRAME: 0238

(b) Valuation of Distribution Securities. Any securities or other consideration to be delivered to the holders of the Series B Convertible Preferred Stock if so elected in connection with a redemption or upon any Extraordinary Transaction in accordance with the terms hereof shall be valued in the manner provided in Section A.5(b).

(c) Notice by Corporation. Prior to the occurrence of any Extraordinary Transaction, the Corporation will furnish each holder of outstanding shares of Series B Convertible Preferred Stock notice in accordance with Section B.9 hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail all material terms of such Extraordinary Transaction, including without limitation the consideration to be delivered in connection with such Extraordinary Transaction, the valuation of the Corporation at the time of such Extraordinary Transaction and the identities of the parties to the Extraordinary Transaction.

(d) Purchase Date and Price. Any date upon which a redemption is to occur in accordance with Section B.5(a) shall be referred to as a "Series B Convertible Preferred Redemption Date." The price for each share of Series B Convertible Preferred Stock redeemed or acquired pursuant to this Section B.5 shall be the per share Series B Convertible Preferred Liquidation Preference Amount or such greater per share amount as may be payable pursuant to the second paragraph of Section B.5(a)(ii), if applicable (the "Series B Convertible Preferred Redemption Price"); provided, however, that if at a Series B Convertible Preferred Redemption Date shares of Series B Convertible Preferred Stock are unable to be redeemed (as contemplated by Section B.5(e) below), then holders of Series B Convertible Preferred Stock that have requested redemption pursuant to Section B.5(a) shall also be entitled to interest and dividends pursuant to Sections B.5(e) and (f) below. The aggregate applicable redemption price elected to be payable in cash pursuant to Section B.5(a) shall be payable in cash in immediately available funds to the respective holders of the Series B Convertible Preferred Stock on the Series B Convertible Preferred Redemption Date (subject to Section B.5(e)), except as otherwise contemplated by Section B.5(a)(ii). Upon any redemption or purchase of the Series B Convertible Preferred Stock as provided herein, holders of fractional shares shall receive proportionate amounts in respect thereof. Until the aggregate applicable redemption price has been paid for all shares of Series B Convertible Preferred Stock for which a request for redemption has been made: (A) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any capital stock of the Corporation; and (B) except as permitted by Section A.8(k), no shares of capital stock of the Corporation (other than the Series B Convertible Preferred Stock in accordance with this Section B.5 and the Series B Convertible Preferred Stock in accordance with Section B.5) shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

TRADEMARK
REEL: 002308 FRAME: 0239

(e) Redemption Prohibited. If, at a Series B Convertible Preferred Redemption Date, the Corporation is prohibited under the General Corporation Laws of the State of Delaware from redeeming such shares of Series B Convertible Preferred Stock for which redemption is required hereunder, then it shall redeem such shares on a pro-rata basis among the requesting holders of Series B Convertible Preferred Stock in proportion to the full respective redemption amounts to which such holders are entitled hereunder to the extent possible and shall redeem the remaining shares to be redeemed as soon as the Corporation is not prohibited from redeeming some or all of such shares under the General Corporation Laws of the State of Delaware, subject to the last paragraph of Section A.8; provided, that in the event that on a proposed Series B Convertible Preferred Redemption Date there exist shares of Series A Convertible Preferred Stock required to be redeemed under Sections A.5, then the shares of Series B Convertible Preferred Stock and Series A Convertible Preferred Stock, as applicable, to be redeemed shall be redeemed by the Corporation on a pro-rata basis among the holders of such shares in proportion to the aggregate redemption amounts to which they are entitled with respect to such shares and, as to which each such holder's shares shall be redeemed, relative to such holder's holdings of shares of Series B Convertible Preferred Stock and Series A Convertible Preferred Stock. Any shares of Series B Convertible Preferred Stock not redeemed shall remain outstanding and entitled to all of the rights and preferences provided in this Article IV. The Corporation shall take such action as shall be necessary or appropriate to review and promptly remove any impediment to its ability to redeem shares of Series B Convertible Preferred Stock under the circumstances contemplated by this Section B.5(e). In the event that the Corporation fails to redeem shares for which redemption is required pursuant to this Section B.5, then (i) if such failure is due to a prohibition of such redemption under the General Corporation Laws of the State of Delaware, then during the period from the applicable Series B Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable per share dividend on such shares shall be adjusted to twelve percent (12%) per annum, with such dividend to increase to fifteen percent (15%) on the date which is 365 days following the Series B Convertible Preferred Redemption Date or (ii) if such failure is due to any reason other than that described in subclause (i) above, then during the period from the applicable Series B Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable redemption price and any dividend accrued but unpaid on the Series B Convertible Preferred Stock shall bear interest at the rate of twelve percent (12%) per annum, with such interest to accrue daily in arrears and to be compounded annually and to increase by one percent (1%) upon the expiration of each 180 day period that such shares remain outstanding; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "Maximum Permitted Rate"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess.

TRADEMARK
REEL: 002308 FRAME: 0240

(f) Dividend After Series B Convertible Preferred Redemption Date. From and after a Series B Convertible Preferred Redemption Date, no shares of Series B Convertible Preferred Stock subject to redemption shall be entitled to dividends, if any, as contemplated by Section B.3; provided, however, that in the event that such shares of Series B Convertible Preferred Stock are unable to be redeemed and continue to be outstanding in accordance with Section B.5(e), such shares shall continue to be entitled to dividends and interest thereon as provided in Sections B.3 and B.5(e) until the date on which such shares are actually redeemed by the Corporation.

(g) Surrender of Certificates. Upon receipt of the applicable Series B Convertible Preferred Redemption Price by certified check or wire transfer (in the event such price is to be paid in cash), each holder of shares of Series B Convertible Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, duly assigned or endorsed for transfer (or accompanied by duly executed stock powers relating thereto), or, in the event the certificate or certificates are lost, stolen or missing, shall deliver an affidavit or agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith (an "Affidavit of Loss") with respect to such certificates at the principal executive office of the Corporation or the office of the transfer agent for the Series B Convertible Preferred Stock or such office or offices in the continental United States of an agent for redemption as may from time to time be designated by notice to the holders of Series B Convertible Preferred Stock, and each surrendered certificate shall be canceled and retired; provided, however, that if the Corporation is prohibited from redeeming any shares of Series B Convertible Preferred Stock as provided in Section B.5(e), a holder whose shares are not so redeemed in full shall not be required to surrender said certificate(s) to the Corporation until said holder has received a new stock certificate for those shares of Series B Convertible Preferred Stock not so redeemed.

TRADEMARK
REEL: 002308 FRAME: 0241

6. Conversion. The holders of the Series B Convertible Preferred Stock shall have the following conversion rights:

(a) Conversion Upon Election of Holders. Any holder of shares of Series B Convertible Preferred Stock shall be entitled at any time, without the payment of any additional consideration, to cause all or part of such holder's outstanding shares of Series B Convertible Preferred Stock to be converted into the number of fully paid and nonassessable shares of Common Stock (including any resulting fractional shares) which results from multiplying the number of shares of Series B Convertible Preferred Stock which are being converted by a fraction, the numerator of which is the per share Series B Conversion Value (as defined in this Section B.6(a)) of the Series B Convertible Preferred Stock, and the denominator of which is the per share Series B Conversion Price (as defined in this Section B.6(a)) in effect for the Series B Convertible Preferred Stock at the time of conversion (which fraction shall hereinafter be referred to as the "Series B Common Stock Conversion Rate"), with fractional shares treated proportionally as provided above (the "Series B Conversion Shares"). Upon the filing of this Amended and Restated Certificate of Incorporation with the office of the Secretary of State of the State of Delaware, the "Series B Conversion Price" per share of Series B Convertible Preferred Stock shall be $4.0514, and the per share "Series B Conversion Value" of Series B Convertible Preferred Stock shall be $4.0514. The Series B Conversion Price per share of Series B Convertible Preferred Stock and the Series B Common Stock Conversion Rate (as defined in this Section B.6(a)) shall be subject to adjustment from time to time as provided in Section B.7 hereof. If a holder of shares of Series B Convertible Preferred Stock elects to convert any outstanding shares of Series B Convertible Preferred Stock at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such accumulated but unpaid dividends and other amounts shall be paid in full by the Corporation in connection with such conversion, in cash, or at the election of the Corporation, in additional shares of Common Stock. For purposes of effecting the foregoing, in the event the Corporation elects to pay any accumulated but unpaid dividends in the form of additional shares of Common Stock, then with respect to such dividends the holder of such shares of Series B Convertible Preferred Stock shall receive the number of fully paid and nonassessable shares of Common Stock (including any resulting fractional shares) which results from dividing the accumulated but unpaid Series B Convertible Cumulative Dividend, as the numerator, by the Series B Conversion Price, as the denominator, with fractional shares treated proportionately as provided above.

(b) Automatic Conversion. The following provisions of this Section B.6(b) shall terminate and be of no further force and effect after February 2, 2005.

(i) Upon a Qualified Public Offering. Each share of Series B Convertible Preferred Stock shall automatically be converted, without the payment of any additional consideration, into shares of Common Stock as of,

TRADEMARK
REEL: 002308 FRAME: 0242

and in all cases subject to, the closing of the Corporation's first Qualified Public Offering; provided, that if a closing of a QPO occurs, all outstanding shares of Series B Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior to such closing at the Series B Common Stock Conversion Rate. Any such conversion shall be at the Series B Common Stock Conversion Rate in effect upon the closing of a QPO. If the holders of shares of Series B Convertible Preferred Stock are required to convert the outstanding shares of Series B Convertible Preferred Stock pursuant to this Section B.6(b)(i) at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall not be paid and the rights of a holder to such dividends shall be deemed to have expired in connection with such conversion.

(ii) Upon a Qualified Extraordinary Transaction. Each share of Series B Convertible Preferred Stock shall automatically be converted, without the payment of any additional consideration, into shares of Common Stock as of, and in all cases subject to, the closing of the Corporation's first QET; provided, that if a closing of a QET occurs, all outstanding shares of Series B Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock as provided herein immediately prior to such closing. Any such conversion shall be at the Series B Common Stock Conversion Rate in effect upon the closing of the QET.

If the holders of shares of Series B Convertible Preferred Stock are required to convert their outstanding shares of Series B Convertible Preferred Stock pursuant to this Section B.6(b)(ii) at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall not be paid and the rights of a holder to such dividends shall be deemed to have expired in connection with such conversion.

(c) Procedure for Voluntary Conversion. Upon election to convert pursuant to Section B.6(a), a holder of Series B Convertible Preferred Stock shall surrender the certificate or certificates representing its Series B Convertible Preferred Stock being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the Series B Convertible Preferred Stock or such office or offices in the continental United States of an agent for conversion as may from time to time be designated by notice to the holders of the Series B Convertible Preferred Stock by the Corporation, or shall deliver an Affidavit of Loss with respect to such certificates. The issuance by the Corporation of Common Stock upon a conversion of Series B Convertible Preferred Stock pursuant to Section B.6(a) hereof shall be effective as of the surrender of the certificate or certificates for the Series B Convertible Preferred Stock to be converted, duly assigned or endorsed for

TRADEMARK
REEL: 002308 FRAME: 0243

transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or as of the delivery of an Affidavit of Loss. Upon surrender of a certificate representing Series B Convertible Preferred Stock for conversion, or delivery of an Affidavit of Loss, the Corporation shall issue and send by hand delivery, by courier or by first class mail (postage prepaid) to the holder thereof or to such holder's designee, at the address designated by such holder, certificates for the number of shares of Common Stock to which such holder shall be entitled upon conversion, plus a cash payment in the amount of any accumulated but unpaid dividends, if applicable, and other amounts as contemplated by Section B.6(a) in respect of the shares of Series B Convertible Preferred Stock. The issuance of certificates for Common Stock upon conversion of Series B Convertible Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such Common Stock. If a conversion of Series B Convertible Preferred Stock upon a Liquidation Event or an Extraordinary Transaction occurs and a holder of Common Stock issued upon such conversion elects to participate, then such holder's outstanding shares of Series B Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior thereto, provided that the Corporation shall make appropriate provisions for the Common Stock issued upon such conversion to be treated on the same basis as all other Common Stock in such Liquidation Event or Extraordinary Transaction. In the event of an automatic conversion upon a QPO or QET, the provisions of Section B.6(d) shall apply.

(d) Procedure for Automatic Conversion. As of, and in all cases subject to, the closing of a QPO or QET (the "Automatic Conversion Date"), all outstanding shares of Series B Convertible Preferred Stock shall be converted automatically into shares of Common Stock at the Series B Common Stock Conversion Rate and without any further action by the holders of such shares and whether or not the certificates representing such shares of Series B Convertible Preferred Stock are surrendered to the Corporation or its transfer agent; provided, however, that all holders of Series B Convertible Preferred Stock shall be given prior written notice of the occurrence of a QPO or QET in accordance with Section B.9 hereof; and provided further, that in the event of a QET, such holders shall be given an opportunity to exercise the rights provided in Section B.5(a)(ii) by giving the Corporation written notice thereof. On the Automatic Conversion Date, all rights with respect to the Series B Convertible Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an Affidavit of Loss thereof to receive certificates for the number of shares of CommonStock into which such Series B Convertible Preferred Stock has been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. Upon surrender of such certificates or Affidavit of Loss the Corporation shall issue and deliver to such holder, promptly (and

TRADEMARK
REEL: 002308 FRAME: 0244

in any event in such time as is sufficient to enable such holder to participate in such QPO or QET) at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series B Convertible Preferred Stock surrendered are convertible on the Automatic Conversion Date.

(e) 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 Series B Convertible 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 Series B Convertible 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 Series B Convertible Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(f) No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Series B Convertible Preferred Stock in any manner which would interfere with the timely conversion of any shares of Series B Convertible Preferred Stock.

7. Adjustments. The Series B Conversion Price of the Series B Convertible Preferred Stock in effect from time to time shall be subject to adjustment from and after February 2, 2000 and regardless of whether any shares of Series B Convertible Preferred Stock are then issued and outstanding as follows:

(a) Dividends and Stock Splits. If the number of shares of Common Stock (which term for purposes of this Section B.7 shall include all common stock of the Corporation) outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the date such payment is made or such change is effective, the Series B Conversion Price of the Series B Convertible Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Series B Convertible Preferred Stock shall be increased in proportion to such increase of outstanding shares of Common Stock.

(b) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination or reverse split of the outstanding shares of Common Stock, then, on the effective date of such combination or reverse split, the Series B Conversion Price of the Series B Convertible Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of any shares of Series B Convertible Preferred

TRADEMARK
REEL: 002308 FRAME: 0245

Stock shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

(c) Other Adjustments. In the event the Corporation 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 securities of the Corporation other than shares of Common Stock, then and in each such event lawful and adequate provision shall be made so that the holders of Series B Convertible Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities of the Corporation which they would have received had their Series B Convertible Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section B.7 as applied to such distributed securities.

(d) Reorganization, etc. If the Common Stock issuable upon the conversion of the Series B Convertible Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section B.7), then and in each such event the holder of each share of Series B Convertible Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the number of shares of Common Stock into which such shares of Series B Convertible Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(e) Mergers and Other Reorganizations. Unless such transaction is an Extraordinary Transaction in which all of the holders of Series B Convertible Preferred Stock elect redemption or otherwise to participate (in which case Section B.5(a)(ii) shall apply and this subsection shall not apply), if at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section B.7) or a merger or consolidation of the Corporation with or into another corporation or the sale of all or substantially all of the Corporation's properties and assets to any other person, then, as part of and as a condition to the effectiveness of such reorganization, merger, consolidation or sale, lawful and adequate provision shall be made so that the holders of the Series B Convertible Preferred Stock shall thereafter be entitled to receive upon conversion of the Series B Convertible Preferred Stock the number of shares of stock or other securities or property of the Corporation or of the successor corporation resulting from such merger or consolidation or sale, to which a

TRADEMARK
REEL: 002308 FRAME: 0246

holder of Common Stock would have been entitled in connection with such capital reorganization, merger, consolidation, or sale. In any such case, appropriate provisions shall be made with respect to the rights of the holders of the Series B Convertible Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section B.7 (including, without limitation, provisions for adjustment of the applicable Series B Conversion Price and the number of shares purchasable upon conversion of the Series B Convertible Preferred Stock) shall thereafter be applicable, as nearly as may be, with respect to any shares of stock, securities or assets to be deliverable thereafter upon the conversion of the Series B Convertible Preferred Stock.

(f) Sale of Common Stock. In the event the Corporation shall at any time, or from time to time, issue, sell or exchange any shares of Common Stock (including treasury shares held by the Corporation but excluding the Excluded Shares), for a consideration per share less than the Series B Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares, then, and thereafter successively upon each such issuance, sale or exchange, the Series B Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares shall forthwith be reduced to an amount determined by multiplying such Series B Conversion Price by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such additional shares of Common Stock (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than the Series B Convertible Preferred Stock) that are then vested and in the money), plus (B) the number of shares of Common Stock which the net aggregate consideration received by the Corporation for the total number of such additional shares of Common Stock so issued would purchase at the Series B Conversion Price (prior to adjustment), and

(ii) the denominator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such additional shares of Common Stock (excluding any unvested shares and any treasury shares held by the Corporation but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series B Convertible Preferred Stock) that are then vested and in the money), plus (B) the number of such additional shares of Voting or Nonvoting Common Stock so issued.

(g) Sale of Options, Rights or Convertible Securities. In the event the Corporation shall at any time or from time to time issue options, warrants or rights to subscribe for shares of Common Stock, or issue any securities convertible into or

TRADEMARK
REEL: 002308 FRAME: 0247

exchangeable for shares of Common Stock (other than any options or warrants for Excluded Shares), for a consideration per share (determined by dividing the Net Aggregate Consideration (as determined below) by the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible or exchangeable securities were exercised or converted to the fullest extent permitted by their terms) less than the Series B Conversion Price in effect immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities, the Series B Conversion Price in effect immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities shall be reduced to an amount determined by multiplying such Series B Conversion Price by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series B Convertible Preferred Stock) that are vested and in the money), plus (B) the number of shares of Common Stock which the total amount of consideration received by the Corporation for the issuance of such options, warrants, rights or convertible or exchangeable securities plus the minimum amount set forth in the terms of such security as payable to the Corporation upon the exercise, conversion or exchange thereof (the "Net Aggregate Consideration") would purchase at the Series B Conversion Price prior to adjustment, and

(ii) the denominator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series B Convertible Preferred Stock) that are vested and in the money), plus (B) the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible or exchangeable securities were exercised, converted or exchanged.

(h) Expiration or Change in Price. If the consideration per share provided for in any options, warrants or rights to subscribe for shares of Common Stock, or any securities convertible into or exercisable or exchangeable for shares of Common Stock (other than with respect to any Excluded Shares), changes at any time other than as a result of any event described in Section B.7(a) or (b) above, the Series B Conversion Price in effect at the time of such change shall be readjusted to the Series B Conversion Price which would have been in effect at such time had such options, warrants, rights

TRADEMARK
REEL: 002308 FRAME: 0248

or convertible or exchangeable securities provided for such changed consideration per share (determined as provided in Section B.7(g)), at the time initially granted, issued or sold; provided, that such adjustment of the Series B Conversion Price will be made only as and to the extent that the Series B Conversion Price effective upon such adjustment remains less than or equal to the Series B Conversion Price that would be in effect if such options, warrants, rights or convertible or exchangeable securities had not been issued. No adjustment of the Series B Conversion Price shall be made under this Section B.7 upon the issuance of any additional shares of Common Stock which are issued pursuant to the exercise of any options, warrants or other subscription or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities if an adjustment shall previously have been made upon the issuance of such options, warrants, rights or convertible or exchangeable securities. Any adjustment of the Series B Conversion Price shall be recomputed if, as, and when the rights to acquire shares of Common Stock upon exercise, conversion or exchange of the options, warrants, rights or convertible or exchangeable securities which gave rise to such adjustment expire or are canceled without having been exercised, converted or exchanged, so that the Series B Conversion Price effective immediately upon such cancellation or expiration shall be equal to the Series B Conversion Price in effect immediately before the time of the issuance of the expired or canceled options, warrants, rights or convertible or exchangeable securities, with such additional adjustments as would have been made to that Series B Conversion Price had the expired or canceled options, warrants, rights or convertible or exchangeable securities not been issued.

(i) Calculations. All calculations under this Section B.7 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(j) Certificate. Upon the occurrence of each adjustment or readjustment pursuant to this Section B.7, 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 B Convertible 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 written request at any time of any holder of Series B Convertible Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Series B Conversion Prices before and after such adjustment or readjustment, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Series B Convertible Preferred Stock.

8. Covenants. So long as any shares of Series B Convertible Preferred Stock shall be outstanding, the provisions of Section A.8 of this Article IV shall apply to all shares of Series B Convertible Preferred Stock.

TRADEMARK
REEL: 002308 FRAME: 0249

9. Notice.

(a) Liquidation Events, Extraordinary Transactions, Etc. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any of the transactions identified in clause (ii) hereof, or (ii) any Liquidation Event, any Extraordinary Transaction, or any QPO, the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Series B Convertible Preferred Stock at least twenty (20) business days prior to such record date specified therein or the expected effective date of any such transaction, whichever is earlier, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event, Extraordinary Transaction, or QPO is expected to become effective,(C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event, and (D) in the event of a QET, a description of the rights provided to the holder's of shares of Series B Convertible Preferred Stock to make an election under Section B.5(b)(ii), including the time period within which such election must be made.

(b) Waiver of Notice. The holder or holders of not less than a Two Thirds Interest of the outstanding shares of Series B Convertible Preferred Stock may, at any time upon written notice to the Corporation, waive any notice provisions specified herein for the benefit of such holders, and any such waiver shall be binding upon all holders of such securities.

(c) General. In the event that the Corporation provides any notice, report or statement to any holder of Common Stock the Corporation shall at the same time provide a copy of any such notice, report or statement to each holder of outstanding shares of Series B Convertible Preferred Stock.

10. No Reissuance of Series B Convertible Preferred Stock. No share or shares of Series B Convertible Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

11. Contractual Rights of Holders. The various provisions set forth herein for the benefit of the holders of the Series B Convertible Preferred Stock shall be deemed contract rights enforceable by them, including without limitation, one or more actions for specific performance.

TRADEMARK
REEL: 002308 FRAME: 0250

C. COMMON STOCK

1. Designation; Ranking. A total of 50,000,000 shares of the Corporation's common stock shall be designated as Common Stock, par value $.01 per share (the "Common Stock").

2. Voting.

(a) Election of Directors. The holders of Common Stock shall be entitled to elect a number of the Directors of the Corporation (other than the Directors who are subject to election by the holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, voting as a separate class) equal to: (i) for so long as any shares of Series A Convertible Preferred Stock or Series B Convertible Preferred Stock remain outstanding, five (5) Directors; and (ii) thereafter, such number as may be designated by the stockholders or Directors in accordance with the applicable provisions of the bylaws of the Corporation and applicable law. Such Directors shall be the candidates receiving the greatest number of affirmative votes entitled to be cast (with each holder entitled to cast one vote for or against each candidate with respect to each share held by such holder), with votes cast against such candidates and votes withheld having no legal effect. The election of such Directors shall occur at the annual meeting of holders of capital stock or at any special meeting called and held in accordance with the bylaws of the Corporation, or by consent in lieu thereof in accordance with this Amended and Restated Certificate of Incorporation. If a person elected in accordance with the foregoing provisions should cease to be a Director for any reason, the vacancy shall only be filled by the vote of the outstanding shares entitled to vote for such Directors, in the manner and on the basis specified above. If at any time fewer than the number of Directors indicated above have been elected, the Board of Directors shall nonetheless be deemed duly constituted.

(b) Other Voting. The holder of each share of Common Stock shall be entitled to one vote for each such share as determined on the record date for the vote or consent of stockholders and, for so long as any shares of Series A Convertible Preferred Stock or Series B Convertible Preferred Stock remain outstanding, shall vote together with the holders of the Series A Convertible Preferred Stock and/or Series B Convertible Preferred Stock as a single class upon any items submitted to a vote of stockholders, except as otherwise provided herein.

3. Dividends. Subject to the payment in full of all preferential dividends to which the holders of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock are entitled hereunder, the holders of Common Stock shall be entitled to receive dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion, with holders of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Common Stock sharing pari passu in such dividends as contemplated by Sections A.3 and B.3.

TRADEMARK
REEL: 002308 FRAME: 0251

4. Liquidation. Upon any Liquidation Event, after the payment or provision for payment of all debts and liabilities of the Corporation and all preferential amounts to which the holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock are entitled with respect to the distribution of assets in liquidation, the holders of Common Stock shall be entitled to share ratably in the remaining assets of the Corporation available for distribution.

5. Fractional Shares; Uncertificated Shares. The Corporation may issue fractional shares of Common Stock and Preferred Stock. Fractional shares shall be entitled to dividends (on a pro rata basis), and the holders of fractional shares shall be entitled to all rights as stockholders of the Corporation to the extent provided herein and under applicable law in respect of such fractional shares. Shares of Common Stock and Preferred Stock, or fractions thereof, may, but need not be, represented by share certificates. Such shares, or fractions thereof, not represented by share certificates ("Uncertificated Shares") shall be registered in the stock records book of the Corporation. The Corporation at any time at its sole option may deliver to any registered holder of such shares share certificates to represent Uncertificated Shares previously issued (or deemed issued) to such holder.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws may provide. No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken, except at a duly convened meeting or by unanimous written consent of the stockholders entitled to vote thereat with respect to the matters submitted thereto, and the power of stockholders to act by other than unanimous written consent without a meeting, is specifically denied, provided that the foregoing shall not apply (i) with respect to consent, approval or waiver rights of the holders of the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock set forth herein in cases for which less than unanimous consent by the holders of such class of securities is contemplated hereby or (ii) if the holders of not less than Two Thirds Interest of the outstanding shares of Series A Convertible Preferred Stock and/or Series B Convertible Preferred Stock, as applicable, sign such written consent of stockholders, or waive such requirement in advance of the taking of such action. To the extent permitted by law, the books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated in the bylaws of the Corporation or from time to time by its Board of Directors.

TRADEMARK
REEL: 002308 FRAME: 0252

ARTICLE VII

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal the bylaws of the Corporation.

ARTICLE VIII

To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the General Corporation Law of the State of Delaware is amended after the effective date of this Amended and Restated Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of each past or present Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended. Any repeal or modification of this Article VIII shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE IX

1. Indemnification of Directors and Officers. The Corporation shall indemnify, to the fullest extent permitted by the General Corporation Law of the State of Delaware any person who was or is a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, and whether by or in the right of the Corporation, its stockholders, a third party or otherwise (a "Proceeding"), by reason of the fact that he is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against all expense (including, but not limited to, attorneys' fees), liability, loss, judgments, fines, excise taxes, penalties and amounts paid in settlement actually and reasonably incurred by him in connection with such Proceeding, including expenses incurred in seeking such indemnification. In addition, the Corporation shall grant such indemnification to each of its Directors and officers with respect to any matter in a Proceeding as to which his liability is limited pursuant to Article VIII of the Amended and Restated Certificate of Incorporation of the Corporation. However, such indemnification shall exclude (i) indemnification with respect to any improper personal benefit which a Director or officer is determined to have received and the expenses of defending against an improper personal benefit claim unless the Director or officer is successful on the merits in said defense, and (ii) indemnification of present or former officers, directors, employees or agents of a constituent corporation absorbed in a merger or consolidation transaction with this Corporation with respect to their activities prior to said transaction, unless

TRADEMARK
REEL: 002308 FRAME: 0253

specifically authorized by the Board of Directors or stockholders of this Corporation. Such indemnification shall include prompt payment of expenses incurred by a Director or officer in defending a Proceeding in advance of the final disposition of such Proceeding, upon receipt of an undertaking by or on behalf of the Director or officer to repay such amounts if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation under this Article IX, which undertaking shall be an unsecured general obligation of the Director or officer and may be accepted without regard to his ability to make repayment.

2. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to an advancement of expenses, pursuant to the provisions of this Article IX, to any person who was or is a party or is threatened to be made a party to or is otherwise involved in any Proceeding by reason of the fact that he is or was an employee or agent of the Corporation or is or was serving at the request of the Corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

3. Nature of Indemnification Rights. The indemnification rights provided in this Article IX shall be a contract right and shall not be deemed exclusive of any other rights to which any person, whether or not entitled to be indemnified hereunder, may be entitled under any statute, bylaw, agreement, vote of stockholders or Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and inure to the benefit of the heirs, executors and administrators of such a person. A Director or officer shall be entitled to the benefit of any amendment of the General Corporation Law of the State of Delaware which enlarges indemnification rights hereunder, but any such amendment which adversely affects indemnification rights with respect to prior activities shall not apply to him without his consent unless otherwise required by law. Each person who is or becomes a Director or officer of the Corporation shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Article IX.

4. Amendment. The provisions of this Article IX may be amended as provided herein; however, no amendment or repeal of such provisions which adversely affects the rights of a Director or officer under this Article IX with respect to his acts or omissions prior to such amendment or repeal, shall apply to him without his consent.

ARTICLE X

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

Cook, Little
Rosenblatt
& Manson
p.l.l.c.
Attorneys at Law

The Center of New Hampshire
650 Elm Street
Manchester, NH 03101

Tel. 603-621-7100
Fax 603-621-7111
Direct 603-621-7106
Email v.canotas@clrm.com

February 7, 2001

COMMISSIONER FOR PATENTS AND TRADEMARKS
BOX ASSIGNMENTS
WASHINGTON, D.C. 20231

Re: ManagedOps.com, Inc.
Registration No. 2,399,360

Ladies and Gentlemen:

Enclosed for filing please find a Recordation Form Cover Sheet, Trademarks Only dated January 15, 2001 on behalf of ManagedOps.com, Inc. along with a check in the amount of $40.00 payable to the order of The United States Patent and Trademark which amount represents the filing fee.

If the enclosed papers are determined to be incomplete in any respect, please contact the undersigned collect at the telephone number below. Thank you for your assistance with this matter.

Respectfully submitted,

Vasiliki M. Canotas, Esquire
Cook, Little, Rosenblatt & Manson, PLLC
350 Elm Street
Manchester, New Hampshire 03101
Tel. (603) 621-7106