

04-05-2002



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

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

102045056

Tab settings

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

1. Name of conveying party(ies):

Matchmaker.com, Inc. a Texas Corporation 3-19-02
Individual(s) Association
General Partnership Limited Partnership
[X] Corporation-State
Other

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

3. Nature of conveyance:

Assignment Merger
Security Agreement Change of Name
Other

Execution Date:

2. Name and address of receiving party(ies)

Name: Matchmaker.com, Inc.
Internal Address: Suite 150

Street Address: 2350 W. Airport Freeway
City: Bedford State: TX Zip: 76021

Individual(s) citizenship
Association
General Partnership
Limited Partnership
[X] Corporation-State Delaware
Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s)

Attached hereto in Appendix A

B. Trademark Registration No.(s)

75/621318

Additional number(s) attached Yes No

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

Name: Michelle A. Massicotte

Internal Address: Fish & Richardson, P.C.

Street Address: 225 Franklin Street

City: Boston State: MA Zip: 02110

6. Total number of applications and registrations involved:

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

Enclosed
Authorized to be charged to deposit account

8. Deposit account number:

06-1050, Reference 01568

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

DO NOT USE THIS SPACE

9. Statement and signature.

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

Michelle A. Massicotte
Name of Person Signing

Signature

03/06/02
Date

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

04/04/2002 LMEILLER 00000199 75621318

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

01 FC:481
02 FC:482

40.00 OP
25.00 OP

TRADEMARK
REEL: 002475 FRAME: 0235

# APPENDIX A

## Application Serial No.

## Mark

1) 75/621,318

MATCHMAKER.COM

2) 75/749,243

MATCHMAKER.COM (and design)

20401136.doc

State of Delaware  
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES: "MATCHMAKER.COM, INC.", A TEXAS CORPORATION, WITH AND INTO "MATCHMAKER.COM, INC." UNDER THE NAME OF "MATCHMAKER.COM, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FOURTEENTH DAY OF JANUARY, A.D. 2000, AT 9 O'CLOCK A.M.

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



*Edward J. Freel*

Edward J. Freel, Secretary of State

3116821 8100M

001023435

AUTHENTICATION: 0202027

DATE: 01-14-00

TRADEMARK

REEL: 002475 FRAME: 0237

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") dated as of January 14, 2000 is between Matchmaker.com, Inc., a Delaware corporation ("Matchmaker-Delaware") and Matchmaker.com, Inc., a Texas corporation ("Matchmaker-Texas"). Matchmaker-Delaware and Matchmaker-Texas are sometimes referred to herein as the "Constituent Corporations."

### RECITALS

A. Matchmaker-Delaware is a corporation duly organized and existing under the laws of the State of Delaware with 44,000,000 shares of authorized Common Stock, \$0.002 par value, and 6,000,000 shares of authorized Preferred Stock, all of which are designated Series A Preferred Stock. As of the date hereof, 1,000 shares of Common Stock were issued and outstanding, all of which were held by Matchmaker-Texas. No other shares were outstanding.

B. Matchmaker-Texas is a corporation duly organized and existing under the laws of the State of Texas with 44,000,000 shares of authorized Common Stock, \$0.002 par value, and 6,000,000 shares of authorized Preferred Stock, \$0.002 par value, all of which are designated Series A Preferred Stock. As of the date hereof, 11,216,667 shares of Common Stock and 5,500,000 shares of Series A Preferred Stock were issued and outstanding. No other shares were outstanding.

C. The Board of Directors of Matchmaker-Texas has determined that, for the purpose of effecting the reincorporation of Matchmaker-Texas in the State of Delaware, it is advisable and in the best interests of Matchmaker-Texas that Matchmaker-Texas merge with and into Matchmaker-Delaware upon the terms and conditions herein provided.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Matchmaker-Delaware and Matchmaker-Texas hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

#### 1. MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the Texas Business Corporation Act, Matchmaker-Texas shall be merged with and into Matchmaker-Delaware (the "Merger"), the separate existence of Matchmaker-Texas shall cease and Matchmaker-Delaware shall be, and is herein sometimes referred as, the "Surviving Corporation", and the name of the Surviving Corporation shall be Matchmaker.com, Inc..

1.2 Filing and Effectiveness. The Merger shall become effective when the following actions shall have been completed:

(a) This Agreement and Merger shall have been adopted and approved by the stockholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the Texas Business Corporation Act;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;

(c) An executed Agreement and Plan of Merger meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and

(d) The executed Articles of Merger meeting the requirements of the Texas Business Corporation Act shall have been filed with the Secretary of State of the State of Texas.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger."

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of Matchmaker-Texas shall cease and Matchmaker-Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and Matchmaker-Texas's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Matchmaker-Texas in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of the debts, liabilities and obligations of Matchmaker-Delaware as constituted immediately prior to the Effective Date of the Merger and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Matchmaker-Texas in the same manner as if Matchmaker-Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the Texas Corporations Code.

## 2. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of Matchmaker-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of Matchmaker-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of Matchmaker-Texas immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

### 3. MANNER OF CONVERSION OF STOCK

3.1 Matchmaker-Texas Common Shares. Upon the Effective Date of the Merger, each share of Matchmaker-Texas Common Stock, \$0.002 par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.002 par value, of the Surviving Corporation. No fractional share interests of Surviving Corporation Common Stock shall be issued. In lieu thereof, any fractional share interests to which a holder would otherwise be entitled shall be aggregated.

#### 3.2 Matchmaker-Texas Preferred Shares.

(a) Upon the Effective Date of the Merger, each share of Series A Preferred Stock of Matchmaker-Texas, \$0.002 par value, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of Matchmaker-Texas Common Stock as set forth in the Matchmaker-Texas Articles of Incorporation, as amended, shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into or exchanged for one fully paid and nonassessable share of Series A Preferred of the Surviving Corporation, \$0.002 par value, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation, which share of Series A Preferred Stock shall be convertible into the same number of shares of the Surviving Corporation's Common Stock, \$0.002 par value, as such share of Matchmaker-Texas Series A Preferred Stock was so convertible into immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Certificate of Incorporation of the Surviving Corporation.

#### 3.3 Matchmaker-Texas Options, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of Matchmaker-Texas under, and continue, the option plans and all other employee benefit plans of Matchmaker-Texas. Each outstanding and unexercised option, other right to purchase, or security convertible into, Matchmaker-Texas Common Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase or a security convertible into the Surviving Corporation's Common Stock on the basis of one share of the Surviving Corporation's Common Stock for each one share of Matchmaker-Texas Common Stock issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such Matchmaker-Texas Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to Matchmaker-Texas Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraph 3.1 and 3.2, respectively, hereof.

(b) A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, stock purchase rights and convertible securities equal to the number of shares of Matchmaker-Texas Common Stock so reserved immediately prior to the Effective Date of the Merger.

3.4 Matchmaker-Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$0.002 par value, of Matchmaker-Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Matchmaker-Delaware, the holder of such shares or any other person, be cancelled and returned to the status of authorized but unissued shares.

3.5 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Matchmaker-Texas Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Matchmaker-Texas Common Stock or Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, respectively, into which such shares of Matchmaker-Texas Common Stock or Preferred Stock, as the case may be, were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock or Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock or Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Matchmaker-Texas so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of the Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

#### 4. GENERAL

4.1 Covenants of Matchmaker-Delaware. Matchmaker-Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

- (a) Qualify to do business as a foreign corporation in the State of Texas.
- (b) File any and all documents with the Texas Comptroller necessary for the assumption by Matchmaker-Delaware of all of the franchise tax liabilities of Matchmaker-Texas.
- (c) Take such other actions as may be required by the Texas Business Corporation Act.

4.2 Further Assurances. From time to time, as and when required by Matchmaker-Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Matchmaker-Texas such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Matchmaker-Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Matchmaker-Texas and otherwise to carry out the purposes of this Agreement, and the officers and directors of Matchmaker-Delaware are fully authorized in the name and on behalf of Matchmaker-Texas or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Matchmaker-Texas or of Matchmaker-Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of Matchmaker-Texas or by the sole stockholder of Matchmaker-Delaware, or by both.

4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of any Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, DE 19801 and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

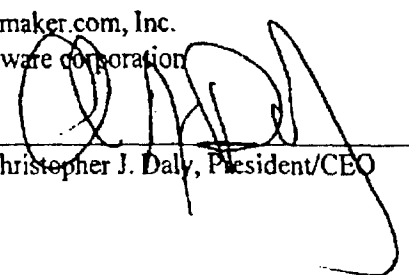
4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 2350 W. Airport Freeway, Suite 150, Bedford, Texas 76022, and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.




4.7 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the Texas Business Corporation Act.

IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Board of Directors of Matchmaker-Delaware and Matchmaker-Texas is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

Matchmaker.com, Inc.  
a Delaware corporation

By:   
Christopher J. Daly, President/CEO


ATTEST:

  
Secretary *Assistant Secretary*

Matchmaker.com, Inc.  
a Texas corporation

By:   
Christopher J. Daly, President/CEO

ATTEST:

  
Secretary *Assistant Secretary*



# The State of Texas

*SECRETARY OF STATE*

## CERTIFICATE OF MERGER

The undersigned, as Secretary of State of Texas, hereby certifies that the attached Articles of Merger of

MATCHMAKER.COM, INC.  
(a Texas corporation)

with

MATCHMAKER.COM, INC.  
(a Delaware no permit entity)

have been received in this office and are found to conform to law. ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Merger.

Filed            JANUARY 19, 2000

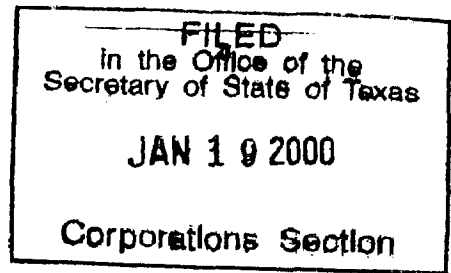
Effective       JANUARY 19, 2000



*Elton Bomer*  
*Secretary of State*

**TRADEMARK**

**REEL: 002475 FRAME: 0245**



**ARTICLES OF MERGER**

Pursuant to the provisions of Part Five of the TEXAS Business Corporation Act, the undersigned domestic and foreign corporation adopt the following Articles of Merger for the purpose of merging them into one of such corporations:

1. The names of the undersigned corporations and the State under the laws of which they are respectively organized are:

<u>Name of Corporation</u>	<u>State of Incorporation</u>
Matchmaker.com, Inc.	: Texas
Matchmaker.com, Inc.	: Delaware

2. The number of outstanding shares of Matchmaker.com, Inc., a Texas corporation (Matchmaker-Texas), and the number of shares voting for and against the merger are:

Common Stock Outstanding	:	11,216,667
• For	:	10,421,666
• Against	:	0
• Abstain	:	
Series A Preferred Stock Outstanding	:	5,500,000
• For	:	4,552,000
• Against	:	0
• Abstain	:	

3. Matchmaker-Texas is the owner of all the outstanding shares of the capital stock of Matchmaker.com, Inc., a Delaware corporation (Matchmaker-Delaware).

4. The laws of the State under which Matchmaker-Delaware is organized permit such merger.

5. The approval of the Agreement and Plan of Merger was duly authorized by all action required by the laws of the State of Delaware and by its constituent documents.

6. The name of the surviving corporation is Matchmaker.com, Inc., a Delaware corporation, and it is to be governed by the laws of the State of Delaware, and Matchmaker-Texas shall cease to exist.

7. Matchmaker-Delaware, the surviving corporation, will assume and be responsible for the payment of any fees and franchise taxes of Matchmaker-Texas.

8. A copy of the resolutions approving the merger adopted by the Board of Directors and Shareholders of Matchmaker-Texas are attached hereto as Exhibits A and B, respectively.

9. The address of the surviving corporation's registered office and the jurisdiction under whose laws it is governed:

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

The surviving corporation will be governed by Delaware law.

10. The Certificate of Incorporation of Matchmaker-Delaware shall be the Certificate of Incorporation of the surviving corporation, and no amendments to such Certificate of Incorporation are desired to be effected by the merger.

11. An executed Agreement and Plan of Merger is on file at the principal place of business of the surviving foreign corporation, at the address set forth below:

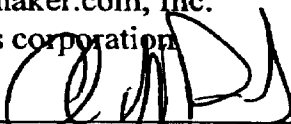
Matchmaker.com, Inc.  
2350 W. Airport Freeway, Suite 150  
Bedford, Texas 76022

A copy of the Plan of Merger is attached hereto as Exhibit C.

A copy of the Agreement of Merger will be furnished by the surviving corporation, upon written request and without cost, to each shareholder of Matchmaker-Texas, that is a party to or created by the Agreement of Merger, to any creditor or any obligee of the parties to the merger at the time of the merger if such obligation is then outstanding.

DATED as of the 14 day of January, 2000.

Matchmaker.com, Inc.  
a Texas corporation

By:   
Christopher J. Daly, President/CEO

By:   
William C. Meier, Assistant Secretary

Matchmaker.com, Inc.  
a Delaware corporation

By:   
Christopher J. Daly, President/CEO

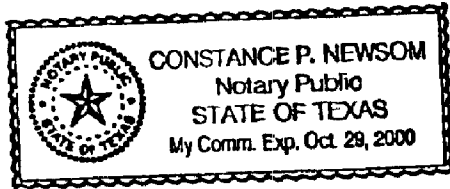
By:   
William C. Meier, Assistant Secretary

State of Texas §

County of Tarrant §

Before me, a Notary Public, on this day personally appeared **Christopher J. Daly**, President/CEO of Matchmaker.com, Inc., a Texas corporation, known to me to be the person and officer whose name is subscribed to the foregoing document and being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 14<sup>th</sup> day of January, 2000.



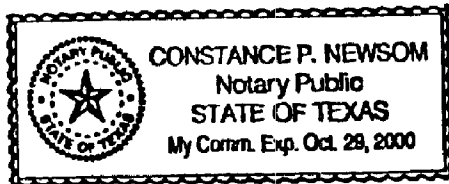
Constance P. Newsom  
Notary Public in and for the State of  
Texas

State of Texas §

County of Tarrant §

Before me, a Notary Public, on this day personally appeared **Christopher J. Daly**, President/CEO of Matchmaker.com, Inc., a Delaware corporation, known to me to be the person and officer whose name is subscribed to the foregoing document and being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 14<sup>th</sup> day of January, 2000.



Constance P. Newsom  
Notary Public in and for the State of  
Texas

**EXHIBIT A**



F. 02/13

**ACTION BY UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF**

**Matchmaker.com, Inc.**

**(a Texas corporation)**

**July 15, 1999**

In accordance with Article 9.10.B of the TEXAS Business Corporation Act and the corporation's Bylaws, the undersigned, constituting all of the directors of this corporation, hereby adopt the following resolutions effective as of the date first set forth above:

**I. SERIES A PROCEEDS**

**RESOLVED:** That in accordance with Section 6(f) of this corporation's Investors' Rights Agreement, dated February 19, 1999, Board of Directors hereby authorizes the officers of this corporation to withdraw an additional \$1.0 million of the proceeds from the sale and issuance of the corporation's Series A Preferred Stock.

**II. ELECTION OF OFFICER**

**RESOLVED:** That the Chris Daly is elected as President and CEO of this corporation to serve until his successor is duly elected and qualified.

**III. FISCAL AFFAIRS**

**RESOLVED:** That Chris Daly is, authorized (a) to open, maintain and close general and special accounts with Bank of America; (b) to cause to be deposited, from time to time in such accounts with such depository, such funds of the corporation as he deems necessary or advisable, and to designate or change the designation of the officer or officers or agent or agents of the corporation authorized to make such deposits and to endorse checks, drafts and other instruments for deposit and (c) to designate, change or revoke the designation, from time to time, of the officer or officers or agent or agents of the corporation authorized to sign or countersign checks, drafts, or other orders for the payment of money issued in the name of the corporation against any funds deposited in any of such accounts.

**IV. SHAREHOLDER MEETING**

**RESOLVED:** That the officers of the corporation are authorized to prepare and give notice to the shareholders of this corporation as of the record date hereafter determined of the Shareholder Meeting ("Meeting") to be held at the principal office of the corporation at 2350 Airport Freeway, Suite 150, Bedford, Texas 76022 on Saturday, August 28, 1999 at 11 a.m. local time, and at any adjournments thereof.

**RESOLVED FURTHER:** That for the purpose of establishing those shareholders who may vote their shares at the Meeting, the record date of the Meeting shall be the close of business on July 15, 1999.

**RESOLVED FURTHER:** That such Notice of Meeting shall set forth the following purpose at the Meeting: To approve the reincorporation of Matchmaker.com, Inc. from Texas to Delaware.

**RESOLVED FURTHER:** That the officers of this corporation are hereby authorized and directed to prepare and cause to be sent to the shareholders of record a Notice of Meeting of Shareholders and to take such actions as are reasonable and necessary to comply with such laws and regulations and to carry out the intent of the foregoing resolutions.

## V. DELAWARE REINCORPORATION

### Creation of Subsidiary; Purchase of Subsidiary Stock

**RESOLVED:** That the officers of the corporation are hereby authorized, directed and empowered to incorporate a wholly-owned subsidiary of the corporation (the "Subsidiary") in the State of Delaware having the Certificate of Incorporation and Bylaws in substantially the form previously delivered to each director.

**RESOLVED FURTHER:** That the Subsidiary's Certificate of Incorporation shall provide for 44,000,000 shares of authorized Common Stock, \$0.002 par value, and 6,000,000 shares of authorized Preferred Stock, \$0.002 par value, all of which shall be designated Series A Preferred Stock.

**RESOLVED FURTHER:** That the Certificate of Incorporation of Subsidiary shall provide, among other things, that there shall be no cumulative voting rights for stockholders, and that the holders of Series A Preferred Stock shall be entitled to elect three directors, voting as a single class, that the holders of Common Stock shall be entitled to elect three directors, voting as a single class, and that the holders of Common Stock and Series A Preferred Stock, voting as a single class, shall be entitled to elect one director.

**RESOLVED FURTHER:** That the corporation is hereby authorized and directed to purchase 1,000 shares of the Subsidiary's Common Stock, \$0.002 par value, at a purchase price of \$0.01 per share payable in cash.

### Merger of the Corporation with and into Subsidiary

**RESOLVED:** That it is deemed advisable and in the best interests of the corporation and its shareholders, in order to effect the reincorporation of the corporation into the State of Delaware, that the Subsidiary acquire all of the assets and assume all of the liabilities of the corporation in a merger (the "Reincorporation") of the corporation with and into the Subsidiary, in which the Subsidiary shall be the surviving corporation.

**RESOLVED FURTHER:** That, subject to shareholder approval of the Reincorporation, the Certificate of Incorporation and Bylaws of Subsidiary, in substantially the form previously delivered to each director, are hereby adopted and approved as the Certificate of Incorporation and Bylaws of the surviving corporation in the Reincorporation to be effective at the effective time of the Reincorporation.

**RESOLVED FURTHER:** That the officers of the corporation are hereby authorized, directed and empowered to effect the Reincorporation upon such terms and conditions as are set forth in the Agreement and Plan of Merger (the "Merger Agreement") in substantially the form previously delivered to each director.

**RESOLVED FURTHER:** That the Merger Agreement shall provide that, at the effective time of the Reincorporation (the "Effective Time"), each outstanding and unexercised option, warrant and other right to purchase shares of capital stock of the corporation shall be assumed and shall become an option, warrant or right to purchase one (1) of a like number and type of shares of the capital stock of the Subsidiary at a like exercise price and each existing and effective employee stock benefit plan of the corporation shall similarly be assumed by the Subsidiary as the surviving corporation at the Effective Time for all intents and purposes as if the Plan, including the reservation of shares of Common Stock for issuance pursuant thereto, had been originally adopted and authorized by the Subsidiary.

**RESOLVED FURTHER:** That the shareholders of record of Common Stock of the corporation at the Effective Time shall be entitled to receive one (1) share of Common Stock of the Subsidiary for each one (1) share of Common Stock of the corporation held of record by such shareholders at the Effective Time, and the shareholders of record of Preferred Stock of the corporation at the Effective Time shall be entitled to receive one (1) share of the respective series of Preferred Stock of the Subsidiary for each one (1) share of that series of Preferred Stock of the corporation held of record by such shareholders at the Effective Time.

**RESOLVED FURTHER:** That the proper officers of the corporation are hereby authorized, directed and empowered, subject to approval of the Merger Agreement by the shareholders of the corporation, to execute and deliver the Merger Agreement to the Subsidiary for and on behalf of the corporation.

**RESOLVED FURTHER:** That the officers of the corporation are hereby authorized, directed and empowered, subject to review by the Board of Directors of the Merger Agreement and its approval by the shareholders of the corporation, and further subject to review by the Board of Directors of the facts and circumstances relating to the advisability of the Reincorporation at the proposed time of such Reincorporation, to cause the Merger Agreement and any related officers' certificates or other required documents to be filed with the appropriate governmental offices of the States of Delaware and Texas in accordance with applicable laws to consummate the Reincorporation.

#### **Stockholder Approval**

**RESOLVED:** That the corporation, as the sole stockholder of the Subsidiary, shall vote the shares of the Subsidiary's Common Stock in favor of the Reincorporation.

**RESOLVED FURTHER:** That the officers of the corporation are hereby authorized, directed and empowered, for and on behalf of the corporation, to solicit its shareholders for their approval of the Reincorporation.

### **Qualifications to do Business**

**RESOLVED:** That the officers of the corporation are hereby authorized, directed and empowered to assist the Subsidiary in any reasonable manner in causing the Subsidiary to qualify to do business, in timely fashion and in accordance with applicable law, in Texas and all other states in which the corporation is currently qualified.

### **Tax Matters**

**RESOLVED:** That the Reincorporation is intended to qualify as a tax-free reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended (or any corresponding provisions of any succeeding law).

### **Assignment of Contracts; Transfer of Property**

**RESOLVED:** That the officers of the corporation are hereby authorized, directed and empowered to cause the assignment to the Subsidiary at the effective time of the Reincorporation, insofar as possible without any change in the rights and obligations attendant thereto of any person or entity, of all agreements, contracts, rights, entitlements or other arrangements (including any novation required) to which the corporation (or any subsidiary thereof, if necessary) is a party, including the giving of any and all notices of, and the obtaining of any and all consents to, such assignment to, and from, any person or entity, where such notice or consent is required for any such assignment.

**RESOLVED FURTHER:** That the officers of the corporation are hereby authorized, directed and empowered to cause the transfer to the Subsidiary of all property of any kind and all types of the corporation, whether tangible or intangible, or personal or real, in the Reincorporation.

### **Omnibus Resolutions**

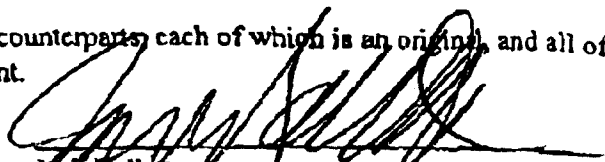

**RESOLVED:** That after the Reincorporation the business of the corporation shall be continued by the Subsidiary without interruption or alteration, including the following: (i) the employment of all persons who are employees of the corporation at the time of the Reincorporation will be continued on the same terms as they were employed by the corporation with respect to salary, benefits and type of employment (at will or pursuant to a contract) and such employees will be given credit for their length of service with the corporation as if they had worked for the Subsidiary, (ii) the Subsidiary will assume all contracts and obligations of the corporation, (iii) the Subsidiary will implement corporate policies and procedures substantially similar to those of the corporation, and (iv) all other matters that have previously been approved by the Board of Directors of the corporation and which involve ongoing programs or commitments will be continued.

**RESOLVED FURTHER:** That the officers of the corporation may, by virtue of these resolutions, execute all documents and take such action as they deem necessary in order to

accomplish the intent of the foregoing resolutions and to assure that, for all practical purposes, there is no change in the business or affairs of the corporation except with respect to its state of incorporation and such matters as are set forth in the Merger Agreement.

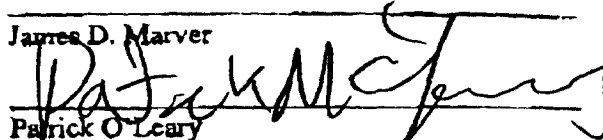
**RESOLVED FURTHER:** That the officers of the corporation are hereby authorized, directed and empowered to execute all documents and take whatever action is deemed necessary or advisable to carry out the intent and perform the obligations of the corporation as set forth in all of the resolutions above, and all actions taken by them prior hereto with such purpose are hereby ratified.

This action may be signed in one or more counterparts, each of which is an original, and all of which shall be deemed to constitute one instrument.

  
\_\_\_\_\_  
Jack Balleto  
  
\_\_\_\_\_  
William C. Meier

\_\_\_\_\_  
Ken Goldman

James D. Marver

  
\_\_\_\_\_  
Patrick O'Leary

Matchmaker.com, Inc. July 15, 1999 Board Consent Signature Page


\*\* TOTAL PAGE. 13 \*\*

This action may be signed in one or more counterparts, each of which is an original, and all of which shall be deemed to constitute one instrument.

\_\_\_\_\_  
Jack Balleto

\_\_\_\_\_  
William C. Meier

\_\_\_\_\_  
Ken Goldman

  
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James R. Marver

  
\_\_\_\_\_  
Patrick O'Leary

Matchmaker.com, Inc July 15, 1999 Board Consent Signature Page

\*\*\* TOTAL PAGES: 13 \*\*\*

P.17

Oct-26-99 10:56 WILLIAM C MEIER

TRADEMARK  
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This action may be signed in one or more counterparts, each of which is an original, and all of which shall be deemed to constitute one instrument.

\_\_\_\_\_  
Jack Balletto

\_\_\_\_\_  
William C. Meier

\_\_\_\_\_  
Ken Goldman

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James D. Marver

\_\_\_\_\_  
Patrick O'Leary

Matchmaker.com, Inc. July 15, 1999 Board Consent Signature Page



**Resolution of the Shareholders  
of Matchmaker.com, Inc.,  
a Texas Corporation**

**August 28, 1999**

"RESOLVED, that the shareholders deem it to be in the best interests of Matchmaker.com, Inc., a Texas corporation ("Matchmaker-Texas") to merge with Matchmaker.com, Inc., a Delaware corporation and wholly-owned subsidiary of Matchmaker-Texas ("Matchmaker-Delaware") (such merger being referred to as the "Merger") for the purpose of changing the state of incorporation of Matchmaker-Texas to Delaware.

FURTHER RESOLVED, that the Agreement and Plan of Merger between Matchmaker-Texas and Matchmaker-Delaware is hereby approved in substantially the form attached to these minutes, subject to such changes as may be negotiated and approved by the officers of the Company.

FURTHER RESOLVED, that the officers of Matchmaker-Texas are authorized to execute such agreements as are necessary to consummate the Merger."

I, William C. Meier, Assistant Secretary of Matchmaker.com, Inc., a Texas corporation, hereby certify that the foregoing is a full, true, and correct copy of the resolution of the Shareholders of the Corporation, duly and regularly passed and adopted at a meeting of the Shareholders duly called and held in all respects as required by law and by the Bylaws of the corporation on the 28th day of August, 1999, at which meeting a quorum of the Shareholders was present.

Executed by me as Assistant Secretary of the Corporation on this 18<sup>th</sup> day of January, 2000.

  
\_\_\_\_\_  
William C. Meier, Assistant Secretary

**EXHIBIT B**

# AGREEMENT AND PLAN OF MERGER

14 THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") dated as of January 14, 2000 is between Matchmaker.com, Inc., a Delaware corporation ("Matchmaker-Delaware") and Matchmaker.com, Inc., a Texas corporation ("Matchmaker-Texas"). Matchmaker-Delaware and Matchmaker-Texas are sometimes referred to herein as the "Constituent Corporations."

## RECITALS

A. Matchmaker-Delaware is a corporation duly organized and existing under the laws of the State of Delaware with 44,000,000 shares of authorized Common Stock, \$0.002 par value, and 6,000,000 shares of authorized Preferred Stock, all of which are designated Series A Preferred Stock. As of the date hereof, 1,000 shares of Common Stock were issued and outstanding, all of which were held by Matchmaker-Texas. No other shares were outstanding.

B. Matchmaker-Texas is a corporation duly organized and existing under the laws of the State of Texas with 44,000,000 shares of authorized Common Stock, \$0.002 par value, and 6,000,000 shares of authorized Preferred Stock, \$0.002 par value, all of which are designated Series A Preferred Stock. As of the date hereof, 11,216,667 shares of Common Stock and 5,500,000 shares of Series A Preferred Stock were issued and outstanding. No other shares were outstanding.

C. The Board of Directors of Matchmaker-Texas has determined that, for the purpose of effecting the reincorporation of Matchmaker-Texas in the State of Delaware, it is advisable and in the best interests of Matchmaker-Texas that Matchmaker-Texas merge with and into Matchmaker-Delaware upon the terms and conditions herein provided.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Matchmaker-Delaware and Matchmaker-Texas hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

### 1. MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the Texas Business Corporation Act, Matchmaker-Texas shall be merged with and into Matchmaker-Delaware (the "Merger"), the separate existence of Matchmaker-Texas shall cease and Matchmaker-Delaware shall be, and is herein sometimes referred as, the "Surviving Corporation", and the name of the Surviving Corporation shall be Matchmaker.com, Inc..

1.2 Filing and Effectiveness. The Merger shall become effective when the following actions shall have been completed:

(a) This Agreement and Merger shall have been adopted and approved by the stockholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the Texas Business Corporation Act;

**EXHIBIT C**

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(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;

(c) An executed Agreement and Plan of Merger meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and

(d) The executed Articles of Merger meeting the requirements of the Texas Business Corporation Act shall have been filed with the Secretary of State of the State of Texas.

The date and time when the Merger shall become effective, as aforesaid, is herein called the **“Effective Date of the Merger.”**

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of Matchmaker-Texas shall cease and Matchmaker-Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and Matchmaker-Texas’s Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Matchmaker-Texas in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of the debts, liabilities and obligations of Matchmaker-Delaware as constituted immediately prior to the Effective Date of the Merger and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Matchmaker-Texas in the same manner as if Matchmaker-Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the Texas Corporations Code.

## 2. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of Matchmaker-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of Matchmaker-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of Matchmaker-Texas immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

### 3. MANNER OF CONVERSION OF STOCK

3.1 Matchmaker-Texas Common Shares. Upon the Effective Date of the Merger, each share of Matchmaker-Texas Common Stock, \$0.002 par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.002 par value, of the Surviving Corporation. No fractional share interests of Surviving Corporation Common Stock shall be issued. In lieu thereof, any fractional share interests to which a holder would otherwise be entitled shall be aggregated.

#### 3.2 Matchmaker-Texas Preferred Shares.

(a) Upon the Effective Date of the Merger, each share of Series A Preferred Stock of Matchmaker-Texas, \$0.002 par value, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of Matchmaker-Texas Common Stock as set forth in the Matchmaker-Texas Articles of Incorporation, as amended, shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into or exchanged for one fully paid and nonassessable share of Series A Preferred of the Surviving Corporation, \$0.002 par value, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation, which share of Series A Preferred Stock shall be convertible into the same number of shares of the Surviving Corporation's Common Stock, \$0.002 par value, as such share of Matchmaker-Texas Series A Preferred Stock was so convertible into immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Certificate of Incorporation of the Surviving Corporation.

#### 3.3 Matchmaker-Texas Options, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of Matchmaker-Texas under, and continue, the option plans and all other employee benefit plans of Matchmaker-Texas. Each outstanding and unexercised option, other right to purchase, or security convertible into, Matchmaker-Texas Common Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase or a security convertible into the Surviving Corporation's Common Stock on the basis of one share of the Surviving Corporation's Common Stock for each one share of Matchmaker-Texas Common Stock issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such Matchmaker-Texas Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to Matchmaker-Texas Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraph 3.1 and 3.2, respectively, hereof.

(b) A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, stock purchase rights and convertible securities equal to the number of shares of Matchmaker-Texas Common Stock so reserved immediately prior to the Effective Date of the Merger.

3.4 Matchmaker-Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$0.002 par value, of Matchmaker-Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Matchmaker-Delaware, the holder of such shares or any other person, be cancelled and returned to the status of authorized but unissued shares.

3.5 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Matchmaker-Texas Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Matchmaker-Texas Common Stock or Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, respectively, into which such shares of Matchmaker-Texas Common Stock or Preferred Stock, as the case may be, were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock or Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock or Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Matchmaker-Texas so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of the Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

#### 4. GENERAL

4.1 Covenants of Matchmaker-Delaware. Matchmaker-Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of Texas.

(b) File any and all documents with the Texas Comptroller necessary for the assumption by Matchmaker-Delaware of all of the franchise tax liabilities of Matchmaker-Texas.

(c) Take such other actions as may be required by the Texas Business Corporation Act.

4.2 Further Assurances. From time to time, as and when required by Matchmaker-Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Matchmaker-Texas such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Matchmaker-Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Matchmaker-Texas and otherwise to carry out the purposes of this Agreement, and the officers and directors of Matchmaker-Delaware are fully authorized in the name and on behalf of Matchmaker-Texas or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Matchmaker-Texas or of Matchmaker-Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of Matchmaker-Texas or by the sole stockholder of Matchmaker-Delaware, or by both.

4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of any Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, DE 19801 and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

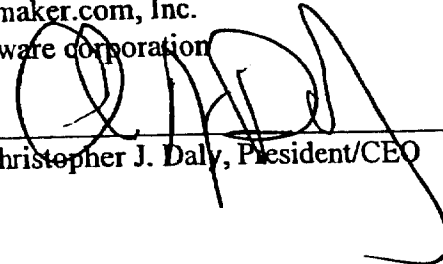
4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 2350 W. Airport Freeway, Suite 150, Bedford, Texas 76022, and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.




4.7 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the Texas Business Corporation Act.

IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Board of Directors of Matchmaker-Delaware and Matchmaker-Texas is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

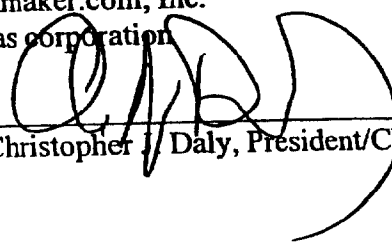
Matchmaker.com, Inc.  
a Delaware corporation

By:   
Christopher J. Daly, President/CEO


ATTEST:

  
Secretary *Assistant Secretary*

Matchmaker.com, Inc.  
a Texas corporation

By:   
Christopher J. Daly, President/CEO

ATTEST:

  
Secretary *Assistant Secretary*