

07-02-2002

Form PTO-1594

RECORDATION FORM

(Rev. 03/01)

OMB No. 0651-0027 exp. 5/31/2002

TRADEMARKS



DEPARTMENT OF COMMERCE and Trademark Office

Tab settings

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

1. Name of conveying party(ies):

Starbridge Technologies, Inc.

06/24/02

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State Delaware, 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: July 31, 2000

2. Name and address of receiving party(ies)

Name: StarGen, Inc.

Internal

Address:

Street Address: 225 Cedar Hill Street, Suite 22

City: Marlborough State: MA Zip: 01752

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

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

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

A. Trademark Application No.(s)

76/199,47

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Miriam J. Rovner, Senior Legal Assistant

Internal Address

Street Address: Goodwin Procter LLP Exchange Place

City: Boston State: MA Zip: 02109-2881

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$40.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

07-1700

(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.

Rachelle A. Kagan

Signature

June 24, 2002

Name of Person signing

Signature

Date

07/01/2002 LUPELLER 00000206 76199947

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

25

01 FC:481

40.00

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

LIBC/1548151 CPI #1703-178

TRADEMARK REEL: 002535 FRAME: 0893

Office of the Secretary of State

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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 AMENDMENT OF "STARBRIDGE TECHNOLOGIES, INC.", CHANGING ITS NAME FROM "STARBRIDGE TECHNOLOGIES, INC." TO "STARGEN, INC.", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF JULY, A.D. 2000, AT 3:15 O'CLOCK P.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

AUTHENTICATION: 0591686  
DATE: 07-31-00

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TRADEMARK

REEL: 002535 FRAME: 0894

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
STARBRIDGE TECHNOLOGIES, INC.**

StarBridge Technologies, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is StarBridge Technologies, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was February 16, 1999.
2. This Second Amended and Restated Certificate of Incorporation (the "Certificate") amends, restates and integrates the provisions of the Amended and Restated Certificate of Incorporation of the Corporation that was filed under the name StarBridge Technologies, Inc. with the Secretary of State of the State of Delaware on July 6, 1999 and was duly adopted by the Board of Directors of the Corporation in accordance with the provisions of Sections 141(f), 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL") and was duly adopted by the stockholders of the Corporation in accordance with the applicable provisions of Section 242 and 245 of the DGCL.
3. The text of the Amended and Restated Certificate of Incorporation is hereby amended and restated in its entirety to provide as herein set forth in full.

**ARTICLE I**

**NAME**

The name of the Corporation is StarGen, Inc.

**ARTICLE II**

**REGISTERED OFFICE**

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 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**

**PURPOSES**

The nature of the business or purposes to be conducted or promoted is: to engage in the business of software and hardware design, development, manufacture, sales, distribution and

licensing and to engage in computer consulting services; and to engage in any lawful act or activity for which corporations may be organized under the DGCL.

## ARTICLE IV

### CAPITAL STOCK

#### Section 1. Authorized capital stock.

The aggregate number of shares of stock which the Corporation is authorized to issue is 33,000,000 shares consisting of (i) 20,000,000 shares of Common Stock, \$.01 par value (the "Common Stock") and (ii) 6,000,000 shares of Series A Preferred Stock, \$.01 par value (the "Series A Preferred"), and (iii) 7,000,000 shares of Series B Preferred Stock, \$.01 par value (the "Series B Preferred," and together with the Series A Preferred, the "Preferred Stock"). The relative rights, preferences and privileges of the common stock and the Preferred Stock are set forth below.

#### Section 2. Definitions.

For purposes of this Certificate the following definitions shall apply and shall be equally applicable to both the singular and plural forms of the defined terms:

2.1 "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after the filing of this Certificate, other than:

- A. shares of Common Stock issuable upon conversion of the Series A Preferred or the Series B Preferred;
- B. shares of Common Stock (i) issued to certain employees, directors, officers, consultants or agents of the Corporation pursuant to stock-based compensation plans approved by the Board or issuable upon exercise of stock options or stock awards granted to such employees, directors, officers, consultants or agents pursuant to stock-based compensation plans approved by the Board or (ii) issued in any registered public offering; and
- C. shares of Common Stock issued or issuable by way of stock split or stock dividend.

2.2 "Affiliate" shall mean any Person which directly or indirectly controls, is controlled by or is under common control with, the indicated Person. For the purposes of this definition, "control" has the meaning specified as of the date hereof for that word in Rule 405 promulgated by the United States Securities and Exchange Commission under the Securities Act of 1933, as amended.

2.3 "Board" shall mean the Board of Directors of the Corporation.

2.4 "Common Stock Dividend" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.

2.5 "Common Stock Directors" shall mean the directors of the Corporation elected by the holders of the Common Stock, voting separately as a class, pursuant to Section 3.2(A) below.

2.6 "Conversion Price" when used in reference to the Preferred Stock, shall have the meanings set forth in Section 7.1 below.

2.7 "Conversion Rights" shall have the meaning set forth in Section 7 below.

2.8 "Conversion Stock" shall mean the Common Stock into which the Preferred Stock is convertible and the Common Stock issued upon such conversion.

2.9 "Convertible Securities" shall mean evidences of indebtedness, shares of stock or other securities which are at any time, directly or indirectly, convertible into or exchangeable for Additional Shares of Common Stock.

2.10 "Dividend Rate" shall mean \$0.10 per share per annum for the Series A Preferred, appropriately adjusted for any stock split, combination or other recapitalization affecting the Series A Preferred and dividends on such stock payable in shares of Series A Preferred or Common Stock which occur after the Original Issue Date and \$.31 per share per annum for the Series B Preferred, appropriately adjusted for any stock split, combination or other recapitalization affecting the Series B Preferred and dividends on such stock payable in shares of Series B Preferred or Common Stock which occur after the Original Issue Date.

2.11 "Effective Price" shall mean the price per share for Additional Shares of Common Stock determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under Sections 7.7 and 7.8, into the aggregate consideration received, or deemed to have been received by the Corporation for such issue or sale under such Sections 7.7 and 7.8, for such Additional Shares of Common Stock.

2.12 "Equity Securities" shall mean any stock or similar security, including, without limitation, securities containing equity features and securities containing profit participation features, or any security convertible or exchangeable, with or without consideration, into any stock or similar security, or any security carrying any warrant or right to subscribe to or purchase any stock or similar security, or any such warrant or right.

2.13 "Independent Director" shall mean the directors of the Corporation elected by the holders of the Preferred Stock and the Common Stock voting together pursuant to Section 3.2(A) below.

2.14 "Liquidation Price" shall mean the sum of (i) \$1.50 per share of Series A Preferred or \$4.65 per share of Series B Preferred (subject to appropriate adjustments for stock splits and other combinations in the same manner as set forth in Section 7.6) plus (ii) unpaid

dividends thereon, if declared and unpaid, to and including the date full payment shall be tendered to the holders of the Preferred Stock.

2.15 "Original Issue Date" for the Series A Preferred shall mean the date on which the first share of Series A Preferred was issued by the Corporation and for the Series B Preferred shall mean the date on which the first share of Series B Preferred is issued by the Corporation.

2.16 "Person" shall include all natural persons, corporations, business trusts, associations, limited liability companies, partnerships, joint ventures and other entities, governments, agencies and political subdivisions.

2.17 "Preferred Directors" shall mean the directors of the Corporation elected by the holders of the Preferred Stock, voting together as a single class, pursuant to Section 3.2(A).

2.18 "Purchase Agreement" shall mean the Series B Preferred Stock Purchase Agreement dated as of July \_\_, 2000 by and among the parties named therein.

2.19 "Qualified Public Offering" shall mean an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offering and sale of Common Stock for the account of the Corporation on a firm commitment basis in which the aggregate gross proceeds received by the Corporation at the public offering price equals or exceeds \$20 million (before deduction of underwriters' commissions and expenses) and the public offering price equals or exceeds \$15.00 per share of Common Stock (appropriately adjusted for subdivisions and combinations of shares of Common Stock and dividends on Common Stock payable in shares of Common Stock).

2.20 "Redemption Date" shall have the meaning set forth in Section 6.3 below.

2.21 "Redemption Notice" shall have the meaning set forth in Section 6.3 below.

2.22 "Redemption Price" shall have the meaning set forth in Section 6.2 below.

### Section 3. Voting Rights.

3.1 General. At all meetings of the stockholders of the Corporation and in the case of any actions of stockholders in lieu of a meeting, each holder of Preferred Stock shall have that number of votes on all matters submitted to the stockholders that is equal to the number of whole shares of Common Stock into which such holder's shares of Preferred Stock are then convertible, as provided in Section 7, at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of such stockholders is effected. This provision for determination of the number of votes to which each holder of the Preferred Stock is entitled shall also apply in cases in which the holders of the Preferred Stock have the right to vote together as a separate class. Except as may be otherwise provided in this Certificate, by agreement or by law, the holders of the Common Stock and the holders of the Preferred Stock shall vote together as a single class on all actions to be taken by the stockholders of the Corporation.

3.2 Election of Directors.

- A. Allocation of Board Seats. So long as at least 10% of the shares of Preferred Stock issued by the Company remain outstanding, the holders of a majority in interest of (a) the Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect three (3) directors of the Corporation (collectively the "Preferred Directors") and (b) a majority in interest of Common Stock, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation (collectively the "Common Stock Directors"). The sixth seat shall be subject to election by a majority of all of the shares voting on an as-converted basis based upon the nomination of a person with relevant business or industry experience and mutually acceptable to both the Preferred Directors and the Common Stock Directors (the "Independent Director").
- B. Quorums. At any meeting held for the purpose of electing directors, (i) the presence in person or by proxy of the holders of a majority of the aggregate number of shares of the Preferred Stock then outstanding shall constitute a quorum of the Preferred Stock for the election of Preferred Directors, (ii) the presence in person or by proxy of the holders of a majority of the aggregate number of shares of the Common Stock then outstanding shall constitute a quorum of the Common Stock for the election of the Common Stock Directors and (iii) the presence in person or by proxy of the holders of a majority of the aggregate number of shares of the Common Stock and the Preferred Stock (on an as-converted basis) then outstanding shall constitute a quorum of the Common Stock and the Preferred Stock for the election of the Independent Director.
- C. Vacancies. A vacancy in any directorship (i) elected by the holders of the Preferred Stock shall be filled only by vote of the holders of the Preferred Stock as provided above, (ii) elected by the holders of the Common Stock shall be filled only by vote of the holders of the Common Stock as provided above and (iii) elected jointly by the holders of the Common Stock and the Preferred Stock shall be filled only by vote of the holders of the Common Stock and the holders of the Preferred Stock as provided above.

3.3 Additional Class Votes by Preferred Stock. For so long as at least ten percent (10%) of the aggregate combined number of shares of Preferred Stock issued as of the Original Issue Date remain outstanding, the Corporation shall not, without the affirmative vote of sixty percent (60%) of the then outstanding shares of Preferred Stock (voting together as a separate class), with each share of Preferred Stock entitled to one vote in each instance:

- A. take any action that constitutes or results in the redemption of any share(s) of Common Stock (other than an isolated redemption, repurchase or other

acquisition for cash of shares under the provisions of the Corporation's stock option, restricted stock or other equity compensation plans or other employee, director, officer, consultant or agent agreements; provided, however, that each of the Preferred Directors shall specifically approve such plans or agreements that are entered into after the Original Issue Date); or

- B. sell, lease, license (on an exclusive basis) or otherwise dispose of all or substantially all of the assets of the Corporation or of any subsidiary of the Corporation, or sell, lease, license (on an exclusive basis) or otherwise dispose of any asset or assets, other than sales in the ordinary course of business, which would have a material effect upon the business or financial condition of the Corporation and the subsidiaries of the Corporation, taken as a whole, or consolidate with or merge into any other corporation or entity, or permit any other corporation or entity to consolidate or merge into the Corporation or any subsidiary of the Corporation, or enter into a plan of exchange with any other corporation or entity, or otherwise acquire any other corporation or entity; or
- C. take any action constituting or resulting in a liquidation, dissolution or winding up of the Corporation; or
- D. take any action that constitutes or results in a change to the authorized number of directors on the Board; or
- E. authorize a payment of a cash or stock dividend or other distribution on any class of capital stock.

3.4 Additional Class Vote of the Series A Preferred. For so long as at least ten percent (10%) of the aggregate number of shares of Series A Preferred issued as of the Original Issue Date remain outstanding, the Corporation shall not, without the affirmative vote of a majority of the outstanding shares of Series A Preferred (voting as a separate class), with each share of Series A Preferred entitled to one vote in each instance:

- A. take any action that constitutes or results in amendment or waiver of any provision of this Certificate or the Corporation's Bylaws if such amendment or waiver in any way affects, alters or changes any existing rights, preferences, privileges or provisions relating to the Series A Preferred or the holders thereof (including any reduction in the number of shares of Series A Preferred); or
- B. create (by reclassification or otherwise), authorize or issue any new class of additional shares of capital stock of the Corporation having rights, preferences or privileges senior to the Series A Preferred or ranking in parity with the Series A Preferred (including the authorization or issuance of any additional shares of Series A Preferred); or



3.5 Additional Class Vote of Series B Preferred. For so long as at least ten percent (10%) of the aggregate number of shares of Series B Preferred issued as of the Original Issue Date remain outstanding, the Corporation shall not, without the affirmative vote of a majority of the outstanding shares of Series B Preferred (voting as a separate class), with each share of Series B Preferred entitled to one vote in each instance:

- A. take any action that constitutes or results in amendment or waiver of any provision of this Certificate or the Corporation's Bylaws if such amendment or waiver in any way affects, alters or changes any existing rights, preferences, privileges or provisions relating to the Series B Preferred or the holders thereof (including any reduction in the number of shares of Series B Preferred); or
- B. create (by reclassification or otherwise), authorize or issue any new class of additional shares of capital stock of the Corporation having rights, preferences or privileges senior to the Series B Preferred or ranking in parity with the Series B Preferred (including the authorization or issuance of any additional shares of Series B Preferred); or

Section 4. Dividends.

4.1 Dividend Preference. The holders of each share of Preferred Stock then outstanding shall be entitled to receive non-cumulative dividends, out of any funds and assets of the Corporation legally available therefor, prior and in preference to any declaration or payment of any dividend payable on Common Stock of the Corporation at the annual Dividend Rate for the Series A Preferred and Series B Preferred, respectively. Dividends on the Series A Preferred and Series B Preferred shall be on a pari passu basis. Such non-cumulative dividends shall be payable if, as and when declared by the Board.

4.2 Other Dividends. Except as set forth in Section 4.1 above, no dividend or other distribution shall accrue or be paid with respect to any shares of capital stock of the Corporation for any period, whether before or after the effective date of this Certificate, unless and until (i) declared by the Board and (ii) approved by the holders of the Preferred Stock in accordance with Section 3.3.E above. No dividends shall be paid without the unanimous consent of the Board.

4.3 Non-Cash Dividends. Whenever a dividend provided for in this Section 4 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board.

4.4 Payments on Conversion. If the Corporation shall have accrued but unpaid dividends with respect to any shares of Preferred Stock upon its conversion as provided in Section 7, then all such accrued but unpaid dividends on such converted shares shall be either paid as cash or converted into additional shares of Common Stock at the applicable Conversion Price, at the election of the holder.

## Section 5. Liquidation Rights.

5.1 Preference of Preferred Stock. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether such assets are capital, surplus, or earnings, before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock, an amount equal to the Liquidation Price with respect to such liquidation, dissolution or winding up, and the holders of the Preferred Stock shall not be entitled to any further payment. If, upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed to the holders of any class of the Preferred Stock shall be insufficient to permit the payment to such stockholders of the full preferential amounts aforesaid, then all of the assets of the Corporation shall be distributed ratably, on a pari passu basis between the holders of the Series A Preferred and Series B Preferred, to the holders of the Preferred Stock on the basis of the full liquidation preference payable with respect to such Preferred Stock if such liquidation preference was paid in full.

5.2 Reorganization; Sale of Assets. The merger, acquisition or consolidation of the Corporation into or with any other entity or entities which results in the exchange of outstanding shares of the Corporation for securities or other consideration issued or paid or caused to be issued or paid by any such entity or Affiliate thereof pursuant to which the stockholders of the Corporation immediately prior to the transaction do not own a majority of the outstanding shares of the surviving corporation immediately after the transaction, or any sale, lease, license (on an exclusive basis) or transfer by the Corporation of all or substantially all its assets, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of the provisions of this Section 5 and the consideration to be received by the stockholders of the Corporation shall be apportioned as though first received by the Corporation and then distributed in liquidation thereof.

5.3 Notice. Written notice of such liquidation, dissolution or winding up, stating a payment date and the place where said payments shall be made, shall be given by mail, postage prepaid, or by telex to non-U.S. residents, not less than twenty (20) days prior to the payment date stated therein, to the holders of record of Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

5.4 Determination of Consideration. To the extent any distribution pursuant to Section 5.1 or Section 5.2 consists of property other than cash, the value thereof shall, for purposes of Section 5.1 or Section 5.2, be the fair value at the time of such distributions as determined in good faith by the Board.

5.5 Conversion Prior to Liquidating Distributions. Any holder of the Preferred Stock may, at his, her or its option, convert all or a portion of such shares into Common Stock upon a liquidation, dissolution or winding up of the Corporation and thereby receive distributions with the holders of the Common Stock in lieu of receiving distributions with the holders of the Preferred Stock.

## Section 6. Redemption Rights.

6.1 Scheduled Redemptions. To the extent the Corporation shall have funds legally available for such payments, the Corporation shall offer to redeem one-half of all of the outstanding shares of Preferred Stock on June 30, 2005 and the remaining outstanding shares of Preferred Stock on June 30, 2006. The shares to be redeemed shall be determined pro rata among the holders of shares of the Series A Preferred and Series B Preferred, and on a pari passu basis among both series of Preferred Stock. The Corporation's obligation to redeem the Preferred Stock pursuant to this Section 6 shall not otherwise be affected by such a deferral, and the redemption rights described in this Section 6 shall be cumulative. The holder of Preferred Stock may accept or reject the redemption offer at each Redemption Date.

If the Corporation shall fail to discharge all or any part of any scheduled redemption obligation pursuant to this subsection 6.1 because of insufficient funds or because of state law restrictions on such redemption, the entire amount legally available for the payment of such obligation shall be used to offer to and redeem the shares of the holders of the Preferred Stock ratably in proportion to the full number of shares which they would otherwise be entitled to have redeemed, and the balance of such redemption obligation shall be discharged as soon as the Corporation shall have funds legally available to permit such redemption, at which time the Board shall promptly fix a date for such redemption and so notify the holders of such shares in writing.

6.2 Price. The redemption price of the Series A Preferred (the "Series A Redemption Price") shall be an amount per share equal to \$1.77 in the case of the first scheduled redemption date and \$1.94 in the case of the second scheduled redemption date, plus, in each case, all accrued and unpaid dividends thereon, to and including the applicable Redemption Date (as hereinafter defined). The Redemption Price of the Series B Preferred (the "Series B Redemption Price") shall be an amount per share equal to \$5.00 in the case of the first scheduled Redemption Date and \$5.50 in the case of the second scheduled Redemption Date. (The Series A Redemption Price and the Series B Redemption Price shall be referred to as the "Redemption Price.") The Redemption Price shall be subject to adjustment as provided in Sections 6.6 and 6.7 hereof, and shall be subject to a 10% increase each year that the redemption obligation is deferred under Section 6.1 above.

6.3 Redemption Notice. The Corporation shall, not less than thirty (30) days or more than sixty (60) days prior to the date fixed for redemption ("Redemption Date"), mail written notice ("Redemption Notice"), postage prepaid, to each holder of shares of record of Preferred Stock to be redeemed, at such holder's post office address last shown on the records of the Corporation. The Redemption Notice shall state:

- A. the total number of shares of each class of Preferred Stock which the Corporation is required to offer to redeem;
- B. the number of shares of each class of Preferred Stock held by the holder which the Corporation intends to offer to redeem;

- C. the Redemption Date and applicable Redemption Price; and
- D. the time, place and manner in which the holder may elect to surrender to the Corporation the certificate or certificates representing the shares of Preferred Stock to be redeemed.

6.4 Surrender of Stock. On or before the Redemption Date, each holder of Preferred Stock electing to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares represented by such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

6.5 Termination of Rights. If the Redemption Notice is duly given, and if, on or prior to the Redemption Date, the holders of the Preferred Stock elect to have her, his or its shares redeemed and the Redemption Price is either paid or made available for payment, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption have not been surrendered, all rights with respect to such shares shall forthwith after the Redemption Date cease and determine, except only (i) the right of the holders to receive the Redemption Price without interest upon surrender of their certificates therefor, (ii) the right to receive Common Stock upon exercise of the conversion rights as provided in Section 7 hereof on or prior to the Redemption Date or (iii) the right to defer redemption as provided in Section 6.1.

6.6 Adjustment for Stock Splits and Combinations. If the Corporation at any time or from time to time after the Commitment Date for the Preferred Stock effects a subdivision of the outstanding shares of such Preferred Stock, the Redemption Price for the applicable series of Preferred Stock then in effect immediately before the subdivision shall be proportionately decreased, and conversely, if the Corporation at any time or from time to time after the Commitment Date for the Preferred Stock combines the outstanding shares of such Preferred Stock into a smaller number of shares, the Redemption Price for the applicable series of Preferred Stock then in effect immediately before the combination shall be proportionately increased. Any adjustment under this subdivision 6.6 shall become effective at the close of business on the date the subdivision or combination becomes effective.

6.7 Adjustment for Certain Dividends and Distributions. If the Corporation at any time or from time to time after the Commitment Date makes or issues or fixes a record date for the determination of holders of shares of the Preferred Stock entitled to receive, a dividend or other distribution payable in additional shares of such series of Preferred Stock, then and in each such event the Redemption Price for the Preferred Stock then in effect shall be decreased as of the time of such issuances or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Redemption Price for such series of Preferred Stock then in effect by a fraction (1) the numerator of which is the total number of shares of Preferred Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which shall be the total number of shares of the

Preferred Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Preferred Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Redemption Price for the Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Redemption Price for the Preferred Stock shall be adjusted pursuant to this subsection 6.7 as of the time of actual payment of such dividends or distributions.

6.8 Other Redemptions. Other than the scheduled redemptions provided for in Section 6.1, the Corporation shall not, without the prior approval of a majority of the Board (including the affirmative vote of the Preferred Directors), purchase or set aside any sums for the purchase of shares of Common Stock, except for the purchase of Common Stock from former employees, directors, officers, consultants or agents of the Corporation who acquired such shares directly from the Corporation, if (i) such purchase is made pursuant to the contractual rights held by the Corporation relating to the termination of employment of such former employee, and (ii) the purchase price does not exceed the original issue price paid by such former employee, director, officer, consultant or agent agreements to the Corporation.

Section 7. Conversion. The holders of the Preferred Stock shall have the following conversion rights (the "Conversion Rights"):

7.1 Optional Conversion of the Series A and Series B Preferred.

- A. The Series A Preferred shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the first issuance of shares of Series A Preferred by the Corporation, at the office of the Corporation or any transfer agent for the Common Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.00 by the Conversion Price, determined as hereinafter provided, in effect at the time of conversion and then multiplying such quotient by each share of Series A Preferred to be converted. The Conversion Price at which shares of Common Stock shall be deliverable upon conversion without the payment of any additional consideration by the holder thereof (the "Series A Conversion Price") shall at the time of the filing of this Certificate initially be \$1.00 in the case of the Series A Preferred. Such initial Conversion Price shall be subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series A Preferred is convertible, as hereinafter provided.
- B. The Series B Preferred shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the first issuance of shares of Series B Preferred by the Corporation, at the office of the Corporation or any transfer agent for the Common Stock, into such number of fully paid and

nonassessable shares of Common Stock as is determined by dividing \$3.10 by the Conversion Price, determined as hereinafter provided, in effect at the time of conversion and then multiplying such quotient by each share of Series B Preferred to be converted. The Conversion Price at which shares of Common Stock shall be deliverable upon conversion without the payment of any additional consideration by the holder thereof (the "Series B Conversion Price") shall at the time of the filing of this Certificate initially be \$3.10 in the case of the Series B Preferred. Such initial Conversion Price shall be subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series B Preferred is convertible, as hereinafter provided. The Series A Conversion Price and the Series B Conversion Price shall be referred to collectively as the "Conversion Price."

7.2 Automatic Conversion of the Preferred Stock. If at any time (a) the Corporation shall complete a Qualified Public Offering or (b) the holders of at least sixty percent (60%) of the outstanding Preferred Stock shall consent in writing to the conversion of the Preferred Stock into shares of Common Stock, then effective upon (x) the closing of the sale of such shares by the Corporation pursuant to such Qualified Public Offering or (y) such vote of the holders of the Preferred Stock, as the case may be, all outstanding shares of Preferred Stock shall automatically convert into shares of Common Stock at the then applicable Conversion Price.

7.3 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional share to which any holder would otherwise be entitled upon conversion of some or all of the Preferred Stock owned by such holder, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price.

7.4 Mechanics of Optional Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, such holder shall surrender the certificate or certificates therefor, endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by such holder's attorney duly authorized in writing, at the office of the Corporation or of any transfer agent for the Common Stock, and shall give at least five (5) days' prior written notice to the Corporation at such office that such holder elects to convert the same and shall state therein such holder's name or the name of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to such holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. From and after such date, all rights of the holder with respect to the Preferred Stock so converted shall terminate, except only the right of such holder, upon the

surrender of his, her or its certificate or certificates therefor, to receive certificates for the number of shares of Common Stock issuable upon conversion thereof and cash for fractional shares.

**7.5 Mechanics of Automatic Conversion.** All holders of record of shares of Preferred Stock will be given at least twenty (20) days' prior written notice of the anticipated date of any automatic conversion referenced in Section 7.2 and at least three (3) days' prior written notice of the actual date of such conversion. The Corporation shall also exercise its best efforts to provide at least three (3) days' written or telephonic notice of such actual conversion date to said holders. Each such notice shall designate a place for automatic conversion of all of the shares of such Preferred Stock pursuant to Section 7.2. Such notices will be sent by mail, first class, postage prepaid to each record holder of Preferred Stock at such holder's address appearing on the Corporation's stock register, or by overnight courier service in the case of the notice prior to the actual date of conversion. On or before the date fixed for conversion, each holder of shares of Preferred Stock shall surrender such holder's certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock or other securities to which such holder is entitled. Failure to provide such notice shall not affect the validity of automatic conversion hereunder. On the date fixed for conversion, all rights with respect to the Preferred Stock will terminate, except only (i) any rights to receive declared but unpaid dividends with a record date preceding the date of conversion, and (ii) the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock or other securities into which such Preferred Stock has been converted and cash for fractional shares. 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 her, his or its attorney duly authorized in writing. All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date such certificates are so required to be surrendered, be deemed to have been retired and canceled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. As soon as practicable after the date of such automatic conversion and the surrender of the certificate or certificates for Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered to such holder, or to her, his or its written order, a certificate or certificates for the number of full shares of Common Stock or other securities issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 7.3 in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

**7.6 Certain Adjustments to Conversion Price for Stock Splits, Dividends, Mergers, Reorganizations, Etc.**

- A. Adjustment for Stock Splits, Stock Dividends and Combinations of Common Stock. In the event the outstanding shares of Common Stock shall, after the filing of this Certificate be further subdivided (split), or combined (reverse split), by reclassification or otherwise, or in the event of any dividend or other distribution payable on the Common Stock in

shares of Common Stock, the applicable Conversion Price in effect immediately prior to such subdivision, combination, dividend or other distribution shall, concurrently with the effectiveness of such subdivision, combination, dividend or other distribution, be proportionately adjusted.

B. Adjustment for Merger or Reorganization, Etc. In the event of a reclassification, reorganization or exchange (other than described in subsection 7.6.A. above) or any consolidation or merger of the Corporation with another Corporation (other than a merger, acquisition or other reorganization as defined in Section 5.2, which shall be considered a liquidation pursuant to Section 5 above), each share of Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of the Preferred Stock would have been entitled upon such reclassification, reorganization, exchange, consolidation, merger or conveyance had the conversion occurred immediately prior to the event; and, in any such case, appropriate adjustment (as determined by the Board) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth herein (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

C. Adjustments for Other Dividends and Distributions. In the event the Corporation, at any time or from time to time after the filing of this Certificate, makes, or fixes 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, provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their 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 conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 7.6 with respect to the rights or the holders of the Preferred Stock.

7.7 Adjustment to Conversion Price for Issue or Sale of Additional Shares of Common Stock. If, at any time or from time to time on or after the filing of this Certificate, the Corporation shall issue or sell Additional Shares of Common Stock for an Effective Price per share less than the applicable Series A Conversion Price or Series B Conversion Price then in



effect, then the then applicable Conversion Price of the Series A Preferred and/or Series B Preferred, as the case may be, shall be reduced to an adjusted Conversion Price (computed to the nearest cent, a half cent being treated as a full cent), as of the date of such issue or sale, by dividing (A) the sum of (i) the result obtained by multiplying the number of shares of Common Stock outstanding immediately prior to such issue or sale by the Conversion Price then in effect, and (ii) the consideration, if any, received by the Corporation upon such issue and sale, by (B) the number of shares of Common Stock outstanding immediately after such issue or sale. For purposes of adjusting the Conversion Price under this Section 7.7, Common Stock outstanding shall include all shares of Preferred Stock on an as-converted basis, not include any outstanding Convertible Securities or outstanding rights, options or warrants, except as required by the provisions of Section 7.8.

7.8 Further Provisions for Adjustment of Conversion Price. For the purpose of Section 7.7 above, the following provisions shall be applicable:

- A. Issuance or Sale of Convertible Securities. If, at any time on or after the filing of this Certificate, the Corporation shall issue or sell any Convertible Securities, there shall be determined as of the date of issue the Effective Price per share for which Additional Shares of Common Stock are issuable upon the conversion or exchange thereof, such determination to be made by dividing (X) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (Y) the maximum number of Additional Shares of Common Stock issuable upon conversion or exchange of all of such Convertible Securities; and such issue or sale shall be deemed to be an issue or sale for cash (as of the date of issue or sale of such Convertible Securities) of such maximum number of Additional Shares of Common Stock at the price per share so determined.

If such Convertible Securities shall by their terms provide for an increase or increases, with the passage of time, in the amount of additional consideration, if any, payable to the Corporation, or in the rate of exchange, upon the conversion or exchange thereof the adjusted Conversion Price shall, forthwith upon any such increase becoming effective, be readjusted to reflect the same.

If any rights of conversion or exchange evidenced by such Convertible Securities shall expire without having been exercised, any adjusted Conversion Price shall forthwith be readjusted to be the adjusted Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock issued or sold were those actually issued upon the conversion or exchange of such Convertible Securities, and that they were issued or sold for the consideration actually received by the Corporation upon such conversion

or exchange, plus the consideration, if any, actually received by the Corporation for the issue or sale of such Convertible Securities as were actually converted or exchanged.

- B. Grant of Rights, Warrants or Options for Common Stock. If, at any time on or after the filing of this Certificate, the Corporation shall grant any rights, warrants or options to subscribe for, purchase or otherwise acquire Additional Shares of Common Stock, there shall be determined as of the date of issue the Effective Price per share for which Additional Shares of Common Stock are issuable upon the exercise of such rights, warrants or options, such determination to be made by dividing (X) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such rights, options or warrants, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights, options or warrants, by (Y) the maximum number of Additional Shares of Common Stock of the Corporation issuable upon the exercise of such rights, options or warrants; and the granting of such rights, warrants or options shall be deemed to be an issue or sale for cash (as of the date of the granting of such rights, warrants or options) of such maximum number of Additional Shares of Common Stock at the price per share so determined.

If such rights, warrants or options shall by their terms provide for an increase or increases, with the passage of time, in the amount of additional consideration payable to the Corporation upon the exercise thereof, the adjusted Conversion Price shall, forthwith upon any such increase becoming effective, be readjusted to reflect the same.

If any such rights, warrants or options shall expire without having been exercised, any adjusted Conversion Price shall forthwith be readjusted to be the adjusted Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued or sold were those actually issued or sold upon the exercise of such rights, warrants or options and that they were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights, warrants or options, whether or not exercised.

- C. Grant of Rights, Warrants or Options for Convertible Securities. If, at any time on or after the filing of this Certificate, the Corporation shall grant any rights, warrants or options to subscribe for, purchase or otherwise acquire Convertible Securities, there shall be determined as of the date of issue the Effective Price per share for which Additional Shares of Common Stock are issuable upon the exercise of such rights warrants or options for such Convertible Securities, such determination to be made by

dividing (X) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such rights, warrants or options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights, warrants or options, by (Y) the maximum number of Additional Shares of Common Stock of the Corporation issuable upon the exercise of such rights, warrants or options and the conversion or exchange of all of such Convertible Securities; and the granting of such rights, warrants or options shall be deemed to be an issue or sale for cash (as of the date of the granting of such rights, warrants or options) of such maximum number of Additional Shares of Common Stock at the price per share so determined.

If such rights, warrants or options shall by their terms provide for an increase or increases, with the passage of time, in the amount of additional consideration payable by the Corporation upon the exercise thereof, any adjusted conversion price shall, forthwith upon any such increase becoming effective, be readjusted to reflect the same.

If any such rights, warrants or options shall expire without having been exercised, the adjusted Conversion Price shall forthwith be readjusted to be the adjusted Conversion Price which would have been in effect had an adjustment been made on the basis that the only Convertible Securities so issued or sold were those actually issued or sold upon the exercise of such rights, warrants or options and that they were issued or sold for the consideration actually received by the Corporation upon such exercise plus the consideration, if any, actually received by the Corporation for the granting of all such rights, warrants or options, whether or not exercised.

- D. Determination of Consideration. Upon any issuance or sale for a consideration other than cash, or a consideration part of which is other than cash, of any Additional Shares of Common Stock or Convertible Securities or any rights, warrants or options to subscribe for, purchase or otherwise acquire any Additional Shares of Common Stock or Convertible Securities, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board. In case any Additional Shares of Common Stock or Convertible Securities or any rights, warrants or options to subscribe for, purchase or otherwise acquire any Additional Shares of Common Stock or Convertible Securities shall be issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers two or more thereof, the consideration for the issue or sale of such Additional Shares of Common Stock or Convertible Securities or such rights, warrants or options shall be deemed to be the portion of such consideration allocated thereto in good faith by the Board.

- E. Duration of Adjusted Conversion Price. Following each computation or readjustment of an adjusted Conversion Price as provided above in this Section 7, the new adjusted Conversion Price shall remain in effect until a further computation or readjustment thereof is required by this Section 7.
- F. Other Action Affecting Common Stock. In case, after the filing of this Certificate, the Corporation shall take any action affecting its shares of Common Stock, other than an action described above in this Section 7, which in the good faith opinion of the Board would have a materially adverse effect upon the conversion rights of the Preferred Stock granted herein, the Conversion Price shall be adjusted in such manner and at such time as the Board may in good faith determine to be equitable in the circumstances.
- G. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 7, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in reasonable detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request, at any time, of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth: (i) such adjustments and readjustments; (ii) the applicable Conversion Price at the time in effect; and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Preferred Stock.

7.9 Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is the same as cash dividends paid in previous quarters) or other distribution, any capital reorganization of the Corporation, any reclassification or recapitalization of the Corporation's capital stock, any consolidation or merger with or into another Corporation, any transfer of all or substantially all of the assets of the Corporation or any dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Preferred Stock at least ten (10) days prior to the date specified for the taking of a record, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

7.10 Common Stock Reserved. The Corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect (a) conversion of the Series A Preferred and Series B Preferred and (b) issuance of Common Stock pursuant to any outstanding option, warrant or other rights to acquire Common Stock.

7.11 Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock, other than any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered.

## ARTICLE V

### STOCKHOLDER ACTION

Any action required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders or by a written consent of stockholders entitled to vote thereto in lieu thereof.

## ARTICLE VI

### DIRECTORS

#### Section 1. General.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided herein or required by law.

#### Section 2. Election of Directors.

Election of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

#### Section 3. Terms of Directors.

The number of directors of the Corporation shall be fixed by resolution duly adopted from time to time by the Board of Directors.

At each annual meeting of stockholders, the successor or successors of the directors whose term expires at that meeting shall be elected by a plurality of the votes of the shares present in person or represented by proxy at such meeting and entitled to vote on the election of directors, and shall hold office for a term expiring at the next annual meeting of stockholders. The directors elected shall hold office until their successors are duly elected and qualified or until their earlier resignation or removal.

Notwithstanding the foregoing, whenever, pursuant to the provisions of Article IV of this Certificate, the holders of any one or more series of preferred stock shall have the right, voting separately as a series or together with holders of other such series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate and any certificates of designation applicable thereto.

Section 4. Vacancies.

Subject to the rights, if any, of the holders of any series of preferred stock to elect directors and to fill vacancies in the Board of Directors relating thereto, any and all vacancies in the Board of Directors, however occurring, including, without limitation, by reason of an increase in size of the Board of Directors, or the death, resignation, disqualification or removal of a director, shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum of the Board of Directors. Any director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term in which the new directorship was created or the vacancy occurred and until such director's successor shall have been duly elected and qualified or until his or her earlier resignation or removal. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board of Directors until the vacancy is filled.

Section 5. Removal.

Subject to the rights, if any, of any series of preferred stock to elect directors and to remove any director whom the holders of any such stock have the right to elect, any director (including persons elected by directors to fill vacancies in the Board of Directors) may be removed from office (a) only with cause and (b) only by the affirmative vote of the holders of two-thirds of the shares then entitled to vote at an election of directors. At least 30 days prior to any meeting of stockholders at which it is proposed that any director be removed from office, written notice of such proposed removal shall be sent to the director whose removal will be considered at the meeting.

ARTICLE VII

LIMITATION OF LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL or (d) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended after the effective date of this Certificate to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any repeal or modification of this Article VII by either of (i) the stockholders of the Corporation or (ii) an amendment to the DGCL, shall not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring before such repeal or modification of a person serving as a director at the time of such repeal or modification

## ARTICLE VIII

### AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend or repeal this Certificate in the manner now or hereafter prescribed by statute and this Certificate, and all rights conferred upon stockholders herein are granted subject to this reservation. No amendment or repeal of this shall be made unless the same is first approved by the Board of Directors pursuant to a resolution adopted by the Board of Directors in accordance with Section 242 of the DGCL, and, except as otherwise provided by law, thereafter approved by the stockholders. Whenever any vote of the holders of voting stock is required to amend or repeal any provision of this Certificate, and in addition to any other vote of the holders of voting stock that is required by this Certificate or by law, the affirmative vote of a majority of the outstanding shares entitled to vote on such amendment or repeal, and the affirmative vote of a majority of the outstanding shares of each class entitled to vote thereon as a class, shall be required to amend or repeal any provision of this Certificate; provided, however, that the affirmative vote of not less than two-thirds of the outstanding shares entitled to vote on such amendment or repeal, and the affirmative vote of not less than two-thirds of the outstanding shares of each class entitled to vote thereon as a class, shall be required to amend or repeal any of the provisions of Article V, Article VI, Article VII or Article VIII of this Certificate.

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I, Tracy Richardson, President, Treasurer and Secretary of the Corporation, for the purpose of amending and restating the Corporation's Amended and Restated Certificate of Incorporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed on behalf of the Corporation this 31<sup>st</sup> day of July, 2000.



Tracy Richardson  
President, Treasurer and Secretary

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Office of the Secretary of State

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "STARGEN, 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 THIRTY-FIRST DAY OF JULY, A.D. 2000.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.



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

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Edward J. Freel, Secretary of State

AUTHENTICATION: 0591746

DATE: 07-31-00

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TRADEMARK

REEL: 002535 FRAME: 0917