

FORM PTO 1594
(Rev. 6-93)

11-25-2002

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

OMB No. 0651-0011 (exp. 4/94)



11-20-02

To the Honorable Co

ie attached original documents or copy thereof.

102292826

1. Name of conveying party(ies):
Gander Mountain, L.L.C.

- Individual(s)
 - General Partnership
 - Corporation
 - Other Delaware Limited Liability Company
- Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Gander Mountain Company

- Street Address: 4567 West 80th Street
City: Bloomington State: MN ZIP: 55437
- Individual(s)
 - Association
 - General Partnership
 - Limited Partnership
 - Corporation Delaware
 - Other

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Conversion and Change of Name
- Merger
- Change of Name

Execution Date: December 31, 2000

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 patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s): 1,309,488

Additional numbers attached? Yes No

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

Name: Travis L. Bachman

Internal Address: Dorsey & Whitney LLP

Street Address: Suite 1500, 50 South Sixth Street

City: Minneapolis State: MN ZIP: 55402-1498

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:
04-1420

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

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2002 NOV 23 AM 10:21
FINANCE SECTION

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.

Travis L. Bachman
Name of person Signing

Signature

November 15, 2002
Date

Total number of pages comprising cover sheet: 1

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

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

11/22/2002 TDIAZI 00000238 1309488

01 FC:8521

40.00 DP

BOX ASSIGNMENT
Director - U.S. Patent and Trademark Office
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE LIMITED LIABILITY COMPANY UNDER THE NAME OF "GANDER MOUNTAIN, L.L.C." TO A DELAWARE CORPORATION, CHANGING ITS NAME FROM "GANDER MOUNTAIN, L.L.C." TO "GANDER MOUNTAIN COMPANY", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF DECEMBER, A.D. 2000, AT 12:35 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CONVERSION IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2000.



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

Edward J. Freel, Secretary of State

2689111 8100V

AUTHENTICATION: 0882963

001653368

DATE: 12-28-00

TRADEMARK
REEL: 002621 FRAME: 0243

FROM RICHARDS, LAYTON & FINGER #10

(THU) 12. 28 '00 12:45 / ST. 12:44 AM '00 12:35 PM 12/28/2000
STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 12:35 PM 12/28/2000
001653368 - 2689111


**CERTIFICATE OF CONVERSION
FROM A LIMITED LIABILITY COMPANY TO A
CORPORATION PURSUANT TO SECTION 265 OF
THE DELAWARE GENERAL CORPORATION LAW
AND SECTION 18-216 OF THE DELAWARE
LIMITED LIABILITY COMPANY ACT**

The undersigned certifies on behalf of Gander Mountain, L.L.C. as follows:

1. The date on which the limited liability company was first formed is November 27, 1996.
2. Gander Mountain, L.L.C. is a Delaware limited liability company.
3. The name of the limited liability company immediately prior to the filing of this Certificate is Gander Mountain, L.L.C.
4. The name of the corporation as set forth in its Certificate of Incorporation filed in accordance with Section 265(b) is Gander Mountain Company.
5. The conversion shall be effective at 12:01 a.m., local time, Minneapolis, Minnesota, on December 31, 2000.

IN WITNESS WHEREOF, this Certificate has been executed this 28th day of December, 2000.

Gander Mountain, L.L.C.

By: 
Stephen E. Watson, President
and Chief Executive Officer

M1:695814.01

TRADEMARK

REEL: 002621 FRAME: 0244

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "GANDER MOUNTAIN COMPANY" FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF DECEMBER, A.D. 2000, AT 12:35 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF INCORPORATION IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2000.



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

Edward J. Freel, Secretary of State

2689111 8100V

AUTHENTICATION: 0882963

001653368

DATE: 12-28-00

TRADEMARK
REEL: 002621 FRAME: 0245

**CERTIFICATE OF INCORPORATION
OF
GANDER MOUNTAIN COMPANY**

THE UNDERSIGNED, for the purpose of forming a corporation under the laws of the State of Delaware, does make, file and record this Certificate, and does certify that the facts herein stated are true:

FIRST: The name of the Corporation is GANDER MOUNTAIN COMPANY.

SECOND: The name and address of the Corporation's registered agent for service of process in the State of Delaware is, until changed by the Board of Directors of the Corporation in their sole discretion and in accordance with applicable law, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

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

FOURTH: The authorized capital stock of the Corporation shall be as follows:

A. AUTHORIZED CAPITAL STOCK.

1.1 General.

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 1,684,725, consisting solely of:

50,000 shares of Class A Nonvoting Convertible Preferred Stock, \$.01 par value per share (the "Class A Nonvoting Convertible Preferred Stock");

34,725 shares of Class B Voting Convertible Preferred Stock, \$.01 par value per share (the "Class B Voting Convertible Preferred Stock");

1,000,000 shares of Class A Voting Common Stock, \$.01 par value per share (the "Class A Voting Common Stock");

100,000 shares of Class B Nonvoting Common Stock, \$.01 par value per share (the "Class B Nonvoting Common Stock"); and

500,000 preferred shares, par value \$.01 per share, undesignated as to series or class (the "Undesignated Preferred Stock").

The shares of Class A Nonvoting Convertible Preferred Stock and Class B Voting Convertible Preferred Stock are referred to herein collectively as "Preferred Stock;" except as otherwise provided in Section E.1.3.11 below of this Article FOURTH, the Class A Voting Common Stock and Class B Nonvoting Common Stock are referred to herein collectively as the "Common Stock;" and the Preferred Stock, the Undesignated Preferred Stock and the Common Stock are referred to herein collectively as the "capital stock."

1.2 Authority Relative to Undesignated Preferred Stock. Authority is hereby expressly vested in the Board of Directors of the Corporation, subject to the provisions of this Article FOURTH and to limitations prescribed by law, to authorize the issuance from time to time of one or more series of Undesignated Preferred Stock and, with respect to each such series, to determine or fix, by resolution or resolutions adopted by the Board of Directors providing for the issue of such series, the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof, including, without limitation, the determination or fixing of the rates of and terms and conditions upon which any dividends shall be payable on such series, any terms under or conditions on which the shares of such series may be redeemed, any provisions made for the conversion or exchange of the shares of such series for shares of any other class or classes or of any other series of the same or any other class or classes of the Corporation's capital stock, and any rights of the holders of the shares of such series upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

The following is a statement of the designations, powers, preferences, privileges and rights, and the qualifications, limitations and restrictions thereof, in respect of each class of capital stock of the Corporation, except the Undesignated Preferred Stock.

B. VOTING PRIVILEGES.

1.1 General.

(a) Class B Voting Convertible Preferred Stock and Class A Voting Common Stock. Each holder of Class B Voting Convertible Preferred Stock and each holder of Class A Voting Common Stock shall have one vote on all matters submitted to the stockholders for each share of Class B Voting Convertible Preferred Stock or Class A Voting Common Stock, as the case may be, standing in the name of such holder on the books of the Corporation. Except as otherwise provided herein, and except as otherwise required by law, the holders of shares of Class B Voting Convertible Preferred Stock and Class A Voting Common Stock shall vote as a single class on all matters submitted to the stockholders.

(b) Class A Nonvoting Convertible Preferred Stock and Class B Nonvoting Common Stock. Except as otherwise provided herein, and except as otherwise required by law, the holders of Class A Nonvoting Convertible Preferred Stock and the holders of Class B Nonvoting Common Stock, as the case may be, shall

have, with respect to such shares, no right or power to vote on any question or in any proceeding, or to be represented at, or to receive notice of, any meeting of stockholders. When so entitled to vote, each holder of shares of Class A Nonvoting Convertible Preferred Stock or Class B Nonvoting Common Stock, as the case may be, shall have one vote on all matters submitted to such stockholders for each share of such capital stock standing in the name of such holder on the books of the Corporation.

1.2 Additional Class Votes by Preferred Stock. Without the affirmative vote or written consent of the holders (acting together as a class) of a majority of the shares of Preferred Stock at the time outstanding, the Corporation shall not:

(a) authorize or issue any additional shares of Preferred Stock, or any shares of stock having priority over Preferred Stock or ranking on a parity therewith as to the payment or distribution of assets upon the liquidation, dissolution or winding up, voluntary or involuntary, of the Corporation; or

(b) amend the Certificate of Incorporation of the Corporation so as to alter any existing provision relating to Preferred Stock or the holders thereof or waive any of the rights granted to the holders of the Preferred Stock by the Certificate of Incorporation of the Corporation; or

(c) sell, lease, license or otherwise dispose of all or substantially all of the assets of the Corporation or of any subsidiary of the Corporation, or any asset or assets which have a material effect upon the business or financial condition of the Corporation or any subsidiary of the Corporation, nor shall the Corporation or any subsidiary of the Corporation 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.

1.3 No Cumulative Voting. No holder of shares of capital stock of the Corporation shall have any cumulative voting rights.

C. NO PREEMPTIVE RIGHTS.

No holder of shares of any class of capital stock of the Corporation shall be entitled as such, as a matter of right, to subscribe for, purchase or receive any part of any new or additional issue of stock of any class whatsoever, or of securities convertible into or exchangeable for any stock of any class whatsoever, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

D. OTHER TERMS OF THE COMMON STOCK.

1.1 Ratable Treatment. Except as specifically otherwise provided with respect to voting rights in Section B.1.1 above of this Article FOURTH, all shares of Common

Stock shall be identical and shall entitle the holders thereof to the same rights and privileges. The Corporation shall not subdivide or combine any shares of Common Stock, or pay any dividend or retire any share or make any other distribution on any share of Common Stock, or accord any other payment, benefit or preference to any share of Common Stock, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all shares of Common Stock. If dividends are declared that are payable in shares of Common Stock, such dividends shall be payable in shares of Class A Voting Common Stock to holders of Class A Voting Common Stock and in shares of Class B Nonvoting Common Stock to holders of Class B Nonvoting Common Stock.

1.2 Dividends. Subject to the rights of holders of Preferred Stock, the holders of Common Stock shall be entitled to dividends when, as and if declared by the Board of Directors of the Corporation in respect of Common Stock, and, upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, to ratably share in the assets of the Corporation available for distribution to the holders of Common Stock. Dividends on shares of Common Stock shall be payable only out of funds legally available therefor.

1.3 Conversion of Class B Nonvoting Common Stock into Class A Voting Common Stock. If and when any mandatory conversion of Preferred Stock into Class A Voting Common Stock shall occur pursuant to Section E.1.4 below of this Article FOURTH in connection with the closing of a Qualified Public Offering (as defined therein), then each share of Class B Nonvoting Common Stock shall automatically be converted into one share of Class A Voting Common Stock, without any act by the Corporation or the holders of Class B Nonvoting Common Stock, concurrently with such mandatory conversion of Preferred Stock into Class A Voting Common Stock. Upon such conversion, each holder of a share of Class B Nonvoting Common stock shall immediately surrender the certificate formerly representing such share in exchange for appropriate stock certificates representing a share or shares of Class A Voting Common Stock of the Corporation. Until the surrender of a certificate representing shares of Class B Nonvoting Common Stock so converted, such certificates shall represent, from and after the conversion of such shares of Class B Nonvoting Common Stock, the shares of Class A Voting Common Stock of the Corporation into which they were converted.

1.4 Reservation of Shares. So long as any shares of Class B Nonvoting Common Stock remain outstanding, the Corporation shall reserve at all times, free from preemptive rights, out of its treasury stock (if applicable) or its authorized but unissued shares of Class A Voting Common Stock, or both, solely for the purpose of effecting the conversion of the shares of Class B Nonvoting Common Stock as contemplated hereby, sufficient shares of Class A Voting Common Stock to provide for the conversion of all outstanding shares of Class B Nonvoting Common Stock.

1.5 Valid Issuance. All shares of Class A Voting Common Stock that may be issued upon conversion of shares of Class B Nonvoting Common Stock will upon issuance by the Corporation be duly and validly issued, fully paid and nonassessable and free

from all taxes, liens and charges with respect to the issuance thereof, and the Corporation shall take no action that will cause a contrary result (including without limitation any action that would cause the par value of the Class B Nonvoting Common Stock to be less than the par value, if any, of Class A Voting Common Stock).

E. OTHER TERMS OF THE PREFERRED STOCK.

1.1 Dividends.

1.1.1 Dividend Rate on Class A Nonvoting Convertible Preferred Stock. From and after December 28, 2000, the Class A Nonvoting Convertible Preferred Stock shall be entitled to receive cumulative cash dividends at an annual rate of \$100 per share (10% per annum of \$1,000 per share of Class A Nonvoting Convertible Preferred Stock), payable annually on the last day of December in each year, commencing December 31, 2000 with respect to the twelve months then ending. Such dividend shall be determined on the basis of the actual number of days in the relevant calendar year (365 or 366 days, as the case may be) in the period for which such dividend is being determined, and shall be cumulative and compounded annually to the extent not paid pursuant hereto. Such dividend shall be subject to appropriate adjustment to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes to the Class A Nonvoting Convertible Preferred Stock hereafter effected.

1.1.2 Dividend Rate on Class B Voting Convertible Preferred Stock. From and after January 1, 1997, the Class B Voting Convertible Preferred Stock shall be entitled to receive cumulative cash dividends at an annual rate of \$80 per share (10% per annum of \$800 per share of Class B Voting Convertible Preferred Stock), payable annually on the last day of December in each year, commencing December 31, 1997 with respect to the twelve months then ending. Such dividend shall be determined on the basis of the actual number of days in the relevant calendar year (365 or 366 days, as the case may be) in the period for which such dividend is being determined, and shall be cumulative and compounded annually to the extent not paid pursuant hereto. Such dividend shall be subject to appropriate adjustment to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes to the Class B Voting Convertible Preferred Stock hereafter effected.

1.1.3 Accrual; Payments in Respect of Common Stock. Such dividends shall accrue from day to day whether or not earned or declared, and whether or not issued or outstanding (x) in the case of the Class A Nonvoting Convertible Preferred Stock with respect to the time period from December 28, 2000 to the date of the effectiveness of this Certificate of Incorporation, and (y) in the case of the Class B Voting Convertible Preferred Stock with respect to the time period from January 1, 1997 to the date of the effectiveness of this Certificate of Incorporation. Such dividends shall be payable before any dividends on any shares of Common Stock shall be declared or paid or set apart for payment, and shall be cumulative (whether or not in any annual dividend period there shall be funds of the Corporation legally available for the payment of such dividends), so that if at any time

dividends on the outstanding Preferred Stock at such rate have not been paid thereon, or funds set apart for the payment thereof, with respect to all preceding annual dividend periods, the amount of such deficiency shall be fully paid, or set apart for payment, before any distribution by way of dividend, redemption, repurchase or otherwise (other than stock dividends payable solely in Common Stock) shall be declared or paid upon, or set apart for, the shares of Common Stock or any other class of shares of the Corporation ranking junior to the Preferred Stock with respect to the payment of dividends or upon an involuntary or voluntary liquidation, dissolution or winding up of the Corporation.

1.1.4 Proportionate Dividends on Preferred Stock. No dividends shall be paid upon, or declared or set apart for, any share of Preferred Stock for any annual dividend period unless at the same time a like proportionate dividend for the same annual dividend period shall be paid upon, or declared and set apart for, all shares of Preferred Stock then issued and outstanding.

1.1.5 Legally Available Funds. Dividends on shares of Preferred Stock shall be payable only out of funds legally available therefor.

1.2 Liquidation Preference for Preferred Stock. In the event of an involuntary or voluntary liquidation, dissolution or winding up of the Corporation at any time, the holders of shares of Class A Nonvoting Convertible Preferred Stock shall be entitled to receive out of the assets of the Corporation an amount equal to \$1,000 per share (appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes to the Class A Nonvoting Convertible Preferred Stock hereafter effected), plus an amount equal to dividends unpaid and accumulated or accrued thereon, if any. In the event of an involuntary or voluntary liquidation, dissolution or winding up of the Corporation at any time, the holders of shares of Class B Voting Convertible Preferred Stock shall be entitled to receive out of the assets of the Corporation an amount equal to \$800 per share (appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes to the Class B Voting Convertible Preferred Stock hereafter effected), plus an amount equal to dividends unpaid and accumulated or accrued thereon, if any. In the event of an involuntary or voluntary liquidation, dissolution or winding up of the Corporation, payment shall be made to the holders of shares of Preferred Stock in the amounts herein fixed before any payment shall be made or any assets distributed to the holders of the Common Stock or any other class of shares of the Corporation ranking junior to the Preferred Stock with respect to payment upon any dissolution, liquidation or winding up of the Corporation. If upon any liquidation, dissolution or winding up of the Corporation the assets available for distribution shall be insufficient to pay the holders of all outstanding shares of Preferred Stock the full amounts to which they respectively shall be entitled, the holders of such shares shall share pro rata in any such distribution (based on the aggregate amounts payable to such holders hereunder).

At any time, in the event of the merger or consolidation of the Corporation into or with another corporation or any other entity or the merger or consolidation of any other corporation or any other entity into or with the Corporation or a plan of exchange between the Corporation

and any other corporation or other entity (in which consolidation or merger or plan of exchange any stockholders of the Corporation receive distributions of cash or securities or other property), or the sale, transfer or other disposition of all or substantially all of the assets of the Corporation, then, subject to the provisions of this paragraph, such transaction shall be deemed, solely for purposes of determining the amounts to be received by the holders of the Preferred Stock in such merger, consolidation, plan of exchange, sale, transfer or other disposition, and for purposes of determining the priority of receipt of such amounts as between the holders of the Preferred Stock and the holders of the Common Stock, to be a liquidation, dissolution or winding up of the Corporation if the holders of a majority of the outstanding shares of Preferred Stock so elect by giving written notice thereof to the Corporation at least two days before the effective date of such transaction. If no such notice is given, the provisions of Section E.1.3.7 below of this Article FOURTH shall apply. The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than 14 days prior to the stockholders' meeting of the Corporation called to approve such transaction, or 14 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the transaction and of this Section E.1.2 of this Article FOURTH (including, without limiting the generality of the foregoing, a description of the value of the consideration, if any, being offered to the holders of the Preferred Stock in the transaction and the amount to which such holders would be entitled if such transaction were (as described above) to be deemed to be a liquidation, dissolution or winding up of the Corporation), and the Corporation shall thereafter give such holders prompt notice of any material changes to such terms and conditions. The transaction shall in no event take place sooner than 14 days after the mailing by the Corporation of the first notice provided for herein or sooner than ten days after the mailing by the Corporation of any notice of material changes provided for herein; provided, however, that such periods may be reduced upon the written consent of the holders of a majority of the Preferred Stock, voting together as a single class.

Nothing hereinabove set forth shall affect in any way the right of each holder of shares of Preferred Stock to convert such shares at any time and from time to time in accordance with Section E.1.3 below of this Article FOURTH.

1.3 Conversion Right; Conversion Price. At the option of the holders thereof, the shares of Preferred Stock shall be convertible, at the office of the Corporation (or at such other office or offices, if any, as the Board of Directors may designate), into fully paid and nonassessable shares (calculated as to each conversion to the nearest 1/100th of a share) of Class A Voting Common Stock of the Corporation, at the applicable Conversion Price (as defined below), determined as hereinafter provided and as in effect at the time of conversion, as follows:

(a) each share of Class A Nonvoting Convertible Preferred Stock shall be converted into a number of shares of Class A Voting Common Stock determined by dividing (i) \$1,000 by (ii) the Class A Preferred Stock Conversion Price (as defined below, and initially \$893.70 per share) (i.e., at an initial conversion rate of 1.11894 shares of Class

A Voting Common Stock for each share of Class A Nonvoting Convertible Preferred Stock);
and

(b) each share of Class B Voting Convertible Preferred Stock shall be converted into a number of shares of Class A Voting Common Stock determined by dividing (i) \$800 by (ii) the Class B Preferred Stock Conversion Price (as defined below, and initially \$800 per share) (i.e., at an initial conversion rate of one share of Class A Voting Common Stock for each share of Class B Voting Convertible Preferred Stock);

provided, however, that the amounts in subparagraphs (a)(i) above (\$1,000) and (a)(ii) above (\$800) shall be appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations, and similar changes to the Class A Nonvoting Convertible Preferred Stock (in the case of subparagraph (a)(i) above) and the Class B Voting Convertible Preferred Stock (in the case of subparagraph (a)(ii) above).

For purposes of this Certificate of Incorporation, the following definitions shall apply:

“Class A Preferred Stock Conversion Price” means \$893.70 per share, subject to adjustment from time to time as hereinafter provided in this Section E.1.3 of this Article FOURTH.

“Class B Preferred Stock Conversion Price” means \$800 per share, subject to adjustment from time to time as hereinafter provided in this Section E.1.3 of this Article FOURTH.

“Conversion Price” means the Class A Preferred Stock Conversion Price and/or the Class B Preferred Stock Conversion Price, together.

The following provisions shall govern such right of conversion:

1.3.1 Mechanics of Conversion. In order to convert shares of Preferred Stock into shares of Class A Voting Common Stock of the Corporation, the holder thereof shall surrender at any office hereinabove mentioned the certificate or certificates therefor, duly endorsed to the Corporation or in blank, and give written notice to the Corporation at such office that such holder elects to convert such shares. Shares of Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the day of the surrender of such shares for conversion as herein provided, and the person entitled to receive the shares of Class A Voting Common Stock of the Corporation issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Class A Voting Common Stock at such time. As promptly as practicable on or after the conversion date, the Corporation shall issue and deliver or cause to be issued and delivered at such office a certificate or certificates for the number of shares of Class A Voting Common Stock of the Corporation issuable upon such conversion.

1.3.2 Conversion Price Adjustment. The Conversion Price shall be subject to adjustment from time to time as hereinafter provided. Upon each adjustment of the Conversion Price each holder of shares of Preferred Stock shall thereafter be entitled to receive the number of shares of Class A Voting Common Stock of the Corporation obtained by multiplying the applicable Conversion Price in effect immediately prior to such adjustment by the number of shares issuable pursuant to conversion immediately prior to such adjustment and dividing the product thereof by the Conversion Price resulting from such adjustment.

1.3.3 Common Stock Issued at Less than Class A Preferred Stock Conversion Price Prior to September 30, 2001. Except for Permitted Option Issuances (as defined below), if and whenever prior to September 30, 2001 the Corporation shall issue or sell any shares of its Common Stock for a consideration per share less than the Class A Preferred Stock Conversion Price in effect immediately prior to the time of such issuance or sale, then, forthwith upon such issuance or sale, the Class A Preferred Stock Conversion Price shall be reduced to such lesser price. For purposes of this Section E.1.3.3 of this Article FOURTH, "Permitted Option Issuances" shall mean (i) options to purchase shares of Common Stock and the issuances of awards of Common Stock to the Corporation's employees, directors and consultants as approved by the Board of Directors of the Corporation, and (ii) shares of Common Stock issued upon exercise of such options granted as approved by the Corporation's Board of Directors.

For the purposes of this Section E.1.3.3 of this Article FOURTH, the following provisions (i) to (v), inclusive, shall also be applicable:

(i) Issuance of Purchase and Subscription Rights for Common Stock or Convertible Securities. In case at any time the Corporation shall grant (whether directly or by assumption in a merger or otherwise) any rights to subscribe for or to purchase, or any options for the purchase of, (a) Common Stock or (b) any obligations or any shares of stock of the Corporation which are convertible into, or exchangeable for, Common Stock (any of such obligations or shares of stock being hereinafter called "Convertible Securities"), whether or not such rights or options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such rights or options or upon conversion or exchange of such Convertible Securities (determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such rights or options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of such rights or options, plus, in the case of such rights or options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such rights or options) shall be less than the Class A

Preferred Stock Conversion Price in effect immediately prior to the time of the granting of such rights or options, then the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such rights or options shall (as of the date of granting of such rights or options) be deemed to have been issued for such price per share. Except as provided in Section E.1.3.6 below of this Article FOURTH, no further adjustments of the Class A Preferred Stock Conversion Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon exercise of such rights or options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. In case the Corporation shall issue or sell (whether directly or by assumption in a merger or otherwise) any Convertible Securities, whether or not the rights to exchange or convert thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined 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 total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Class A Preferred Stock Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall (as of the date of the issue or sale of such Convertible Securities) be deemed to be outstanding and to have been issued for such price per share, provided that (a) except as provided in Section E.1.3.6 below of this Article FOURTH, no further adjustments of the Class A Preferred Stock Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities, and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any rights to subscribe for or to purchase or any option to purchase any such Convertible Securities for which adjustments of the Class A Preferred Stock Conversion Price have been or are to be made pursuant to other provisions of this Section E.1.3.3 of this Article FOURTH, no further adjustment of the Class A Preferred Stock Conversion Price shall be made by reason of such issuance or sale.

(iii) Valuing the Consideration Received for Issued Securities. In case any shares of Common Stock or Convertible Securities or any rights or options to purchase any such Common Stock or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deducting therefrom any expenses incurred or any underwriting commissions, discounts or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock or Convertible Securities or any rights or options to purchase any such Common Stock or

Convertible Securities shall be issued or sold for a consideration other than cash, 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 by the Board of Directors of the Corporation, without deducting therefrom any expenses incurred or any underwriting commissions, discounts or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock or Convertible Securities or any rights or options to purchase such Common Stock or Convertible Securities shall be issued in connection with any merger or consolidation in which the Corporation is the surviving entity, the amount of consideration therefor shall be deemed to be the fair value as determined by the Board of Directors of the Corporation of such portion of the assets and business of the non-surviving corporation(s) or other entity(ies) as such Board shall determine to be attributable to such Common Stock, Convertible Securities, rights or options, as the case may be. In the event of any consolidation or merger of the Corporation in which the Corporation is not the surviving entity or in the event of any sale of all or substantially all of the assets of the Corporation for stock or other securities of any other corporation or other entity, the Corporation shall be deemed to have issued a number of shares of its Common Stock for stock or securities of the other corporation or other entity computed on the basis of the actual exchange ratio on which the transaction was predicated and for a consideration equal to the fair market value on the date of such transaction of such stock or securities of the other corporation or other entity, and if any such calculation results in adjustment of the Class A Preferred Stock Conversion Price, the determination of the number of shares of Common Stock issuable upon conversion immediately prior to such merger, conversion or sale, for purposes of Section E.1.3.7 below of this Article FOURTH, shall be made after giving effect to such adjustment of the Class A Preferred Stock Conversion Price.

(iv) Record Date: Issue or Sale Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (a) to receive a dividend or other distribution payable in Common Stock or in Convertible Securities, or in any rights or options to purchase any Common Stock or Convertible Securities, or (b) to subscribe for or purchase Common Stock or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such rights of subscription or purchase, as the case may be.

(v) Shares Held by Corporation. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this Section E.1.3.3 of this Article FOURTH.

1.3.4 Stock Dividends and Certain Other Dividends and Distributions. In case the Corporation shall (i) declare a dividend upon the Common Stock payable in

Common Stock (other than a dividend declared to effect a subdivision of the outstanding shares of Common Stock, as described in Section E.1.3.5 below of this Article FOURTH) or Convertible Securities, or in any rights or options to purchase Common Stock or Convertible Securities, or (ii) declare any other dividend or make any other distribution upon the Common Stock payable otherwise than out of earnings or earned surplus, then thereafter each holder of shares of Preferred Stock upon the conversion thereof will be entitled to receive the number of shares of Common Stock into which such shares of Preferred Stock have been converted, and, in addition and without payment therefor, each dividend described in clause (i) above and each dividend or distribution described in clause (ii) above which such holder would have received by way of dividends or distributions if continuously since such holder became the record holder of such shares of Preferred Stock such holder (i) had been the record holder of the number of shares of Common Stock then received, and (ii) had retained all dividends or distributions in stock or securities (including Common Stock or Convertible Securities, and any rights or options to purchase any Common Stock or Convertible Securities) payable in respect of such Common Stock or in respect of any stock or securities paid as dividends or distributions and originating directly or indirectly from such Common Stock. For the purposes of the foregoing a dividend or distribution other than in cash shall be considered payable out of earnings or earned surplus only to the extent that such earnings or earned surplus are charged an amount equal to the fair value of such dividend or distribution as determined by the Board of Directors of the Corporation.

1.3.5 Stock Subdivisions or Combinations. In case the Corporation shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

1.3.6 Effect of Subsequent Changes to Purchase Price for Purchase and Subscription Rights or to Additional Consideration for Convertible Securities. If (x) the purchase price provided for in any right or option referred to in subparagraph (i) of Section E.1.3.3 above of this Article FOURTH, or (y) the additional consideration, if any, payable upon the conversion or exchange of Convertible Securities referred to in subparagraph (i) or subparagraph (ii) of Section E.1.3.3 above of this Article FOURTH, or (z) the rate at which any Convertible Securities referred to in subparagraph (i) or subparagraph (ii) of Section E.1.3.3 above of this Article FOURTH are convertible into or exchangeable for Common Stock, shall change at any time (other than under or by reason of provisions designed to protect against dilution), the Class A Preferred Stock Conversion Price then in effect hereunder shall forthwith be increased or decreased to such Class A Preferred Stock Conversion Price as would have obtained had the adjustments made upon the issuance of such rights, options or Convertible Securities been made upon the basis of (a) the issuance of the number of shares of Common Stock

therefore actually delivered upon the exercise of such options or rights or upon the conversion or exchange of such Convertible Securities, and the total consideration received therefor, and (b) the issuance at the time of such change of any such options, rights, or Convertible Securities then still outstanding for the consideration, if any, received by the Corporation therefor and to be received on the basis of such changed price; and on the expiration of any such option or right or the termination of any such right to convert or exchange such Convertible Securities, the Class A Preferred Stock Conversion Price then in effect hereunder shall forthwith be increased to such Class A Preferred Stock Conversion Price as would have obtained had the adjustments made upon the issuance of such rights or options or Convertible Securities been made upon the basis of the issuance of the shares of Common Stock theretofore actually delivered (and the total consideration received therefor) upon the exercise of such rights or options or upon the conversion or exchange of such Convertible Securities. If the purchase price provided for in any right or option referred to in subparagraph (i) of Section E.1.3.3 above of this Article FOURTH, or the rate at which any Convertible Securities referred to in subparagraph (i) or subparagraph (ii) of Section E.1.3.3 above of this Article FOURTH are convertible into or exchangeable for Common Stock, shall decrease at any time under or by reason of provisions with respect thereto designed to protect against dilution, then in case of the delivery of Common Stock upon the exercise of any such right or option or upon conversion or exchange of any such Convertible Security, the Class A Preferred Stock Conversion Price then in effect hereunder shall forthwith be decreased to such Class A Preferred Stock Conversion Price as would have obtained had the adjustments made upon the issuance of such right, option or Convertible Security been made upon the basis of the issuance of (and the total consideration received for) the shares of Common Stock delivered as aforesaid.

1.3.7 Reorganization, Reclassification, Consolidation, Merger, or Sale of Assets. If any capital reorganization or reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with another corporation or any other entity, or the sale of all or substantially all of its assets to another corporation or other entity shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, and subject to Section E.1.2 above of this Article FOURTH, lawful and adequate provision shall be made whereby the holders of Preferred Stock shall thereafter have the right to receive upon the basis and upon the terms and conditions specified herein and in lieu of the shares of the Common Stock of the Corporation immediately theretofore receivable upon the conversion of Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such stock immediately theretofore receivable upon the conversion of Preferred Stock had such reorganization, reclassification, consolidation, merger or sale not taken place, plus all dividends unpaid and accumulated or accrued thereon to the date of such reorganization, reclassification, consolidation, merger or sale, and in any such case appropriate provision shall be made with respect to the rights and interests of

the holders of Preferred Stock to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Price and of the number of shares receivable upon the conversion of Preferred Stock) shall thereafter be applicable, as nearly as may be in relation to any shares of stock, securities or assets thereafter receivable upon the conversion of Preferred Stock. The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof the successor corporation or other entity (if other than the Corporation) resulting from such consolidation or merger or the corporation or other entity purchasing such assets shall assume by written instrument executed and mailed to the registered holders of Preferred Stock, at the last addresses of such holders appearing on the books of the Corporation, the obligation to deliver to such holders such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holders may be entitled to receive.

1.3.8 Notice of Conversion - Price Adjustment to Holders of Preferred Stock.

Upon any adjustment of the Conversion Price, then and in each case the Corporation shall give written notice thereof, by first-class mail, postage prepaid, addressed to the registered holders of Preferred Stock, at the addresses of such holders as shown on the books of the Corporation, which notice shall state the Conversion Price resulting from such adjustment and the increase or decrease, if any, in the number of shares receivable at such price upon the conversion of Preferred Stock, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

1.3.9 Notice of Certain Actions to Holders of Preferred Stock. In case at any time:

- (i) the Corporation shall declare any cash dividend on its Common Stock at a rate in excess of the rate of the last cash dividend theretofore paid;
- (ii) the Corporation shall pay any dividend payable in stock upon its Common Stock or make any distribution (other than regular cash dividends) to the holders of its Common Stock;
- (iii) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;
- (iv) there shall be any capital reorganization, or reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with, or sale of all or substantially all of its assets to, another corporation or other entity; or
- (v) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, the Corporation shall give written notice, by first-class mail, postage prepaid, addressed to the registered holders of Preferred Stock

at the addresses of such holders as shown on the books of the Corporation, of the date on which (a) the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights, or (b) such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also specify the date as of which the holders of Common Stock of record shall participate in such dividend, distribution or subscription rights, or shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation, or winding up, as the case may be. Such written notice shall be given at least 20 days prior to the action in question and not less than 20 days prior to the record date or the date on which the Corporation's transfer books are closed in respect thereto.

1.3.10 Other Appropriate Adjustments to Protect Holders of Preferred Stock. If any event occurs as to which in the opinion of the Board of Directors of the Corporation the other provisions of this Section 1.3 are not strictly applicable or if strictly applicable would not fairly protect the rights of the holders of Preferred Stock in accordance with the essential intent and principles of such provisions, then the Board of Directors shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to protect such rights as aforesaid.

1.3.11 Common Stock Definitions. As used in this Section E.1.3 of this Article FOURTH, the term "Common Stock" shall mean and include the Corporation's presently authorized Common Stock and shall also include any capital stock of any class of the Corporation hereafter authorized which shall not be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares receivable pursuant to conversion of shares of Preferred Stock shall include shares designated as Common Stock of the Corporation as of the date of issuance of such shares of Preferred Stock, or, in case of any reclassification of the outstanding shares thereof, the stock, securities or assets provided for in Section E.1.3.7 above of this Article FOURTH.

1.3.12 Fractional Shares. No fractional shares of Class A Voting Common Stock shall be issued upon conversion, but, instead of any fraction of a share which would otherwise be issuable, the Corporation shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the market price per share of Class A Voting Common Stock as of the close of business on the day of conversion. "Market price" shall mean if the Class A Voting Common Stock is traded on a securities exchange or on the NASDAQ National Market System, the closing price of the Class A Voting Common Stock on such exchange or the NASDAQ National Market System, or, if the Class A Voting Common Stock is otherwise traded in the over-the-counter market, the closing bid price, in each case averaged over a period of 20 consecutive business days prior to the date as of which "market price" is being determined. If at any time the Class A Voting Common Stock is not traded on an

exchange or the NASDAQ National Market System, or otherwise traded in the over-the-counter market, the "market price" shall be deemed to be the fair value thereof determined in good faith by the Board of Directors of the Corporation as of a date which is within 15 days of the date as of which the determination is to be made.

1.4 Mandatory Conversion. The Preferred Stock shall automatically be converted into shares of Class A Voting Common Stock of the Corporation, without any act by the Corporation or the holders of the Preferred Stock, concurrently with the closing of the first public offering by the Corporation of shares of Class A Voting Common Stock of the Corporation registered under the Securities Act of 1933, as amended, in which (x) the aggregate public offering price of the securities sold for cash by the Corporation in the offering is at least \$30,000,000, or such lower amount as may be approved by the holders of at least 75% of the shares of Preferred Stock then outstanding, and (y) the offering is underwritten on a firm commitment basis by an underwriter, or a group of underwriters represented by an underwriter or underwriters, which is a member of the New York Stock Exchange, unless this requirement is waived by the holders of at least 75% of the shares of Preferred Stock then outstanding, and (z) the public offering price per share of Class A Voting Common Stock is at least \$10 (as adjusted from time to time to reflect stock splits, dividends, recapitalizations, combinations or the like), or such lower amount as may be approved by the holders of at least 75% of the shares of Preferred Stock then outstanding (any such public offering meeting such requirements herein being referred to in this Certificate of Incorporation as a "Qualified Public Offering"). As used herein, the term "closing" shall mean the delivery by the Corporation to the underwriters of certificates representing the shares of Class A Voting Common Stock of the Corporation offered to the public against delivery to the Corporation by such underwriters of payment therefor. The term "firm commitment basis" with respect to the underwriting of such public offering shall mean a commitment pursuant to a written underwriting agreement under which the nature of the underwriters' commitment is such that all securities will be purchased by such underwriters if any securities are purchased by such underwriters. Each holder of a share of Preferred Stock so converted shall receive the full number of shares of Class A Voting Common Stock into which such share of Preferred Stock held by such holder could be converted if such holder had exercised its conversion right at the time of closing of such public offering. Upon such conversion, each holder of a share of Preferred Stock so converted shall immediately surrender the certificate representing such share in exchange for appropriate stock certificates representing a share or shares of Class A Voting Common Stock of the Corporation. Until the surrender of a certificate representing shares of Preferred Stock so converted, such certificates shall represent, from and after the conversion of such shares of Preferred Stock, the shares of Class A Voting Common Stock of the Corporation into which they were converted.

1.5 Reservation of Shares. So long as any shares of Preferred Stock remain outstanding, the Corporation shall reserve at all times, free from preemptive rights, out of its treasury stock (if applicable) or its authorized but unissued shares of Class A Voting Common Stock, or both, solely for the purpose of effecting the conversion of the shares of Preferred Stock, sufficient shares of Class A Voting Common Stock to provide for the conversion of all outstanding shares of Preferred Stock.

1.6 Valid Issuance. All shares of Class A Voting Common Stock that may be issued upon conversion of the shares of Preferred Stock will upon issuance by the Corporation be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof, and the Corporation shall take no action that will cause a contrary result (including without limitation any action that would cause the Conversion Price to be less than the par value, if any, of Class A Voting Common Stock).

FIFTH:

1. The name and mailing address of the incorporator is Bruce M. Engler, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402.

2. The powers of the incorporator are to terminate upon the filing of this Certificate of Incorporation. The names and mailing addresses of the persons who are each to serve as a director until the first annual meeting of stockholders or until their respective successors have been elected and qualified are as follows:

<u>Name</u>	<u>Mailing Address</u>
Donovan A. Erickson	4567 West 80 th Street Bloomington, MN 55437
Gerald A. Erickson	4567 West 80 th Street Bloomington, MN 55437
Neal D. Erickson	4567 West 80 th Street Bloomington, MN 55437
Richard A. Erickson	4567 West 80 th Street Bloomington, MN 55437
Ronald A. Erickson	4567 West 80 th Street Bloomington, MN 55437
Marjorie J. Pihl	4567 West 80 th Street Bloomington, MN 55437

SIXTH: Election of directors need not be by written ballot.

SEVENTH: Subject to the provisions of this Certificate of Incorporation, the Corporation reserves the right to alter, amend or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights of stockholders or others hereunder are subject to such reservation. The Board of Directors is

authorized to adopt, amend or repeal By-Laws of the Corporation, except as and to the extent provided in the By-Laws.

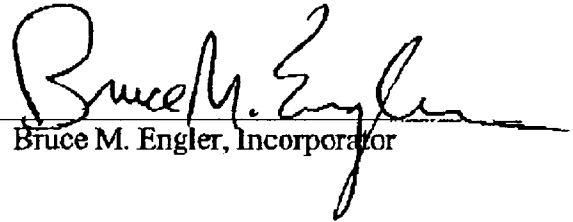
EIGHTH: Any person (a "Covered Person") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (a "proceeding"), whether civil, criminal, administrative or investigative (whether or not by or in the right of the Corporation) by reason of the fact that he is or was a director or officer of the Corporation, or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, incorporator, employee, partner, trustee, or agent of another corporation, partnership, joint venture, trust, or other enterprise (including an employee benefit plan), shall be entitled to be indemnified by the Corporation to the full extent then permitted by law against expenses (including counsel fees and disbursements), judgments, fines (including excise taxes assessed on a person with respect to any employee benefit plan), and amounts paid in settlement incurred by him in connection with such action, suit, or proceeding. Notwithstanding the preceding sentence, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized by the Board of Directors of the Corporation. Such right of indemnification shall inure whether or not the claim asserted is based on matters which antedate the adoption of this Article EIGHTH. Such right of indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of the heirs and personal representatives of such a person. The indemnification provided by this Article EIGHTH shall not be deemed exclusive of any other rights which may be provided now or in the future under any provision currently in effect or hereafter adopted of the by-laws, by any agreement, by vote of stockholders, by resolution of disinterested directors, by provision of law, or otherwise. The Corporation shall pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition; provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified hereunder or otherwise.

NINTH: No director of the Corporation shall be liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this provision does not eliminate the liability of the director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of Title 8 of the Delaware Code, or (iv) for any transaction from which the director derived an improper personal benefit. Each person who serves as a director of the Corporation while this Article NINTH is in effect shall be deemed to be doing so in reliance on the provisions of this Article NINTH, and neither the amendment or repeal of this Article NINTH, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article NINTH, shall apply to or have any effect on the liability or alleged liability of any director or the Corporation for, arising out of, based upon, or in

connection with any acts or omissions of such director occurring prior to such amendment, repeal, or adoption of an inconsistent provision. The provisions of this Article NINTH are cumulative and shall be in addition to and independent of any and all other limitations on or eliminations of the liabilities of directors of the Corporation, as such, whether such limitations or eliminations arise under or are created by any law, rule, regulation, by-law, agreement, vote of stockholders or disinterested directors, or otherwise.

TENTH: This Certificate of Incorporation shall become effective at 12:01 a.m., local time, Minneapolis, Minnesota, on December 31, 2000.

IN WITNESS WHEREOF, I have executed this Certificate of Incorporation this 28th day of December, 2000.


Bruce M. Engler, Incorporator

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