

11-26-2002



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

102293188

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

Tab settings

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

1. Name of conveying party(ies):

Centuri Corporation 11-20-02

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: August 27, 2002

2. Name and address of receiving party(ies)

Name: Estes-Cox Corp.

Internal Address:

Street Address: 1295 H Street, P.O. Box 227

City: Penrose State: CO Zip: 81240

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

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

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

A. Trademark Application No.(s) 75/615,988; 76/215,680; 76/318,225; 76/377,874; 76/431,391

B. Trademark Registration No.(s) 1,174,389; 1,131,659; 1,180,643; 1,163,908; 1,213,345; 1,193,250; 1,174,390; 1,069,316; 1,086,533; 944,537

Additional number(s) attached Yes No

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

Name: Brian F. Schroeder, Schroeder & Siegfried, P.A.

Internal Address:

Street Address: 222 South Ninth Street

Sutie 2870

City: Minneapolis State: MN Zip: 55402

6. Total number of applications and registrations involved:

30

7. Total fee (37 CFR 3.41) \$ 1,200.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

19-0715

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

11/25/2002 BTOM11 00000200 75615988 40.00 DP 725.00 CR

FINANCE SECTION AM 9:57

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.

Brian F. Schroeder

Name of Person Signing

Signature

November 15, 2002

Date

Total number of pages including cover sheet, attachments, and document: 23

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

Repln. Ref: 11/25/2002 BTOM11 0014025900 Name/Number: 75615988 \$435.00 CR

TRADEMARK REEL: 002622 FRAME: 0309

Change of Name/Merger of Centuri Corporation to Estes-Cox Corp.

Additional Registration Nos.:

1,605,756; 2,585,728; 1,611,389; 1,510,279; 1,510,280;

1,374,512; 1,235,350; 2,644,436; 2,507,032; 2,408,858;

2,507,033; 2,435,166; 2,528,308; 2,507,031; 2,609,175

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
CENTURI CORPORATION**  
a Delaware corporation

It is hereby certified that:

1. The name of the corporation (hereinafter called the "corporation") is Centuri Corporation. The Corporation was incorporated in the State of Delaware on March 10, 1994.
2. The Certificate of Incorporation is hereby amended in its entirety as provided in the Amended and Restated Certificate of Incorporation set forth below.
3. The amendments and the restatement of the certificate of incorporation herein certified have been duly adopted by the stockholders in accordance with the provisions of Sections 228, 242, and 245 of the General Corporation Law of the State of Delaware.
4. The effective time of the restated certificate of incorporation and of the amendments herein certified shall become effective upon the filing of the Certificate of Merger dated August 27, 2002.
5. The certificate of incorporation of the corporation, as amended and restated herein, shall at the effective time of the Certificate of Merger, read as follows:

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
CENTURI CORPORATION**

**ARTICLE I**

The name of the corporation is Estes-Cox Corp. (the "Company").

**ARTICLE II**

The address of the registered office of this Company in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, County of New Castle and the name of the registered agent at such address is Corporation Service Company.

### ARTICLE III

The purpose of this Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("DGCL").

### ARTICLE IV

The term of existence of this Company is perpetual.

### ARTICLE V

A. Classes of Stock. The Company is authorized to issue three classes of capital stock, consisting of 22,000 shares of Class A Stock, par value \$.01 per share ("Class A Stock"), 120,000 shares of Class B Stock, par value \$.01 per share ("Class B Stock"), and 60,000 shares of Class C Stock, par value \$.01 per share ("Class C Stock").

B. Class A Stock. The rights, privileges and other matters relating to the Class A Stock are as follows:

1. Voting Rights of Class A Stock. Except as otherwise specifically set forth herein, the Class A Stock shall not have any right to vote on the affairs of the Company.

2. Dividends.

(a) The holders of outstanding shares of Class A Stock shall be entitled to receive dividends, out of any assets at the time legally available therefor, prior and in preference to any payment of any dividend on the Class B Stock or Class C Stock or any other class or series of stock ranking junior to the Class A Stock (such Class B Stock, Class C Stock and other stock, collectively, the "Junior Securities") accruing at an annual rate of 10% of the Original Class A Issue Price on each outstanding share of Class A Stock from the date of issuance, compounded quarterly, and no more, payable in cash; provided, however, that the Board of Directors is not required to declare dividends to such holders if dividends are not declared on Junior Securities. If dividends are not declared on Junior Securities, dividends accrued but undeclared on Class A Stock may be declared in full, in part or not at all, as the Board of Directors may determine, but to the extent not declared in full, shall be cumulative and shall compound quarterly, on the last day of November, February, May and August, commencing November 30, 2002. If the Board of Directors declares any dividend on Junior Securities, the holders of outstanding shares of Class A Stock shall be entitled to receive dividends accruing up to and including the end of the quarter in which such dividends on Junior Securities are declared. Dividends on Junior Securities payable in Junior Securities of the Company shall not be taken into account in applying this Section 2(a). The "Original Class A Issue Price" of the Class A Stock is \$100 per share, as adjusted from time to time for stock splits, stock dividends and the like.

(b) Unless full dividends accruing on the Class A Stock through the end of the then fiscal quarter shall have been paid, or such dividends not so paid shall have been declared and a sum sufficient for payment thereof shall have been deposited in trust or escrow for the benefit of the holders of Class A Stock, no dividend or other distribution whatever (other than a dividend payable solely in Junior Securities) shall be paid or declared on any Junior Securities. The restrictions contained in this Subsection 2(b) shall not apply in any case approved by the holders of a majority of the outstanding shares of Class A Stock or to the repurchase of shares of Junior Securities held by employees, officers, directors, consultants or other persons performing services for the Company or any wholly-owned subsidiary (including, but not by way of limitation, distributors and sales representatives) repurchased pursuant to options under securities agreements, restrictive stock purchase agreements or stock option plans under which the Company has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, provided that both the entry into such agreement and the repurchase pursuant to such agreement have been approved by the Board of Directors.

(c) All stock subdivisions (by stock split, stock dividend or otherwise) or stock combinations (by reverse stock split or otherwise) of Class A Stock shall be payable only in Class A Stock to the holders of Class A Stock.

### 3. Liquidation.

(a) In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary, the holders of Class A Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Company to the holders of Junior Securities by reason of their ownership thereof, an amount per share equal to the sum of (i) the Original Class A Issue Price (as adjusted from time to time for stock splits, stock dividends and the like) and (ii) all accrued but unpaid dividends on such share. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Class A Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of the Class A Stock in proportion to the amount of such stock owned by each such holder.

(b) After the distributions described in Subsection 3(a) above have been paid, the remaining assets of the Company available for distribution to stockholders shall be distributed among the holders of Class B Stock and Class C Stock pro rata based on the number of shares of stock held by each.

(c) A liquidation, dissolution or winding up of the Company shall be required in the event of a sale or other disposition of all or substantially all of the assets of the Company (an "Asset Sale.")

(d) If the consideration received in the Asset Sale is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors or, at the option of a majority in interest of the Class A Stock, by a nationally recognized investment banking firm selected by a majority in interest of the Class A Stock and reasonably acceptable to the Company, the costs and expenses of which shall be borne by the Company.

(e) The Company shall give each holder of record of Class A Stock written notice of a transaction of the type described in this Subsection 3 not later than twenty days prior to the stockholders' meeting called to approve such transaction, or twenty days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Subsection 3, and the Company shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty days after the Company has given the first notice provided for herein or sooner than ten days after the Company has given notice of any material changes provided for herein. The time periods referred to in this Subsection 3(e) may be shortened upon the written consent of the holders of the Class A Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Class A Stock.

4. Record Holders. The Company and its transfer agent, if any, for the Class A Stock may deem and treat the record holder of any shares of Class A Stock as the sole true and lawful owner thereof for all purposes.

5. Protective Provision. Without the consent of a majority of the holders of the Class A Stock, there shall not be a Significant Event (as defined below) unless, in connection therewith and prior thereto, the Class A Stock shall be purchased at a price per share equal to the sum of (i) the Original Class A Issue Price (as adjusted from time to time for stock splits, stock dividends and the like) and (ii) all accrued but unpaid dividends on such share. For purposes of this Section 5, the following events are each considered a "Significant Event": (A) an Initial Public Offering and (B) the merger, consolidation, amalgamation of the Company with or into one or more other persons or entities, or the consummation of any other transaction or series of related transactions (whether by way of a sale of stock, recapitalization, reorganization or otherwise), in each case of a transaction identified under this clause (B) as a result of which the Company's stockholders of record as constituted immediately prior to such transaction (or series of related transactions) will, immediately after such transaction (or series of related transactions), hold less than fifty percent of either the voting power or the equity interests of the surviving or acquiring entities in such transaction or series of related transactions.

6. Amendments. No provision of these terms of the Class A Stock may be amended, modified or waived without the written consent or affirmative vote of the holders of at least a majority in interest of the then outstanding shares of Class A Stock.

C. Class B Stock and Class C Stock. Except as otherwise provided in Sections C3 and C4 below or by the DGCL, all shares of Class B Stock and Class C Stock are identical in all respects and entitle the holder thereof to the same rights and privileges.

1. Dividend Rights. Subject to the prior and participating rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Class B Stock and Class C Stock are entitled to receive pro rata, when and as declared by the Board of Directors, out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors. The Company may not in any manner subdivide (by stock split, stock dividend or otherwise) the number of, or combine (by reverse stock split or otherwise) the number of, the outstanding shares of Class B Stock or Class C Stock unless the outstanding shares of both classes shall be proportionately subdivided or combined. All such stock subdivisions or combinations shall be payable only in Class B Stock to the holders of Class B Stock, and in Class C Stock to the holders of Class C Stock.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Company, the assets of the Company shall be distributed as provided in Subsection B3 of Article V hereof.

3. Voting Rights. Each share of Class B Stock entitles the holder thereof to: (a) one vote per share on all matters to be voted on by the Company's stockholders in such manner as may be provided by law, and (b) notice of any stockholders' meeting in accordance with the By-Laws of the Company. Except as otherwise required by the DGCL, each share of Class C Stock shall have no voting rights and no notice of stockholders meetings shall be required to be given to holders of Class C Stock.

4. Conversion of Shares of Class C Stock.

(a) Automatic Conversion. Immediately prior to the closing of an initial public offering of capital stock pursuant to an effective registration statement under the Securities Act of 1933, as amended (an "Initial Public Offering"), each share of Class C Stock then outstanding shall automatically be converted, without further action by any of the holders of shares of Class C Stock or the Company, into one fully paid and non-assessable share of Class B Stock (subject to adjustment for stock splits, stock dividends and the like). Promptly upon filing any registration statement in connection with an Initial Public Offering, the Company shall deliver to each holder of Class C Stock, at the address of such holder as set forth in the records of the Company, written notice of the Initial Public Offering and a copy of the provisions of this Section 4. Promptly following the closing of the Initial Public Offering, the Company shall deliver confirmatory written notice, at the address of such holder as set forth in the records of the Company, to each holder of shares of Class C Stock whose shares have been so converted. No delay in giving, and no failure to give, such confirmatory notice nor any defect therein shall delay, impair or otherwise affect the effectiveness of the automatic conversion of shares of Class C Stock pursuant to this subparagraph (a). Each holder of shares of Class C Stock converted as

provided in this subparagraph (a) may, at any time following such conversion event, and shall, promptly following receipt of the notice from the Company pursuant to the immediately preceding sentence, deliver to the Company (at the Company's principal office or, if an agent for the registration or transfer of shares of such shares is then duly appointed and acting (said agent being the "Transfer Agent"), then only at the office of the Transfer Agent or as otherwise permitted by the Company and the Transfer Agent, if any) the certificate or certificates representing the converted shares of Class C Stock.

(b) New Certificates. As promptly as practicable following the surrender for conversion of a certificate representing shares of Class C Stock pursuant to subparagraph (a) above and the payment in cash of any amount required by the provisions of Section (d) below, if any, the Company shall deliver or cause to be delivered to the holder of such certificate (or his or her designee) a certificate or certificates representing the number of full shares of Class B Stock issuable upon conversion, issued in the name of such holder (or his or her designee). Each conversion shall be deemed to have been effected at the close of business on the date immediately prior to the closing of the Initial Public Offering. All rights of the holder of such shares of Class C Stock cease at such time, and the person or persons in whose name or names the certificate or certificates representing the shares of Class B Stock are to be issued shall be treated for all purposes as having become the record holder or holders of such shares of Class B Stock at such time.

(c) Record Date. If a share of Class C Stock should be converted subsequent to the record date for (or other applicable date for determining the right to) the payment of a dividend or other distribution on shares of Class C Stock but prior to such payment, the registered holder of such share at the close of business on such record (or other applicable) date is entitled to receive the dividend or other distribution payable on such share on such date notwithstanding the conversion thereof or the Company's default in payment of the dividend due on such date.

(d) Fractional Shares. The Company shall not issue fractions of shares of Class B Stock upon the conversion of shares of Class C Stock. The Company shall, in lieu of issuing such fractional share, round such fraction up to a whole share of Class B Stock taking into account all shares of Class C Stock converted.

(e) Charges. The issuance of certificates for shares of Class B Stock upon conversion of shares of Class C Stock shall be made without charge for any issuance, stamp, documentary or other similar tax or charge in respect of such issuance. If, however, any such certificate is to be issued in a name other than that of the holder of the share or shares of Class B Stock and Class C Stock converted, the person or persons requesting the issuance thereof shall pay to the Company the amount of any tax which may be payable in respect of any transfer resulting directly from such issuance to such other person or persons or shall



establish to the reasonable satisfaction of the Company that such tax has been paid.

(f) Reserved Shares. The Company shall reserve out of its authorized but unissued shares of Class B Stock or shares of Class B Stock held in treasury a sufficient number of shares of Class B Stock to permit the conversion of shares of Class C Stock pursuant to this Section 4. All shares of Class B Stock issued upon conversion shall be fully paid and non-assessable.

#### ARTICLE VI

The Board of Directors and the stockholders have the concurrent power to adopt, amend or repeal the By-Laws or adopt new By-Laws.

#### ARTICLE VII

Elections of directors need not be by written ballot unless the By-Laws of the Company provide otherwise.

#### ARTICLE VIII

Meetings of the stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Company may be kept, subject to any provision contained in the statutes, outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Company.

#### ARTICLE IX

A director or officer of the Company shall, to the fullest extent permitted by the DGCL, as it now exists or as it may hereafter be amended, not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director or officer or for any actions taken, except for liability (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) specifically provided for in the DGCL, or (iv) for any transaction from which the director derived any improper personal benefit. If the DGCL is amended after approval by the stockholders of this Article IX, to authorize corporate action further eliminating or limiting the personal liability of directors and officers, then the liability of a director or officer of the Company shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any amendment, repeal or modification of this Article IX, or the adoption of any provision of the Certificate of Incorporation inconsistent with this Article IX, by the stockholders of the Company shall not apply to or adversely affect any right or protection of a director or officer of the Company existing at the time of such amendment, repeal, modification or adoption.

#### ARTICLE X

Subject to the limitations of Subsection B6 of ARTICLE V hereof, the Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

## ARTICLE XI

To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advance of expenses to) the officers, directors, employees, agents and representatives of the Company (and any other persons to which the DGCL permits the Company to provide indemnification) from and against any and all of the expenses, liabilities or other matters referred to in or covered by the provisions of the DGCL, and the indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, and shall continue as to any person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of heirs, executors and administrators of such person.

The right to indemnification conferred in this Article includes the right to be paid by the Company the expenses incurred in defending any proceeding for which such right to indemnification is applicable in advance of its final disposition. If the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) may be made only upon delivery to the Company of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it should ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Article or otherwise.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of the Company with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

IN WITNESS WHEREOF, this Certificate of Incorporation has been executed this 27<sup>th</sup> day of August, 2002.

/s/ Barry Tunick  
Barry Tunick, President

# Delaware

PAGE 1

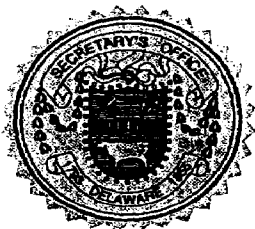
*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "ESTES-COX CORP." 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 TWENTY-SEVENTH DAY OF AUGUST, A.D. 2002.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "ESTES-COX CORP." WAS INCORPORATED ON THE TENTH DAY OF MARCH, A.D. 1994.

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

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.



2385018 8300

020538560

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1954378

DATE: 08-27-02

TRADEMARK  
REEL: 002622 FRAME: 0319

# Delaware

PAGE 1

*The First State*

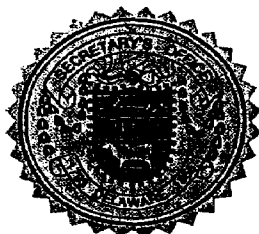
I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"ESTES-COX CORP.", A DELAWARE CORPORATION,

WITH AND INTO "CENTURI CORPORATION" UNDER THE NAME OF

"ESTES-COX CORP.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-SEVENTH DAY OF AUGUST, A.D. 2002, AT 9 O'CLOCK A.M.

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



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

2385018 8100M

020538560

AUTHENTICATION: 1954375

DATE: 08-27-02

TRADEMARK

REEL: 002622 FRAME: 0320

**CERTIFICATE OF MERGER  
OF  
ESTES-COX CORP.  
INTO  
CENTURI CORPORATION**

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

DOES HEREBY CERTIFY THAT:

FIRST: The name and state of incorporation of each of the constituent corporations of the merger is as follows:

<u>Name</u>	<u>State of Incorporation</u>
Centuri Corporation ("Company")	Delaware
Estes-Cox Corp. ("Estes-Cox")	Delaware

SECOND: The Agreement and Plan of Merger dated as of August 27, 2002 between Estes-Cox, Company, the stockholders of Company listed on the signature pages thereto has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with subsection (c) of section 251 of the General Corporation Law of the State of Delaware.

THIRD: The name of the surviving corporation of the merger is Centuri Corporation, which will continue its existence as said surviving corporation under the name of "Estes-Cox Corp." effective as of the file date of this Certificate of Merger and as set forth on the Amended and Restated Certificate of Incorporation of Centuri Corporation attached hereto as Exhibit A.

FOURTH: The Certificate of Incorporation of the surviving corporation is to be amended and changed by reason of the merger as set forth on the Amended and Restated Certificate of Incorporation of Centuri Corporation attached hereto as Exhibit A, and said Amended and Restated Certificate of Incorporation as so amended and restated shall continue to be the Certificate of Incorporation of said surviving corporation until further amended and changed in accordance with the provisions of the General Corporation Law of the State of Delaware.

FIFTH: The executed Merger Agreement is on file at the principal place of business of the surviving corporation. The address of the principal place of business of the surviving corporation is 1295 H Street, Penrose, CO 81240.

SIXTH: A copy of the Merger Agreement will be furnished by Company, on request and without cost, to any stockholder of Company or Estes-Cox.

CENTURI CORPORATION

By: /s/ Barry Tunick  
Barry Tunick, President

**EXHIBIT A**

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
CENTURI CORPORATION  
a Delaware corporation**

It is hereby certified that:

1. The name of the corporation (hereinafter called the "corporation") is Centuri Corporation. The Corporation was incorporated in the State of Delaware on March 10, 1994.
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OF  
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(b) Unless full dividends accruing on the Class A Stock through the end of the then fiscal quarter shall have been paid, or such dividends not so paid shall have been declared and a sum sufficient for payment thereof shall have been deposited in trust or escrow for the benefit of the holders of Class A Stock, no dividend or other distribution whatever (other than a dividend payable solely in Junior Securities) shall be paid or declared on any Junior Securities. The restrictions contained in this Subsection 2(b) shall not apply in any case approved by the holders of a majority of the outstanding shares of Class A Stock or to the repurchase of shares of Junior Securities held by employees, officers, directors, consultants or other persons performing services for the Company or any wholly-owned subsidiary (including, but not by way of limitation, distributors and sales representatives) repurchased pursuant to options under securities agreements, restrictive stock purchase agreements or stock option plans under which the Company has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, provided that both the entry into such agreement and the repurchase pursuant to such agreement have been approved by the Board of Directors.

(c) All stock subdivisions (by stock split, stock dividend or otherwise) or stock combinations (by reverse stock split or otherwise) of Class A Stock shall be payable only in Class A Stock to the holders of Class A Stock.

### 3. Liquidation.

(a) In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary, the holders of Class A Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Company to the holders of Junior Securities by reason of their ownership thereof, an amount per share equal to the sum of (i) the Original Class A Issue Price (as adjusted from time to time for stock splits, stock dividends and the like) and (ii) all accrued but unpaid dividends on such share. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Class A Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of the Class A Stock in proportion to the amount of such stock owned by each such holder.

(b) After the distributions described in Subsection 3(a) above have been paid, the remaining assets of the Company available for distribution to stockholders shall be distributed among the holders of Class B Stock and Class C Stock pro rata based on the number of shares of stock held by each.

(c) A liquidation, dissolution or winding up of the Company shall be required in the event of a sale or other disposition of all or substantially all of the assets of the Company (an "Asset Sale.")

(d) If the consideration received in the Asset Sale is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors or, at the option of a majority in interest of the Class A Stock, by a nationally recognized investment banking firm selected by a majority in interest of the Class A Stock and reasonably acceptable to the Company, the costs and expenses of which shall be borne by the Company.

(e) The Company shall give each holder of record of Class A Stock written notice of a transaction of the type described in this Subsection 3 not later than twenty days prior to the stockholders' meeting called to approve such transaction, or twenty days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Subsection 3, and the Company shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty days after the Company has given the first notice provided for herein or sooner than ten days after the Company has given notice of any material changes provided for herein. The time periods referred to in this Subsection 3(e) may be shortened upon the written consent of the holders of the Class A Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Class A Stock.

4. Record Holders. The Company and its transfer agent, if any, for the Class A Stock may deem and treat the record holder of any shares of Class A Stock as the sole true and lawful owner thereof for all purposes.

5. Protective Provision. Without the consent of a majority of the holders of the Class A Stock, there shall not be a Significant Event (as defined below) unless, in connection therewith and prior thereto, the Class A Stock shall be purchased at a price per share equal to the sum of (i) the Original Class A Issue Price (as adjusted from time to time for stock splits, stock dividends and the like) and (ii) all accrued but unpaid dividends on such share. For purposes of this Section 5, the following events are each considered a "Significant Event": (A) an Initial Public Offering and (B) the merger, consolidation, amalgamation of the Company with or into one or more other persons or entities, or the consummation of any other transaction or series of related transactions (whether by way of a sale of stock, recapitalization, reorganization or otherwise), in each case of a transaction identified under this clause (B) as a result of which the Company's stockholders of record as constituted immediately prior to such transaction (or series of related transactions) will, immediately after such transaction (or series of related transactions), hold less than fifty percent of either the voting power or the equity interests of the surviving or acquiring entities in such transaction or series of related transactions.

6. Amendments. No provision of these terms of the Class A Stock may be amended, modified or waived without the written consent or affirmative vote of the holders of at least a majority in interest of the then outstanding shares of Class A Stock.

C. Class B Stock and Class C Stock. Except as otherwise provided in Sections C3 and C4 below or by the DGCL, all shares of Class B Stock and Class C Stock are identical in all respects and entitle the holder thereof to the same rights and privileges.

1. Dividend Rights. Subject to the prior and participating rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Class B Stock and Class C Stock are entitled to receive pro rata, when and as declared by the Board of Directors, out of any assets of the Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors. The Company may not in any manner subdivide (by stock split, stock dividend or otherwise) the number of, or combine (by reverse stock split or otherwise) the number of, the outstanding shares of Class B Stock or Class C Stock unless the outstanding shares of both classes shall be proportionately subdivided or combined. All such stock subdivisions or combinations shall be payable only in Class B Stock to the holders of Class B Stock, and in Class C Stock to the holders of Class C Stock.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Company, the assets of the Company shall be distributed as provided in Subsection B3 of Article V hereof.

3. Voting Rights. Each share of Class B Stock entitles the holder thereof to: (a) one vote per share on all matters to be voted on by the Company's stockholders in such manner as may be provided by law, and (b) notice of any stockholders' meeting in accordance with the By-Laws of the Company. Except as otherwise required by the DGCL, each share of Class C Stock shall have no voting rights and no notice of stockholders meetings shall be required to be given to holders of Class C Stock.

4. Conversion of Shares of Class C Stock.

(a) Automatic Conversion. Immediately prior to the closing of an initial public offering of capital stock pursuant to an effective registration statement under the Securities Act of 1933, as amended (an "Initial Public Offering"), each share of Class C Stock then outstanding shall automatically be converted, without further action by any of the holders of shares of Class C Stock or the Company, into one fully paid and non-assessable share of Class B Stock (subject to adjustment for stock splits, stock dividends and the like). Promptly upon filing any registration statement in connection with an Initial Public Offering, the Company shall deliver to each holder of Class C Stock, at the address of such holder as set forth in the records of the Company, written notice of the Initial Public Offering and a copy of the provisions of this Section 4. Promptly following the closing of the Initial Public Offering, the Company shall deliver confirmatory written notice, at the address of such holder as set forth in the records of the Company, to each holder of shares of Class C Stock whose shares have been so converted. No delay in giving, and no failure to give, such confirmatory notice nor any defect therein shall delay, impair or otherwise affect the effectiveness of the automatic conversion of shares of Class C Stock pursuant to this subparagraph (a). Each holder of shares of Class C Stock converted as

provided in this subparagraph (a) may, at any time following such conversion event, and shall, promptly following receipt of the notice from the Company pursuant to the immediately preceding sentence, deliver to the Company (at the Company's principal office or, if an agent for the registration or transfer of shares of such shares is then duly appointed and acting (said agent being the "Transfer Agent"), then only at the office of the Transfer Agent or as otherwise permitted by the Company and the Transfer Agent, if any) the certificate or certificates representing the converted shares of Class C Stock.

(b) New Certificates. As promptly as practicable following the surrender for conversion of a certificate representing shares of Class C Stock pursuant to subparagraph (a) above and the payment in cash of any amount required by the provisions of Section (d) below, if any, the Company shall deliver or cause to be delivered to the holder of such certificate (or his or her designee) a certificate or certificates representing the number of full shares of Class B Stock issuable upon conversion, issued in the name of such holder (or his or her designee). Each conversion shall be deemed to have been effected at the close of business on the date immediately prior to the closing of the Initial Public Offering. All rights of the holder of such shares of Class C Stock cease at such time, and the person or persons in whose name or names the certificate or certificates representing the shares of Class B Stock are to be issued shall be treated for all purposes as having become the record holder or holders of such shares of Class B Stock at such time.

(c) Record Date. If a share of Class C Stock should be converted subsequent to the record date for (or other applicable date for determining the right to) the payment of a dividend or other distribution on shares of Class C Stock but prior to such payment, the registered holder of such share at the close of business on such record (or other applicable) date is entitled to receive the dividend or other distribution payable on such share on such date notwithstanding the conversion thereof or the Company's default in payment of the dividend due on such date.

(d) Fractional Shares. The Company shall not issue fractions of shares of Class B Stock upon the conversion of shares of Class C Stock. The Company shall, in lieu of issuing such fractional share, round such fraction up to a whole share of Class B Stock taking into account all shares of Class C Stock converted.

(e) Charges. The issuance of certificates for shares of Class B Stock upon conversion of shares of Class C Stock shall be made without charge for any issuance, stamp, documentary or other similar tax or charge in respect of such issuance. If, however, any such certificate is to be issued in a name other than that of the holder of the share or shares of Class B Stock and Class C Stock converted, the person or persons requesting the issuance thereof shall pay to the Company the amount of any tax which may be payable in respect of any transfer resulting directly from such issuance to such other person or persons or shall

establish to the reasonable satisfaction of the Company that such tax has been paid.

(f) Reserved Shares. The Company shall reserve out of its authorized but unissued shares of Class B Stock or shares of Class B Stock held in treasury a sufficient number of shares of Class B Stock to permit the conversion of shares of Class C Stock pursuant to this Section 4. All shares of Class B Stock issued upon conversion shall be fully paid and non-assessable.

#### ARTICLE VI

The Board of Directors and the stockholders have the concurrent power to adopt, amend or repeal the By-Laws or adopt new By-Laws.

#### ARTICLE VII

Elections of directors need not be by written ballot unless the By-Laws of the Company provide otherwise.

#### ARTICLE VIII

Meetings of the stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Company may be kept, subject to any provision contained in the statutes, outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Company.

#### ARTICLE IX

A director or officer of the Company shall, to the fullest extent permitted by the DGCL, as it now exists or as it may hereafter be amended, not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director or officer or for any actions taken, except for liability (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) specifically provided for in the DGCL, or (iv) for any transaction from which the director derived any improper personal benefit. If the DGCL is amended after approval by the stockholders of this Article IX, to authorize corporate action further eliminating or limiting the personal liability of directors and officers, then the liability of a director or officer of the Company shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any amendment, repeal or modification of this Article IX, or the adoption of any provision of the Certificate of Incorporation inconsistent with this Article IX, by the stockholders of the Company shall not apply to or adversely affect any right or protection of a director or officer of the Company existing at the time of such amendment, repeal, modification or adoption.

#### ARTICLE X

Subject to the limitations of Subsection B6 of ARTICLE V hereof, the Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

## ARTICLE XI

To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advance of expenses to) the officers, directors, employees, agents and representatives of the Company (and any other persons to which the DGCL permits the Company to provide indemnification) from and against any and all of the expenses, liabilities or other matters referred to in or covered by the provisions of the DGCL, and the indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, and shall continue as to any person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of heirs, executors and administrators of such person.

The right to indemnification conferred in this Article includes the right to be paid by the Company the expenses incurred in defending any proceeding for which such right to indemnification is applicable in advance of its final disposition. If the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) may be made only upon delivery to the Company of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it should ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Article or otherwise.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of the Company with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

IN WITNESS WHEREOF, this Certificate of Incorporation has been executed this 27<sup>th</sup> day of August, 2002.

/s/ Barry Tunick  
Barry Tunick, President

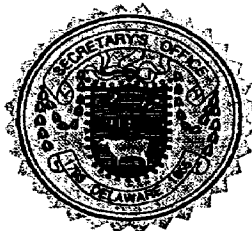
# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "CENTURI CORPORATION", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF AUGUST, A.D. 2002, AT 9 O'CLOCK A.M.

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



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

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020538583

AUTHENTICATION: 1954382

DATE: 08-27-02

RECORDED: 11/20/2002

TRADEMARK  
REEL: 002622 FRAME: 0331