

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	CHANGE OF NAME
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CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Surety Technologies, Inc.		10/29/1999	CORPORATION: DELAWARE

RECEIVING PARTY DATA	
Name:	Surety.com, Inc.
Street Address:	12950 Worldgate Drive
City:	Herndon
State/Country:	VIRGINIA
Postal Code:	20170
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 2		
Property Type	Number	Word Mark
Registration Number:	2159396	SUREFLOW
Registration Number:	2159397	SUREFLOW

CORRESPONDENCE DATA	
Fax Number:	(317)713-3699
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	317-713-3500
Email:	shale@sbalawyers.com
Correspondent Name:	Stephanie A. Hale
Address Line 1:	One Indiana Square
Address Line 4:	Indianapolis, INDIANA 46204

ATTORNEY DOCKET NUMBER:	9511/6516
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NAME OF SUBMITTER:	Stephanie A. Hale
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Total Attachments: 13
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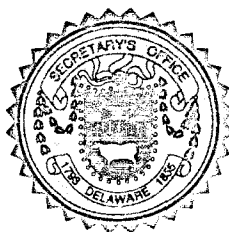
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Delaware

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 "SURETY TECHNOLOGIES, INC.", CHANGING ITS NAME FROM "SURETY TECHNOLOGIES, INC." TO "SURETY.COM, INC.", FILED IN THIS OFFICE ON THE TWENTY-NINTH DAY OF OCTOBER, A.D. 1999, AT 9 O'CLOCK A.M.



2349298 8100

040106943

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 2932133

DATE: 02-17-04

TRADEMARK

REEL: 002803 FRAME: 0409

**THIRD AMENDED RESTATED CERTIFICATE OF
INCORPORATION OF
SURETY TECHNOLOGIES, INC.**

SURETY TECHNOLOGIES, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

FIRST: The name of the Corporation is Surety Technologies, Inc.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State on August 30, 1993 under the Corporation's previous name Digital Time-Stamp, Inc.

THIRD: The Third Amended and Restated Certificate of Incorporation of the Corporation, in the form attached hereto as *Exhibit A*, amends and restates the Certificate of Incorporation of the Corporation and has been duly adopted by the Corporation and the stockholders of the Corporation in accordance with the provisions of Sections 228, 242, and 245 of the General Corporation Law of the State of Delaware.

FOURTH: The Third Amended and Restated Certificate of Incorporation has been adopted by the written consent of the stockholders in accordance with Section 228(d) of the General Corporation Law of the State of Delaware, and written notice has been provided to the stockholders in accordance with such section.

FIFTH: The Third Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and hereby incorporated by reference.

IN WITNESS WHEREOF, the Corporation has caused this Third Amended and Restated Certificate of Incorporation to be signed by its President this 22nd day of October, 1999.

October 22, 1999.

SURETY TECHNOLOGIES, INC.

By: _____

Jay Weislauffer
Chief Executive Officer

EXHIBIT A

THIRD **AMENDED AND RESTATED CERTIFICATE OF
INCORPORATION OF
SURETY.COM, INC.**

ARTICLE I.

The name of this corporation is Surety.com, Inc.

ARTICLE II

The address, including street, number, city, and county, of the registered office of the corporation in the State of Delaware is: 1013 Centre Road, Wilmington, DE 19805, New Castle County, and the name of the registered agent of the corporation in the State of Delaware at such address is The Prentice-Hall Corporation System, Inc.

ARTICLE III

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

ARTICLE IV

Section 1. This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is Sixteen Million (16,000,000) shares. Nine Million (9,000,000) shares will be Common Stock (hereinafter "Common"), each share having six cents (\$.0006) par value. Seven Million (7,000,000) shares will be Preferred Stock, each share having six cents (\$.0006) par value.

Section 2. The Preferred Stock may be issued from time to time in one or more series. Except as provided in Article V, the board of directors is hereby authorized, by filing a certificate pursuant to the Delaware General Corporation Law, to fix or alter from time to time the designation, powers, preferences and rights of the shares of each such series and the qualification, limitations or restrictions thereof, including without limitation, the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and the liquidation preferences of any wholly unissued series of Preferred Stock, and to establish from time to time the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series is so decreased, the shares constituting such decrease will resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

event, the assets and funds thus distributed among the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred are insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the corporation legally available for distribution will be distributed ratably among the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred, *pari passu*, in proportion to the number of shares of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred then held by them.

(b) After payment to the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred of the amount set forth in subparagraph (a) above, the Series E Preferred will be entitled to receive, prior to and in preference to any distribution of any assets or surplus funds of the corporation to the holders of Common by reason of their ownership thereof, an amount per share equal to One Dollar and Ninety-Five Cents (\$1.95). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series E Preferred are insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the corporation legally available for distribution will be distributed ratably among the holders of Series E Preferred.

(c) After payment to the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred of the amount set forth in paragraph (a) above and to the holders of the Series E Preferred of the amount set forth in paragraph (b) above, the entire remaining assets and funds of the corporation legally available for distribution, if any, will be distributed among the holders of the Common pro rata based on the number of shares of Common held by them.

(d) A merger, acquisition or sale of all or substantially all of the assets of the corporation will be deemed a liquidation, dissolution or winding up within the meaning of this Section 3 if more than fifty percent (50%) of the surviving entity is not owned by persons who were holders of capital stock or securities convertible into capital stock of the corporation immediately prior to such merger, consolidation or sale.

Section 4. Voting Rights. Except as otherwise required by law, each share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred will be entitled to the number of votes equal to the number of shares of Common into which such shares of Preferred are convertible (as adjusted pursuant to Section 5 hereof) and will have voting rights and powers equal to the voting rights and powers of the Common. Fractional votes by the holders of the Preferred will not be permitted, and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred held by each holder could be converted) will be rounded up to the nearest whole number. The holder of each share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred will be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the corporation and will vote with holders of the Common upon all matters submitted to a vote of stockholders, except those matters required by law to be submitted to a class vote.

Section 5. Conversion Rights.

(a) **Right to Convert.** Each share of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred will be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common as is determined by dividing the applicable Original Issue Price plus all declared but unpaid dividends on each such share by the applicable Conversion Price (determined as hereinafter provided) in effect at the time of conversion.

(b) **Conversion Price.** The price at which shares of Common will be deliverable upon conversion (the "Conversion Price") of the Series A Preferred and Series C Preferred will be Two Dollars and Eighty-Eight Cents (\$2.88) per share of Common. The Conversion Price of the Series B Preferred will be Two Dollars and Fifty-Eight Cents (\$2.58) per share. The Conversion Price of the Series D Preferred will be Six Dollars and Thirty-Six Cents (\$6.36) per share of Common. Such initial Conversion Prices will be adjusted as

hereinafter provided.

The price at which shares of Common will be deliverable upon conversion of the Series B Preferred will be One Dollar and Ninety-Five Cents (\$1.95) per share of Common. Such Conversion Price will not be adjusted.

(c) **Automatic Conversion.**

(i) Each share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, and Series E Preferred will automatically be converted into shares of Common at the then effective Conversion Price applicable to such shares immediately upon the closing of the sale of the Common in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) with aggregate proceeds to the corporation (after deduction of underwriters' commissions and expenses) equal to or exceeding Five Million Dollars (\$5,000,000).

(ii) Each share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, and Series E Preferred will automatically be converted into shares of Common at the then effective Conversion Price upon the vote or written consent of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the authorized number of shares of Preferred then outstanding, voting as a class.

(iii) Each share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred, and Series E Preferred will automatically be converted into shares of Common at the then effective Conversion Price applicable to such share upon the sale of all or substantially all of the corporation at a price of not less than Five Million Dollars (\$5,000,000). For purposes of this Section 5(b)(iii), the "sale of all or substantially all" of the corporation will mean the sale of eighty percent (80%) or more of either (1) all the equity shares of the corporation on an as converted basis or (2) all the assets of the corporation.

(d) **Mechanics of Conversion.** Before any holder of Preferred will be entitled to convert the same into shares of Common, he, she or it will surrender the certificate or certificates thereof, duly endorsed, at the office of the corporation or of any transfer agent for such stock, and will give written notice to the corporation at such office that he, she or it elects to convert the same and will state therein the name or names in which he, she or it wishes the certificate or certificates for shares of Common to be issued. The corporation will, as soon as practicable thereafter, issue and deliver at such office to such holder of the Preferred a certificate or certificates for the number of shares of Common to which he, she or it will be entitled as aforesaid. Such conversion will be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of the Preferred to be converted, except that in the case of an automatic conversion pursuant to Section 5(b) hereof, such conversion will be deemed to have been made immediately prior to the closing of the public offering referred to in Section 5(b)(i), and the person or persons entitled to receive the shares of Common issuable upon such conversion will be treated for all purposes as the record holder or holders of such shares of Common on such date.

(e) **Adjustments to Conversion Price for Diluting Issues.**

(i) **Special Definitions.** For purposes of this Section 5(d), the following definitions will apply:

(1) "Options" will mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common or Convertible Securities.

(2) "Original Issue Date" will mean the date on which a share of Series E Preferred was first issued.

(3) "Convertible Securities" will mean any evidences of indebtedness,

shares (other than Common, Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred) or other securities convertible into or exchangeable for Common.

(4) "Additional Shares of Common" will mean all shares of Common issued (or, pursuant to Section 5(d)(iii), deemed to be issued) by the corporation after the Original Issue Date, other than shares of Common issued or issuable:

(A) upon conversion of shares of Series A Preferred, Series B Preferred, Series C Preferred or, Series D Preferred or Series E Preferred;

(B) to officers, directors or employees of, or consultants to, the corporation, on terms approved by the board of directors pursuant to the 1999 Equity Incentive Plan;

(C) as a dividend or distribution on Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred;

(D) any event for which adjustment of the Conversion Price is made pursuant to Section 5(d)(vi) or 5(e); or

(E) by way of dividend or other distribution on shares excluded from the definition of Additional Shares of Common by the foregoing clauses (A) or (B) or this clause (E).

(ii) **No Adjustment of Conversion Price.** No adjustment in the Conversion Price of a particular share of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred will be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Share of Common issued or deemed to be issued by the corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to such issue, for such share of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred. No adjustment in the Conversion Price of a particular share of Series E Preferred will be made in respect of the issuance of Additional Shares of Common.

(iii) **Deemed Issue of Additional Shares of Common.** In the event the corporation at any time or from time to time after the Original Issue Date issues any Options or Convertible Securities or fixes a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, will be deemed to be Additional Shares of Common issued as of the time of such issue or, in case such a record date has been fixed, as of the close of business on such record date, provided that Additional Shares of Common will not be deemed to have been issued with respect to a share of Preferred unless the consideration per share (determined pursuant to Section 5(d)(v) hereof) of such Additional Shares of Common would be less than the Conversion Price applicable to such share of Preferred as in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common are deemed to be issued:

(1) no further adjustments in the applicable Conversion Price will be made upon the subsequent issue of Convertible Securities or shares of Common upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the corporation, or decrease in the number of shares of Common issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, will, upon any such increase or decrease becoming effective, be

recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the applicable Conversion Price will affect Common previously issued upon conversion of the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred);

(3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities that have not been exercised, any Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, will, upon such expiration, be recomputed as if:

(A) in the case of Convertible Securities or Options for Common, the only Additional Shares of Common issued were the shares of Common, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the corporation upon such conversion or exchange, and

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the corporation (determined pursuant to Section 5(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to clauses (2) or (3) above will have the effect of increasing any Conversion Price to an amount which exceeds the lower of (A) such Conversion Price on the original adjustment date, or (B) the applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common between the original adjustment date and such readjustment date;

(5) in the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of any Conversion Price will be made, except as to shares of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred converted in such period, until the expiration or exercise of all such Options, whereupon such adjustment will be made in the same manner provided in clause (3) above; and

(6) if any such record date has been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, any adjustment previously made in a Conversion Price that became effective on such record date will be canceled as of the close of business on such record date, and will instead be made on the actual date of issuance, if any.

(iv) **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.** In the event the corporation issues Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 5(d)(iii)) without consideration or for a consideration per share less than any Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price (except for Series E Preferred) will be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which will be the number of shares of Common outstanding immediately prior to such issuance (including for this purpose the number of shares of Common issuable upon the exercise of outstanding options and warrants and upon the conversion of the shares of Preferred outstanding immediately prior to such issue) plus the number of shares of Common which the aggregate consideration received by the corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which will be the number of shares of Common outstanding immediately prior to such issuance (including for this

purpose the number of shares of Common upon the exercise of outstanding options and warrants and upon the conversion of the shares of Preferred outstanding immediately prior to such issue) plus the number of such Additional Shares of Common so issued.

(v) **Determination of Consideration.** For purposes of this Section 5(d), the consideration received by the corporation for the issue of any Additional Shares of Common will be computed as follows:

(1) **Cash and Property.** Such consideration will:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the board of directors; and

(C) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the board of directors.

(2) **Options and Convertible Securities.** The consideration per share received by the corporation for Additional Shares of Common deemed to have been issued pursuant to Section 5(d)(iii), relating to Options and Convertible Securities, will be determined by dividing

(A) the total amount, if any, received or receivable by the corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(B) the maximum number of shares of Common (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) **Adjustments for Combinations or Subdivisions of Common.** In the event the corporation at any time or from time to time after the Original Issue Date declares or pays any dividend on the Common payable in Common or in any right to acquire Common, or effects a subdivision of the outstanding shares of Common into a greater number of shares of Common (by stock split, reclassification or otherwise), or in the event the outstanding shares of Common will be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common, then the applicable Conversion Prices of the Preferred in effect immediately prior to such event will, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate.

(f) **Other Distributions.** In the event the corporation at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common entitled to receive, a dividend or other distribution payable in securities of the corporation other than shares of Common, in each such event provision will be made so that the holders of the Preferred will receive, upon conversion thereof, the securities of the corporation which they would have received had their Preferred been converted into Common on the date of such event.

(g) **No Impairment.** The corporation will not, by amendment of its Restated Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred against impairment.

(h) **Certificates as to Adjustments.** Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 5, the corporation at its expense will promptly compute such adjustment or readjustment in accordance with the terms hereof and cause independent public accountants selected by the corporation to verify such computation and prepare and furnish to each holder of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation will, upon the written request at any time of any holder of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price at the time in effect, and (iii) the number of shares of Common and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred.

(i) **Notices of Record Date.** In the event of any taking by the corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any security or right convertible into or entitling the holder thereof to receive Additional Shares of Common or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the corporation will mail to each holder of Preferred at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution, security or right, and the amount and character of such dividend, distribution, security or right.

(j) **Issue Taxes.** The corporation will pay any and all issue and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of shares of Common on conversion of shares of the Preferred pursuant to this Section 5; *provided, however,* that the corporation will not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(k) **Reservation of Stock Issuable Upon Conversion.** The corporation will at all times reserve and keep available out of its authorized but unissued shares of Common, solely for the purpose of effecting the conversion of the shares of Preferred, such number of shares of Common as will from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred and if at any time the number of authorized but unissued shares of Common is not sufficient to effect the conversion of all then outstanding shares of Preferred, the corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common to such number of shares as will be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate of Incorporation.

(l) **Fractional Shares.** No fractional share will be issued upon the conversion of any share or shares of Preferred. All shares of Common (including fractions thereof) issuable upon conversion of more than one share of Preferred by a holder thereof will be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common, the corporation will, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the board of directors).

(m) **Notices.** Any notice required by the provisions of this Section 5 to be given to the holders of the Preferred will be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at its address appearing on the books of the corporation.

(n) **Adjustments for Reorganization, Reclassification, Consolidation, Merger or Conveyance.** In case of any reorganization or any reclassification of the capital stock of the corporation, any consolidation or merger of the corporation with or into another corporation or corporations, or the conveyance of all or substantially all of the assets of the corporation to another corporation, each share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred will thereafter be convertible into the number of shares of stock or other securities or property (including cash) to which a holder of the number of shares of Common deliverable upon conversion of such share of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred would have been entitled upon the record date of (or date of, if no record date is fixed) such reorganization, reclassification, consolidation, merger or conveyance; and, in any case, appropriate adjustment (as determined by the board of directors) will be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of such Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred, to the end that the provisions set forth herein will thereafter be applicable, as nearly as equivalent as is practicable, in relation to any shares of stock or the securities or property (including cash) thereafter deliverable upon the conversion of the shares of such Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred or Series E Preferred.

Section 6. Restrictions and Limitations.

(a) For so long as at least Sixty-Seven Thousand (67,000) of the authorized shares of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred, individually as a series or together as a class remain outstanding, the corporation will not, without the affirmative vote or written consent of the holders of a majority of the then outstanding shares of Series A, B, C, and D Preferred voting together as a single class:

(i) Purchase, redeem or otherwise acquire (or pay into or set aside for a sinking fund for such purpose), any of the Common of the corporation, provided, however, that this restriction will not apply to the repurchase of shares of Common from directors, officers, consultants or employees of the corporation or any subsidiary pursuant to agreements approved by the board of directors under which the corporation has the option to repurchase such shares upon the occurrence of certain events, including termination of employment or services; or

(ii) Declare or pay dividends in cash, stock, options or any other form of assets or securities of the corporation; or

(iii) Effect any sale or other conveyance of all or substantially all of the assets of the corporation or any of its subsidiaries, or any consolidation or merger involving the corporation or any of its subsidiaries with or into any other corporation, if more than fifty percent (50%) of the surviving entity is not owned by persons who were holders of capital stock or securities convertible into capital stock of the corporation immediately prior to such merger, consolidation or sale; or

(iv) Increase or decrease the number of authorized shares of Preferred designated Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred; or

(v) Authorize or issue, or obligate itself to issue, any other equity security senior to or on a parity with any series of Preferred as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights or otherwise, or create any obligation or security convertible into or exchangeable for, or having any option rights to purchase, any such equity security which is senior to or on a parity with any series of Preferred; or

(vi) Increase or decrease the authorized number of members of the corporation's

board of directors.

(b) For so long as Thirty-Four Thousand (34,000) shares of Series A Preferred remain outstanding, the affirmative vote or written consent of the holders of a majority of all outstanding shares of Series A Preferred will be required to amend, repeal or waive any material provision of, or add any material provision to, the corporation's Restated Certificate of Incorporation or Bylaws if such action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series A Preferred.

(c) For so long as Thirty-Four Thousand (34,000) shares of Series B Preferred remain outstanding, the affirmative vote or written consent of the holders of a majority of all outstanding shares of Series B Preferred will be required to amend, repeal or waive any material provision of, or add any material provision to, the corporation's Restated Certificate of Incorporation or Bylaws if such action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series B Preferred.

(d) For so long as Thirty-Four Thousand (34,000) shares of Series C Preferred remain outstanding, the affirmative vote or written consent of the holders of a majority of all outstanding shares of Series C Preferred will be required to amend, repeal or waive any material provision of, or add any material provision to, the corporation's Restated Certificate of Incorporation or Bylaws if such action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series C Preferred.

(e) For so long as Seventeen Thousand (17,000) shares of Series D Preferred remain outstanding, the affirmative vote or written consent of the holders of a majority of all outstanding shares of Series D Preferred will be required to amend, repeal or waive any material provision of, or add any material provision to, the corporation's Restated Certificate of Incorporation or Bylaws if such action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series D Preferred.

ARTICLE VI

For the management of the business and for the conduct of the affairs of the corporation, and in further definition, limitation and regulation of the powers of the corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

Section 1. The management of the business and the conduct of the affairs of the corporation will be vested in its board of directors. The number of directors which will constitute the whole board of directors will be fixed by the board of directors in the manner provided in the Bylaws.

Section 2. The board of directors may from time to time make, amend, supplement or repeal the Bylaws; *provided, however*, that the stockholders may change or repeal any Bylaw adopted by the board of directors by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the corporation (considered for this purpose as one class); and, provided further, that no amendment or supplement to the Bylaws adopted by the board of directors will vary or conflict with any amendment or supplement thus adopted by the stockholders.

Section 3. The directors of the corporation need not be elected by written ballot unless the Bylaws so provide.

ARTICLE VII

A director of the corporation will, to the full extent not prohibited by the Delaware General Corporation Law, as the same exists or may hereafter be amended, not be liable to the corporation or its stockholders for monetary damages for breach of his fiduciary duty as a director.

ARTICLE VIII

The corporation is to have perpetual existence.

ARTICLE IX

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

ARTICLE V

The relative rights, preferences, privileges and restrictions granted to, or imposed upon, the respective series of Preferred Stock are as follows:

Section 1. Designation. One Hundred Two Thousand (102,000) shares of Preferred Stock are designated "Series A Preferred Stock" ("Series A Preferred") with the rights, preferences, privileges and restrictions specified herein. One Hundred Fifty Thousand (150,000) shares of Preferred Stock are designated "Series B Preferred Stock" ("Series B Preferred") with the rights, preferences, privileges and restrictions specified herein. Sixty-Three Thousand (63,000) shares of Preferred Stock are designated "Series C Preferred Stock" ("Series C Preferred") with the rights, preferences, privileges and restrictions specified herein. Twenty-Nine Thousand (29,000) shares of Preferred Stock are designated "Series D Preferred Stock" ("Series D Preferred") with the rights, preferences, privileges and restrictions specified herein. Three Million Eight Hundred Twenty Thousand (3,820,000) shares of Preferred Stock are designated "Series E Preferred Stock" ("Series E Preferred") with the rights, preferences, privileges and restrictions specified herein. The Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred may be referred to hereinafter as the "Preferred."

Section 2. Dividend Rights.

(a) The holders of the then outstanding shares of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred will be entitled to receive dividends when, as and if declared by the board of directors out of any funds legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common, of the corporation) at the rate of eight percent (8%) of the applicable Original Issue Price (as hereinafter defined) per share per annum. Such dividends will not be cumulative, and no right will accrue to holders of the Preferred by reason of the fact that dividends are not declared in any year, nor will any undeclared or unpaid dividend bear or accrue interest.

The term "Original Issue Price" as used herein means Eight Dollars and Sixteen Cents (\$8.16) for the Series A Preferred and Series C Preferred, Six Dollars and Thirty Cents (\$6.30) for the Series B Preferred, Thirty Dollars and Ninety Cents (\$30.90) for the Series D Preferred, and One Dollar and Ninety-Five Cents (\$1.95) for the Series E Preferred.

(b) After dividends in the amount of eight percent (8%) per share per annum of the applicable Original Issue Price on the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred have been paid or declared and set apart in any one fiscal year of the corporation, if the board of directors elects to declare additional dividends or distributions to be paid to Common holders out of funds legally available therefor in that fiscal year, such additional dividends or distributions will be paid to the holders of Common, the Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred on a proportionate basis as though the holders of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred were the holders of the number of shares of Common of the corporation into which their respective shares of Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Series E Preferred are convertible as of the record date fixed for the determination of the holders of Common entitled to receive such dividend or distribution.

Section 3. Liquidation Rights.

(a) In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred will be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of Series E Preferred and Common by reason of their ownership thereof, an amount per share equal to the sum of (i) the applicable Original Issue Price (appropriately adjusted for any recapitalization) and (ii) all accrued but unpaid dividends on such shares. If, upon the occurrence of such