

01-20-2004

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



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

102649408

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

1. Name of conveying party(ies): 1.2.04  
SiteStuff.com, Inc.

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: December 29, 2000

2. Name and address of receiving party(ies)  
Name: SiteStuff, Inc.  
Internal Address: \_\_\_\_\_  
Address: \_\_\_\_\_

Street Address: 12401 Research Blvd., Building I, Suite 250  
City: Austin State: TX Zip: 78759

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)  
75/943,437

Additional number(s) attached  Yes  No

B. Trademark Registration No.(s)  
2,699,365

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Carl C. Butzer, Esq.  
Internal Address: Jackson Walker L.L.P.  
Street Address: 901 Main Street, Suite 6000  
City: Dallas State: TX Zip: 75202

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41) ..... \$ 80.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

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

DO NOT USE THIS SPACE

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

Lee Grable                                      By: Lee Grable                                      12/30/03  
Name of Person Signing                                      Signature                                      Date

Total number of pages including cover sheet, attachments, and document: 21

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01 FC:8521 40.00 OP  
02 FC:8522 25.00 OP  
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Mail documents to be recorded with required cover sheet information to:  
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**State of Delaware**  
**Office of the Secretary of State**

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SITESTUFF.COM, INC.", CHANGING ITS NAME FROM "SITESTUFF.COM, INC." TO "SITESTUFF, INC.", FILED IN THIS OFFICE ON THE TWENTY-NINTH DAY OF DECEMBER, A.D. 2000, AT 10 O'CLOCK A.M.

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



Edward J. Freel, Secretary of State

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001656695

AUTHENTICATION: 0865259

DATE: 12-29-00

FROM MORRISON & FOERSTER MACHINE #7

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**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF SITESTUFF.COM, INC.  
a Delaware corporation**

The undersigned, Robert Kroll hereby certifies that:

**ONE:** He is the duly elected and acting Secretary and Executive Vice President of said corporation.

**TWO:** The name of this corporation is SiteStuff.com, Inc. and this corporation was originally incorporated on July 26, 1999, pursuant to the Delaware General Corporation Law under the name SiteStuff.com, Inc. This corporation restated its Certificate of Incorporation ("First Restated Certificate") on September 28, 1999 and further amended its First Restated Certificate on December 15, 1999 and on January 31, 2000. This corporation restated its First Restated Certificate on July 18, 2000.

**THREE:** The Amended and Restated Certificate of Incorporation of said corporation shall be amended and restated to read in full as follows:

**ARTICLE I**

The name of this corporation is changed to SiteStuff, Inc.

**ARTICLE II**

The address of the registered office of this corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III**

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware (the "General Corporation Law").

**ARTICLE IV**

**A. Classes of Stock.** This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that this corporation is authorized to issue is one hundred seventy million three hundred thousand (170,300,000) shares. One hundred million (100,000,000) shares shall be Common Stock, par value \$0.001 per share, and seventy million three hundred thousand (70,300,000) shares shall be Preferred Stock, par value \$0.001.

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STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
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**B. Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation (this "Restated Certificate of Incorporation") may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of nine million eight hundred seventy-one thousand one hundred twenty-three (9,871,123) shares. The second series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of fifty-seven million one hundred twenty-eight thousand eight hundred seventy-seven (57,128,877) shares. The third series of Preferred Stock shall be designated "Series C Preferred Stock" and shall consist of three million three hundred thousand (3,300,000) shares. The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock, the Series B Preferred Stock and Series C Preferred Stock are as set forth below in this Article IV(B). The provisions of this Restated Certificate of Incorporation give effect to the three-for-one share stock split that was effective on January 31, 2000.

1. **Dividend Provisions.** The holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Common Stock of this corporation, at the rate of \$0.04 per share per annum, payable quarterly when, as and if declared by the Board of Directors. The holders of shares of Series B Preferred Stock and Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock) on the Common Stock of this corporation, at the rate of \$0.09 per share per annum on each outstanding share of Series B Preferred Stock and Series C Preferred Stock, payable quarterly when, as and if declared by the Board of Directors. Such dividends shall not be cumulative. Declared but unpaid current dividends with respect to a share of Preferred Stock shall, upon conversion of such share to Common Stock, be paid to the extent assets are legally available therefor either in cash or in Common Stock (valued at the fair market value on the date of payment as determined by the Board of Directors of this corporation). Any amounts for which assets are not legally available shall be paid promptly as assets become legally available therefor. Any amounts paid as dividends to the holders of Preferred Stock shall be distributed ratably among the holders of the Preferred Stock so that each holder receives a pro rata portion of the dividends provided for by this Article IV(B)(1).

2. **Liquidation Preference.** In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary (a "Liquidation"), distributions to stockholders of this corporation shall be made in the following manner:

(a) If the aggregate amount available for distribution to the stockholders of this corporation in connection with such Liquidation is equal to or less than Five Dollars (\$5.00) per share, on an as-converted to Common Stock basis (as adjusted for stock splits, stock dividends, stock combinations, reorganizations, recapitalizations and the like):

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(i) The holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to (x) \$0.4833 (the "Original Series A Issue Price"), \$0.648 (the "Original Series B Issue Price") and \$1.15 (the "Original Series C Issue Price"), respectively, for each outstanding share, plus (y) any and all declared but unpaid dividends on such shares (collectively, the sum of (x) and (y), respectively, to be referred to as the "Preferred Stock Preference Amount"). All of the dollar amounts set forth here-in-above shall be adjusted proportionately for stock splits, stock dividends, stock combinations, recapitalizations, reorganizations and the like.

(ii) After payment has been made to the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock of the respective full Preferred Stock Preference Amount to which such holders shall be entitled, if any, as aforesaid, the holders of Common Stock and Preferred Stock shall be entitled to share ratably in all remaining assets and funds to be distributed, based upon the number of shares of Common Stock then held, with each share of Preferred Stock treated as the number of shares of Common Stock into which such share of Preferred Stock is then convertible under Section 4 below.

(b) If the amount available for distribution to the stockholders of this corporation in connection with a Liquidation is more than Five Dollars (\$5.00) per share on an as-converted to Common Stock basis (as adjusted for stock splits, stock dividends, stock combinations, reorganizations, recapitalizations and the like) then the holders of Common Stock and Preferred Stock shall be entitled to share ratably in all assets and funds to be distributed, based upon the number of shares of Common Stock then held, with each share of Preferred Stock treated as the number of shares of Common Stock into which such share of Preferred Stock is then convertible under Section 4 below.

(c) If upon Liquidation the funds or assets legally available for distribution to stockholders are insufficient to pay the full Preferred Stock Preference Amount as described above, then the entire assets of this corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Preferred Stock in proportion to the numbers of shares of Preferred Stock held by them multiplied by the Preferred Stock Preference Amount for such shares of Preferred Stock.

(d) (i) For purposes of this Section 2, unless otherwise agreed by holders of at least sixty-six percent (66%) of the then outstanding shares of Preferred Stock, a Liquidation shall be deemed to be occasioned by, or to include, (A) the acquisition of this corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this corporation; or (B) a sale of all or substantially all of the assets of this corporation.

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(ii) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through The Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the board of directors of this corporation.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an Affiliate (as defined in Article IV(B)(5)(b) below) or former Affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iii) In the event the requirements of this subsection 2(d) are not complied with, this corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(d)(iv) hereof.

(iv) This corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holder 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 Section 2, and this corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place

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sooner than twenty (20) days after this corporation has given the first notice provided for herein or sooner than ten (10) days after this corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least sixty-six percent (66%) of the voting power of all then outstanding shares of such Preferred Stock.

3. Redemption. The Preferred Stock shall not be redeemable.

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price for such series by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share (i) for shares of Series A Preferred Stock shall be the Original Series A Issue Price, (ii) for shares of Series B Preferred Stock shall be the Original Series B Issue Price and (iii) for the shares of Series C Preferred Stock shall be the Original Series C Issue Price; provided, however, that the Conversion Price shall in each case be subject to adjustment as set forth in subsection 4(d).

(b) Automatic Conversion. Each share of Preferred Stock shall automatically and immediately be converted into shares of Common Stock at the Conversion Price at such time in effect for such series upon the earlier of (i) this corporation's sale of its Common Stock in a "Qualified IPO," and (ii) the date specified by written consent or agreement of the holders of more than fifty percent (50%) of the then outstanding shares of Preferred Stock (including the shares held by at least three of the four of Jones, TCC, CB and Edifice (each as defined hereinafter) so long as both the Minimum Ownership Threshold and the Edifice Minimum Ownership Threshold are maintained (provided, however, (i) if only the Edifice Minimum Ownership Threshold is maintained, such consent need only include the shares of Edifice, and (ii) if only the Minimum Ownership Threshold is maintained, such consent need only include shares of two of the three of Jones, TCC and CB)), voting together as a single class. "Qualified IPO" means any underwritten public offering pursuant to a registration statement on Form S-1 or Form SB-2 or other then available form for registration under the Securities Act of 1933, as amended (i) the aggregate proceeds of which are not less than \$20,000,000, and (ii) the price per share of which is not less than \$5.00.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, it shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the Preferred Stock, and shall give written notice to this corporation at its principal corporate office, of the election to convert the same and

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shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with a firm commitment underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock. The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If this corporation shall issue, after the date upon which any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series of Preferred Stock in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of Common Stock that the aggregate consideration received by this corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) plus the number of shares of such Additional Stock.

(B) No adjustment of the Conversion Price for Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and

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(E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Common Stock for consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(d)(i) and subsection 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)), if any, received by this corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any

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related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), the Conversion Price of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4(d)(i)(A)), shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this corporation after the applicable Purchase Date other than:

(A) shares of Common Stock issued pursuant to a transaction described in subsection 4(d)(ii) hereof;

(B) shares of Common Stock issuable or issued to employees, consultants or directors of this corporation pursuant to a stock option plan or restricted stock plan approved by not less than sixty-six percent (66%) of the Board of

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Directors of this corporation (including at least three of the four directors designated by Jones Lang LaSalle Americas, Inc. ("Jones"), Trammell Crow Company ("TCC"), CB Richard Ellis, Inc. ("CB") and Edifice-Rex.com, Inc. ("Edifice" and collectively with Jones, TCC and CB, the "Preferred Directors") if both the Minimum Ownership Threshold and the Edifice Minimum Ownership Threshold are maintained (provided, however, (i) if only the Edifice Minimum Ownership Threshold is maintained, such approval need only include the Director individually designated by Edifice, and (ii) if only the Minimum Ownership Threshold is maintained, such approval need only include two of the Directors individually designated by Jones, TCC and CB)) or a stock purchase agreement unanimously approved by the Board of Directors of this corporation;

(C) shares of Common Stock issued in a Qualified IPO;

(D) shares of Common Stock issuable or issued upon conversion of Preferred Stock or as dividends or distributions on Preferred Stock;

(E) shares of Common Stock issuable or issued in connection with a bona fide business acquisition of or by this corporation that is approved by not less than sixty-six percent (66%) of the Board of Directors (including at least three of the four Preferred Directors if both the Minimum Ownership Threshold and the Edifice Minimum Ownership Threshold are maintained (provided, however, (i) if only the Edifice Minimum Ownership Threshold is maintained, such approval need only include the Director individually designated by Edifice, and (ii) if only the Minimum Ownership Threshold is maintained, such approval need only include two of the Directors individually designated by Jones, TCC and CB)), whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise;

(F) shares of Common Stock issuable or issued upon exercise of warrants or other securities or rights pursuant to equipment lease financings or bank credit arrangements approved by the Board of Directors; or

(G) shares of Common Stock issuable or issued upon exercise of warrants or other securities or rights to persons or entities with which this corporation has business relationships, provided such issuances are for other than primarily equity financing purposes and provided further that such issuances are approved by not less than sixty-six percent (66%) of the Board of Directors (including at least three of the four Preferred Directors so long as both the Minimum Ownership Threshold and the Edifice Minimum Ownership Threshold are maintained (provided, however, (i) if only the Edifice Minimum Ownership Threshold is maintained, such approval need only include the Director individually designated by Edifice, and (ii) if only the Minimum Ownership Threshold is maintained, such approval need only include two of the Directors individually designated by Jones, TCC and CB)).

(H) Notwithstanding anything to the contrary contained in subsections (B), (E) and (G) above, approval of a majority of the directors (without regard to particular votes of the Preferred Directors) shall be required after the

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rights of the Series B Preferred Stock to elect three members of the Board of Directors and the rights of the Series C Preferred Stock to elect one member of the Board of Directors collectively terminate pursuant to Section 5(b).

(iii) In the event this corporation should at any time or from time to time after the date hereof, with respect to the Series A Preferred Stock or Series B Preferred Stock, and after the applicable Purchase Date, with respect to the Series C Preferred Stock, fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time after any applicable Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case for the purpose of this subsection 4(e), the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) a provision shall be made so that the holders of Preferred Stock shall thereafter be entitled to receive upon conversion of any of their shares of Preferred Stock, the number of shares of stock or other securities or property of this corporation or otherwise, to which

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a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. This corporation will not, by amendment of its Restated Certificate of Incorporation or through any reorganization, recapitalization, 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 this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 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 Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share; whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for any series of such holder's Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of any of such holder's Preferred Stock.

(i) Notices of Record Date. In the event of any taking by this 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 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, this corporation shall mail to each holder of Preferred Stock, at least

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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 or right, and the amount and character of such dividend, distribution or right.

(j) Reservation of Stock Issuable Upon Conversion. This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this 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 Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this certificate.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

#### 5. Voting Rights.

(a) General Voting Rights. The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock is then convertible, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except in connection with voting pursuant to Section 5(b) hereof and any matter which by law or pursuant to this Restated Certificate of Incorporation the holders of Common Stock are entitled to vote as a class. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Voting for the Election of Directors. The holders of the shares of Series A Preferred Stock shall be entitled to elect two (2) members of the Board of Directors at each annual (or special) election of directors. The holders of the shares of Series B Preferred Stock shall be entitled to elect three (3) members of the Board of Directors at each annual (or special) election of directors until the date on which Jones, TCC and CB and their respective members, partners, affiliates, subsidiaries, or any other entity controlled by, under common control with or controlling Jones, TCC and CB,

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respectively (hereinafter, and as applied to any other entity described herein, "Affiliate"), collectively own less than seventeen million one hundred twenty four thousand five hundred thirty-six (17,124,536) shares of Series B Preferred Stock or Common Stock issued upon conversion of Series B Preferred Stock in the aggregate as adjusted for stock splits, stock dividends, stock combinations, recapitalizations, reorganizations and the like (the "Minimum Ownership Threshold"). The holders of the shares of Series C Preferred Stock shall be entitled to elect one (1) member of the Board of Directors at each annual (or special) election of directors until the date on which Edifice, III-SSI Holdings, LLC and their respective Affiliates, collectively own less than two million six hundred six thousand twenty-five (2,606,025) shares of Series B Preferred Stock and Series C Preferred Stock or Common Stock issued upon conversion of Series B Preferred Stock and Series C Preferred Stock in the aggregate as adjusted for stock splits, stock dividends, stock combinations, recapitalizations, reorganizations and the like (the "Edifice Minimum Ownership Threshold"). Except as provided in this Section 5(b) and in Section 3 of Division (C) of this Article IV, the members of the Board of Directors of this corporation shall be elected at each annual (or special) election of directors by the holders of shares of outstanding Common Stock and Preferred Stock.

In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to this Section 5(b) or Section 3 of Division (C) of this Article IV, the remaining directors so elected by that class or series may by affirmative vote of a majority thereof, elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class or series of stock or by any directors so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

The voting and director designation rights contained in this Article IV(B)(5)(b) and Article IV(C)(3) shall terminate in their entirety upon the occurrence of a Qualified IPO.

#### 6. Protective Provisions.

(a) Series A Preferred Stock. So long as at least three million (3,000,000) shares (as adjusted for stock splits, stock dividends, recapitalizations or the like) of Series A Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock:

(i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely such shares; or

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(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock.

(b) Series B Preferred Stock. So long as at least six million (6,000,000) shares (as adjusted for stock splits, stock dividends, recapitalizations or the like) of Series B Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock (including the shares held by at least two of the four of Jones, TCC, CB and Edifice (so long as both the Minimum Ownership Threshold and the Edifice Minimum Ownership Threshold are maintained (provided, however, (i) if only the Edifice Minimum Ownership Threshold is maintained, such approval need only include the shares of Edifice, and (ii) if only the Minimum Ownership Threshold is maintained, such approval need only include shares of two of the three of Jones, TCC and CB)):

(i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock so as to affect adversely such shares;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series B Preferred Stock; or

(iii) take any action that would by law require the approval of the holders of at least a majority of the outstanding shares of Series B Preferred Stock.

(c) Series C Preferred Stock. So long as at least three hundred thousand (300,000) shares (as adjusted for stock splits, stock dividends, recapitalizations or the like) of Series C Preferred Stock are outstanding, this corporation shall not without first obtaining the approval of at least a majority of the then outstanding shares of Series C Preferred Stock:

(i) alter or change the rights, preferences or privileges of the shares of Series C Preferred Stock so as to affect adversely such shares;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series C Preferred Stock; or

(iii) take any action that would by law require the approval of the holders of at least a majority of the outstanding shares of Series C Preferred Stock.

(d) All Preferred Stock. So long as at least eight million (8,000,000) shares (as adjusted for stock splits, stock dividends, recapitalizations or the like) of Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of holders of at least a majority, including the shares held by at least two of the four of Jones, TCC, CB and Edifice (so long as both the Minimum Ownership Threshold and the Edifice Minimum Ownership Threshold are maintained (provided, however, (i) if only the Edifice

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Minimum Ownership Threshold is maintained, such approval need only include the shares of Edifice, and (ii) if only the Minimum Ownership Threshold is maintained, such approval need only include shares of two of the three of Jones, TCC and CB)), of the then outstanding shares of Preferred Stock:

(i) sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of this corporation is disposed of;

(ii) liquidate, dissolve or wind up this corporation, either voluntary or involuntary;

(iii) amend the Restated Certificate of Incorporation of this corporation;

(iv) increase the number of authorized shares of any class of stock of this corporation;

(v) authorize any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or on a parity with, the Preferred Stock with respect to voting, dividends or upon liquidation; or

(vi) declare or pay any dividends on the Common Stock or redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to (a) the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares (x) at cost, or (y) at cost upon the occurrence of certain events, such as the termination of employment; or (b) the repurchase by this corporation of all of the shares of Common Stock or other equity securities upon the occurrence of certain events, at the times and prices and on the other terms set forth in that certain Common Stock Purchase Agreement, dated as of December 6, 1999, between this corporation and such investor. A copy of the relevant provisions of such purchase agreement will be provided to any holder of Preferred Stock upon written request to this corporation.

(e) Board Approval or Preferred Stock Voting. In addition, unless unanimously approved by the Board of Directors of this corporation, this corporation shall not take any of the following actions without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock:

(i) make any loans or advances to its employees or any members of their immediate families, other than travel advances and other advances

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made in the ordinary course of business or loans to employees made pursuant to promissory notes issued for the purchase of shares under a stock option plan or restricted stock plan approved by not less than sixty-six percent (66%) of the Board of Directors of this corporation including at least three of the four Preferred Directors (so long as both the Minimum Ownership Threshold and the Edifice Minimum Ownership Threshold is maintained (provided, however, (i) if only the Edifice Minimum Ownership Threshold is maintained, such approval need only include the Director individually designated by Edifice, and (ii) if only the Minimum Ownership Threshold is maintained, such approval need only include two of the Directors individually designated by Jones, TCC and CB));

(ii) guarantee any indebtedness or obligation of any other party other than in the ordinary course of business;

(iii) create or suffer to be imposed any lien, mortgage, security interest or other charge on or against all or substantially all of the properties or assets of this corporation or any subsidiary; or

(iv) acquire, or permit any subsidiary to acquire, any stock or other securities of any corporation, partnership or entity unless immediately following such acquisition such corporation, partnership or entity would be wholly owned by this corporation or a subsidiary of this corporation.

7. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by this corporation. The Restated Certificate of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in this corporation's authorized capital stock.

C. Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section 2 of Division (B) of this Article IV.

3. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The holders of the shares of Common Stock shall be entitled to elect two (2) members of the Board of Directors at each annual (or special) election of directors; provided that one of the directors designated by the holders of the shares of Common Stock shall be the Chief Executive Officer of this corporation. The holders of at least a majority of the Preferred Stock and

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the Common Stock of this corporation (voting as separate classes) shall be entitled to elect one (1) member of the Board of Directors at each annual (or special) election of directors; provided that such member is an Independent Director. An "Independent Director" shall mean any designee who is not an employee, former employee, or an Affiliate of any employee or this corporation. Except as provided in Section 5(b) of Division (B) of this Article IV and in this Section 3 of Division (C) of this Article IV, the members of the Board of Directors of this corporation shall be elected at each annual (or special) election of directors by the holders of shares of outstanding Common Stock and Preferred Stock. The voting and director designation rights contained in this Article IV(C)3 shall terminate in their entirety and be of no further force and effect upon the occurrence of a Qualified IPO.

4. Mandatory Redemption. This corporation shall redeem, out of funds legally available for that purpose, all of the shares of Common Stock or other equity securities of this corporation then owned by a certain investor in the Common Stock of this corporation upon the occurrence of certain events, at the times and prices and on the other terms set forth in that certain Common Stock Purchase Agreement, dated as of December 6, 1999, between this corporation and such investor. A copy of the relevant provisions of such purchase agreement will be provided to any holder of Common Stock upon written request to this corporation.

#### ARTICLE V

Except as otherwise provided in this Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the bylaws of this corporation.

#### ARTICLE VI

The number of directors of this corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors or by the stockholders or by consent of the Board of Directors. The number of directors may not be changed without the consent of a majority of the holders of the Series B Preferred Stock.

#### ARTICLE VII

Elections of directors need not be by written ballot unless the bylaws of this corporation shall so provide.

#### ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of this corporation may provide. The books of this corporation 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 bylaws of this corporation.

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**ARTICLE IX**

A director or officer of this corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except for liability (i) for any breach of the director's or officer's duty of loyalty to this corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director or officer derived any improper personal benefit. If the General Corporation Law is amended, after approval by the stockholders of this Article, to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director or officer of this corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

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

**ARTICLE X**

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article X 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 this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

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**ARTICLE XI**

This 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 stockholders herein are granted subject to this reservation.

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**FOUR:** The foregoing Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the provisions of Section 228, 242 and 245 of the General Corporation Law.

**IN WITNESS WHEREOF,** the undersigned has executed this Amended and Restated Certificate of Incorporation on December 29, 2000.

/s/ Robert Kroll  
Secretary and Executive Vice President  
Robert Kroll

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