

06-28-2004

TRADEMARK REC
COVER



102778192

Attorney Docket No.
D335.22-0002

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

1. Name of conveying party:
Provell, Inc.

Individual(s) Association

General Partnership Limited Partnership

Corporation-MN Other Explain

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

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

Name: Provell, Inc.

Internal Address: _____

Street Address: 11100 Wayzata Boulevard, Suite 680

City Minneapolis State MN ZIP 55305

3. Nature of Conveyance:

Assignment Merger Security Agreement

Change of Name Other _____

Execution Date: February 19, 2003

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
(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

4A. Application No.(s)

Additional numbers attached? Yes No

4B. Registration No.(s) 2,151,669

Additional numbers attached? Yes No

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

Name: James L. Young
KINNEY & LANGE, P.A.

Street Address: THE KINNEY & LANGE BUILDING
312 South Third Street

City: Minneapolis State: MN ZIP 55415-1002

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 2.6(b)(6)):.....\$ 40.00

8. Method of Payment

Enclosed

The Commissioner is authorized to charge payment of any additional recording fees or credit any overpayment to deposit account No. 11-0982. A duplicate copy of this page is enclosed.

06/25/2004 MBETACHE 00000043 2151669
01 FC:0521 40.00 DP

2004 JUN 24 AM 7:47
OPR/FINANCE

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.

James L. Young
Name of Person Signing

[Signature]
Signature

June 21, 2004
Date

Total number of pages including cover sheet, attachments and document: [15]

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT "PROVELL, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE NOT HAVING BEEN CANCELLED OR DISSOLVED SO FAR AS THE RECORDS OF THIS OFFICE SHOW AND IS DULY AUTHORIZED TO TRANSACT BUSINESS.

THE FOLLOWING DOCUMENTS HAVE BEEN FILED:

CERTIFICATE OF INCORPORATION, FILED THE TENTH DAY OF FEBRUARY, A.D. 2003, AT 3:30 O'CLOCK P.M.

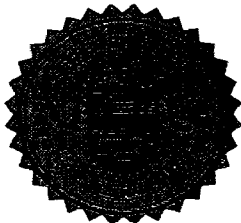
CERTIFICATE OF MERGER, FILED THE NINETEENTH DAY OF FEBRUARY, A.D. 2003, AT 8:30 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE NINETEENTH DAY OF FEBRUARY, A.D. 2003, AT 8:30 O'CLOCK A.M.

CERTIFICATE OF MERGER, FILED THE NINETEENTH DAY OF FEBRUARY, A.D. 2003, AT 9:30 O'CLOCK A.M.

CERTIFICATE OF MERGER, FILED THE NINETEENTH DAY OF FEBRUARY, A.D. 2003, AT 10 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3616755 8310

AUTHENTICATION: 2265619

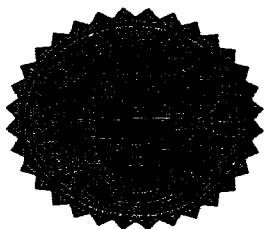
030108494

DATE: 02-20-03

The First State

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES
HAVE NOT BEEN ASSESSED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "PROVELL,
INC." WAS INCORPORATED ON THE TENTH DAY OF FEBRUARY, A.D. 2003.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3616755 8310

030108494

AUTHENTICATION: 2265619

DATE: 02-20-03

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Delaware

PAGE 1

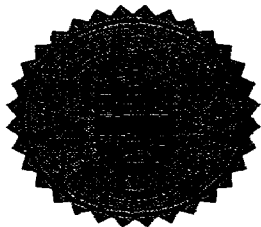
The First State

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 CERTIFICATE OF MERGER, WHICH MERGES:

"PROVELL, INC.", A MINNESOTA CORPORATION,

WITH AND INTO "PROVELL, INC." UNDER THE NAME OF "PROVELL, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINETEENTH DAY OF FEBRUARY, A.D. 2003, AT 8:30 O'CLOCK A.M.

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



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3616755 8100M

AUTHENTICATION: 2264437

030103896

DATE: 02-19-03

TRADEMARK
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CERTIFICATE OF MERGER OF

PROVELL, INC.
(a Minnesota corporation)

into

PROVELL, INC.
(a Delaware corporation)

1. The constituent entities are:

(a) Provell, Inc., which is incorporated under the laws of the State of Minnesota ("Provell MN") ; and

(b) Provell, Inc., which is incorporated under the laws of the State of Delaware ("Provell DE").

2. An Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with the provisions of subsection (c) of Section 252 of the Delaware General Corporation Law, to wit, Provell MN in accordance with the laws of the State of Minnesota and by Provell DE in the same manner as is provided in Section 251 of the Delaware General Corporation Law.

3. The name of the surviving corporation, Provell DE, in the merger herein certified is "Provell, Inc.," which will continue its existence as the surviving corporation under its present name upon the effective date of said merger pursuant to the provisions of the Delaware General Corporation Law.

4. The Certificate of Incorporation of Provell DE, as now in force and effect, shall be amended and restated in its entirety substantially in the form attached hereto as Exhibit A and shall be the Certificate of Incorporation of the surviving corporation until amended or changed pursuant to the provisions of the Delaware General Corporation Law of Delaware.

5. The executed Agreement and Plan of Merger between the constituent corporations is on file at a place of business of the surviving corporation, at 301 Carlson Parkway, Suite 201, Minneapolis, MN 55305.

6. A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request and without cost to any shareholder of the constituent entities.

7. The authorized capital stock of Provell MN consists of 87,000,000 shares of all classes of stock, of which 10,000,000 shares are designated preferred stock and 77,000,000 shares are designated common stock (the "Capital Stock"). The Capital Stock consists of (i) 75,000,000 shares of Class A Common Stock, par value \$0.01 per share, (ii) 2,000,000 shares of Class B Common Stock, par value \$0.01 per share, (iii) 2,400,000 shares of Series A Preferred Stock,

par value \$0.01 per share, (iv) 1,165,000 shares of Series B Preferred Stock, par value \$0.01 per share, (v) 400,000 shares of Series C Junior Preferred Stock, par value \$0.01 per share, (vi) 200,000 shares of Series D Preferred Stock, par value \$0.01 per share, (vii) 210,000 shares of Series E Preferred Stock, par value \$0.01 per share, and (viii) 5,625,000 shares of undesignated preferred stock, par value \$0.01 per share.

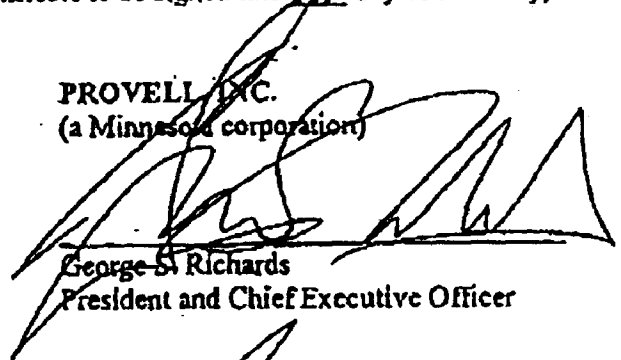
8. The Agreement and Plan of Merger between the constituent corporations provide that the merger herein certified shall be effective upon filing with Secretary of State of the State of Delaware.

[Remainder of page is intentionally blank.]

[Signature page to Certificate of Merger]

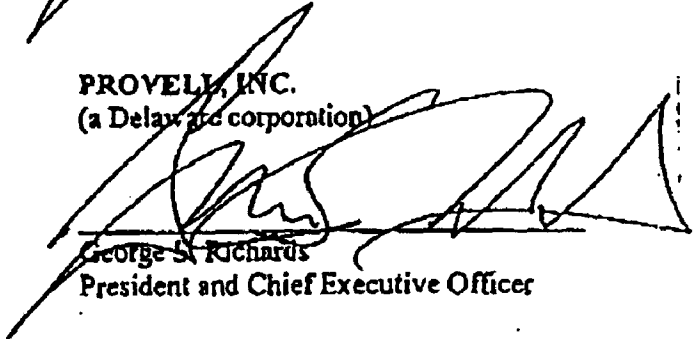
IN WITNESS WHEREOF, the undersigned, authorized officers of each of the constituent entities have caused this Certificate to be signed this 6th day of February, 2003.

PROVELL, INC.
(a Minnesota corporation)



George S. Richards
President and Chief Executive Officer

PROVELL, INC.
(a Delaware corporation)



George S. Richards
President and Chief Executive Officer

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

OF

PROVELL, INC.

IT IS HEREBY CERTIFIED that:

1. The name of the corporation (hereinafter referred to as the "Corporation") is Provell, Inc. and the original Certificate of Incorporation of the Corporation was filed on February 10, 2003, under the name of Provell, Inc.

2. The Certificate of Incorporation of the Corporation is hereby amended and restated in the entirety as follows:

FIRST: The name of the corporation (hereinafter referred to as the "Corporation") is Provell, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

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

FOURTH:

(a) The total number of shares of stock which the Corporation shall have authority to issue is one million seventy-five thousand (1,075,000), all of which shares shall be Common Stock, par value \$.01 per share.

(b) Notwithstanding anything to the contrary contained herein, to the extent, and only for so long as is, required by Section 1123(a)(6) of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), the Corporation (i) shall not issue any shares of non-voting equity securities, (ii) shall provide, as to the several classes or series of securities having voting power, a distribution of such power determined by the board of directors of the Corporation (the "Board") to be appropriate for such classes and series, and (iii) in the case of any class or series of Preferred Stock having a preference over any other class or series of Preferred Stock or over Common Stock with respect to dividends, shall provide, in a manner determined by the Board to be adequate, for the election of directors representing such class or series in the event of default by the Corporation in the payment of such dividends.

FIFTH:

(a) For purposes of this Article Fifth, the following terms shall have the meanings indicated below:

(i) "Agent" shall mean the Person designated by the Corporation for purposes of effectuating the transactions described in paragraph (c) of this Article Fifth.

(ii) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, or any successor statute, and the regulations thereunder.

(iii) "Excess Stock" shall mean, with respect to a Transfer of Stock, the amount of such Stock that is in excess of the amount of Stock that may be transferred without restriction pursuant to subparagraph (b)(i) of this Article Fifth.

(iv) "Expiration Date" shall mean the earlier of (x) January 1, 2008 or (y) January 1 of a taxable year of the Corporation to which the Board determines that no significant Tax Benefits that arose on or before the date hereof may be carried forward, unless the Board shall fix an earlier or later date in accordance with paragraph (g) of this Article Fifth.

(v) "Initial Transferor" shall mean the Person who initially purported to Transfer Excess Stock to a Purported Acquiror.

(vi) "Optionee" shall mean any Person holding an Option Right to acquire Stock.

(vii) "Option Right" shall mean any option, warrant or other right to acquire, convert into, or exchange or exercise for, or any similar interests in, shares of Stock.

(viii) "Ownership Change" shall have the meaning set forth in Section 382(g) of the Code.

(ix) "Ownership Interest Percentage" shall mean the sum of such Person's or Public Group's direct ownership interest in the Corporation, as determined under Treasury Regulation Section 1.382-2T(f)(8) (or any successor regulation), and such Person's or Public Group's indirect ownership interest in the Corporation, as determined under Treasury Regulation Section 1.382-2T(f)(15) or 1.1502-92(c) (or any successor regulations), except that, for purposes of determining a person's indirect ownership interest in the Corporation, Treasury Regulation Sections 1.382-2T(g)(2), 1.382-2T(g)(3), 1.382-2T(h)(2)(iii) and 1.382-2T(h)(6)(iii) (or any successor regulations) shall not apply and any Option Right to acquire Stock shall be deemed to have been exercised only to the extent such exercise would cause an increase in ownership of Stock by such Person or Public Group.

(x) "Person" shall mean any individual, corporation, estate, trust, association, company, partnership, joint venture, or other entity or organization, including, without limitation, any "entity" within the meaning of Treasury Regulation Section 1.382-3(a) (or any successor regulation).

(xi) "President" shall mean the president of the Corporation.

(xii) "Prohibited Distribution" shall mean dividends or other distributions made with respect to Stock received by a Purported Acquiror.

(xiii) "Public Group" shall mean a group of individuals, entities or other Persons described in Treasury Regulation Section 1.382-2T(f)(13) (or any successor regulation).

(xiv) "Purported Acquiror" shall mean a Transferee of Excess Stock.

(xv) "Sales Proceeds" shall mean the proceeds received upon a sale of Excess Stock.

(xvi) "Secretary" shall mean the secretary of the Corporation.

(xvii) "Stock" shall mean shares of stock of the Corporation (other than stock described in Section 1504(a)(4) of the Code or stock that is not described in Section 1504(a)(4) solely because it is entitled to vote as a result of dividend arrearages), any Option Rights to acquire Stock, and all other interests that would be treated as stock of the Corporation pursuant to Treasury Regulation Section 1.382-2T(f)(18) (or any successor regulation).

(xviii) "Tax Benefits" shall mean the Corporation's net operating loss carryovers, capital loss carryovers and built-in losses.

(ix) "Transfer" shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event, that causes a Person or Public Group to acquire or increase an Ownership Interest Percentage in the Corporation, or any agreement to take any such actions or cause any such events, including, without limitation, (x) the granting or exercise of any Option Right with respect to Stock, (y) the disposition of any securities or rights convertible into or exchangeable or exercisable for Stock or any interest in Stock or any exercise of any such conversion or exchange or exercise right and (z) transfers of interests in other entities that result in changes in direct or indirect ownership of Stock, in each case, whether voluntary or involuntary, of record, by operation by law or otherwise.

(xx) "Transferee" shall mean any Person to whom Stock is transferred.

(xxi) "Treasury Regulation" shall mean any of the treasury regulations promulgated under the Code.

(b) In order to preserve the Tax Benefits to which the Corporation is entitled under the Code, the following restrictions shall apply until the Expiration Date:

(i) No Person, other than the Corporation, shall engage in any Transfer of Stock with any other Person to the extent that such Transfer, if effective, would cause the Ownership Interest Percentage of any Person or Public Group to (x) increase to 4.9 percent or

above, (y) increase from 4.9 percent or above to a greater Ownership Interest Percentage or (z) create a new Public Group under Treasury Regulation Section 1.382-2T(j)(3)(i) (or any successor regulation), except as otherwise permitted pursuant to subparagraph (b)(ii).

(ii) Any Transfer that would otherwise be prohibited pursuant to subparagraph (b)(i) shall nonetheless be permitted if (x), the aggregate change in stock ownership taken into account under Section 382 of the Code arising from all Transfers since the last Ownership Change, including the specific proposed transaction, is less than 25%, information relating to the specific proposed transaction is presented to the President and the President determines in his or her discretion that such transaction will not jeopardize or create a material limitation on the Corporation's then current or future ability to utilize its Tax Benefits, taking into account both the proposed transaction and potential future transactions, and (y), the aggregate change in stock ownership taken into account under Section 382 of the Code arising from all Transfers since the last Ownership Change, including the specific proposed transaction, is greater than or equal to 25%, information relating to a specific proposed transaction is presented to the Board and the Board determines in its discretion that such transaction will not jeopardize or create a material limitation on the Corporation's then current or future ability to utilize its Tax Benefits, taking into account both the proposed transaction and potential future transactions. Notwithstanding the foregoing, if the President does not permit a Transfer pursuant to clause (x) above, the Initial Transferor shall be entitled to request that information relating to the specific proposed transaction be presented to the Board for its review and, if the Board approves the proposed Transfer, it may be made provided that the Board determines in its discretion that such transaction will not jeopardize or create a material limitation on the Corporation's then current or future ability to utilize its Tax Benefits, taking into account both the proposed transaction and potential future transactions. Nothing in this subparagraph shall be construed to limit or restrict the President or the Board in the exercise of its fiduciary duties under applicable law.

(c) (i) Any attempted Transfer of Excess Stock shall be void ab initio and not effective to transfer ownership of the Excess Stock to the Purported Acquiror thereof, who shall not be entitled to any rights as a stockholder of the Corporation with respect to the Excess Stock (including, without limitation, the right to vote or to receive dividends with respect thereto and, to the extent that a vote is cast by a Purported Acquiror, the vote shall be rescinded as void), or otherwise as the holder of the Excess Stock, unless approval of the President or the Board is obtained as provided in subparagraph (b)(ii) of this Article Fifth.

(ii) Upon demand by the Corporation, the Purported Acquiror shall transfer any certificate or other evidence of purported ownership of the Excess Stock within the Purported Acquiror's possession or control, along with any Prohibited Distributions received by the Purported Acquiror, to the Agent. If, prior to the notification by the Agent of such demand, the Purported Acquiror has sold the Excess Stock to an unrelated party in an arm's-length transaction that would not constitute a prohibited Transfer pursuant to subparagraph (b)(i) of this Article Fifth if made by the Initial Transferor, the Purported Acquiror shall be deemed to have sold the Excess Stock on behalf of the Initial Transferor, and, in lieu of transferring the Excess Stock to the Agent, shall transfer the Sale Proceeds to the Agent, except to the extent that the Agent grants written permission to the Purported Acquiror to retain a portion of the Sale

Proceeds not exceeding the amount that would have been payable by the Agent to the Purported Acquiror pursuant to subparagraph (c)(iii) if the Excess Stock had been sold by the Agent rather than by the Purported Acquiror. Any purported Transfer of the Excess Stock by the Purported Acquiror, other than a Transfer described in one of the two preceding sentences, shall not be effective to transfer any ownership of the Excess Stock.

(iii) The Agent may sell in an arm's-length transaction any Excess Stock transferred to the Agent by the Purported Acquiror to the extent such sale would be feasible and would not constitute a prohibited Transfer pursuant to subparagraph (b)(i) of this Article Fifth. The Sales Proceeds shall be allocated and paid to the Purported Acquiror up to the following amount: (x) where applicable, the purported purchase price paid or value of consideration surrendered by the Purported Acquiror for the Excess Stock and (y) where the purported Transfer of the Excess Stock to the Purported Acquiror was by gift, inheritance or any similar purported Transfer, the fair market value of the Excess Stock at the time of such purported Transfer. Any Sale Proceeds in excess of the amount allocable to the Purported Acquiror pursuant to the preceding sentence, shall be transferred to an entity designated by the Corporation that is described in Section 501(c)(3) of the Code. In no event shall any such amounts inure to the benefit of the Corporation or the Agent, but such amounts may be used to cover expenses incurred by the Agent in performing its duties under this paragraph. If the Agent is not able to sell such Excess Stock because such sale would constitute a prohibited Transfer or, if such sale would not constitute a prohibited Transfer, the Agent is not able to find a purchaser, then such Excess Stock shall be returned to the Initial Transferor which shall return to the Purported Acquiror, the Sale Proceeds, if any, received by the Initial Transferor from the purported Transfer of the Excess Stock to the Purported Acquiror.

(d) Within 30 business days after learning of a purported Transfer of Excess Stock to a Purported Acquiror, the Corporation (through its Secretary) shall demand that the Purported Acquiror surrender to the Agent the certificates representing the Excess Stock, or any Sale Proceeds, and any Prohibited Distributions. If such surrender is not made by the Purported Acquiror within 30 business days from the date of such demand, the Corporation may institute legal proceedings to compel such transfer; provided, however, that nothing in this paragraph (d) shall preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand, and also provided that failure of the Corporation to act within the time periods set forth in this paragraph (d) shall not constitute a waiver of any right of the Corporation under this Article Fifth.

(e) The Corporation may require as a condition to the registration of the Transfer of any shares of its Stock that the proposed Transferee furnish to the Corporation all information reasonably requested by the Corporation with respect to all the proposed Transferee's direct or indirect ownership interests in, or options to acquire, Stock.

(f) All certificates evidencing ownership of shares of Stock shall bear substantially the following legend:

AS DESCRIBED IN ARTICLE FIFTH OF THE CERTIFICATE OF INCORPORATION, THE SHARES OF STOCK REPRESENTED BY.

THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON *TRANSFER* FOR THE PURPOSE OF THE PRESERVATION OF THE CORPORATION'S NET OPERATING LOSS CARRYOVERS AND RELATED TAX ATTRIBUTES PURSUANT TO SECTION 382 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. WITHOUT THE AUTHORIZATION OF THE PRESIDENT OR THE BOARD OF DIRECTORS, NO *PERSON*, OTHER THAN THE CORPORATION, SHALL ENGAGE IN ANY *TRANSFER* OF STOCK WITH ANY OTHER *PERSON* TO THE EXTENT THAT SUCH *TRANSFER*, IF EFFECTIVE, WOULD CAUSE THE *OWNERSHIP INTEREST PERCENTAGE* OF ANY *PERSON* OR *PUBLIC GROUP* TO (I) INCREASE TO 4.9 PERCENT OR ABOVE, (II) INCREASE FROM 4.9 PERCENT OR ABOVE TO A GREATER *OWNERSHIP INTEREST PERCENTAGE* OR (III) CREATE A NEW *PUBLIC GROUP* UNDER TREASURY REGULATION SECTION 1.382-2T(j)(3)(i). (FOR THIS PURPOSE OWNERSHIP INCLUDES OWNERSHIP BY ATTRIBUTION AS WELL AS DIRECT OWNERSHIP). ITALICIZED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN ARTICLE FIFTH OF THE CERTIFICATE OF INCORPORATION. A COPY OF THE RESTRICTIONS ON *TRANSFER*, WILL BE SENT WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS. IF THE RESTRICTIONS ON *TRANSFER* ARE VIOLATED, THE *TRANSFER* WILL BE VOID AB INITIO WITH THE CORPORATION RETAINING THE RIGHT TO REPOSSESS AND DISPOSE OF SUCH STOCK IN A PERMITTED *TRANSFER*.

(g) Nothing contained in this Article Fifth shall limit the authority of the Board to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation and the interests of the holders of its Stock in preserving the Tax Benefits. Without limiting the generality of the foregoing, in the event of a change in law making one or more of the following actions necessary or desirable, the Board may, by adopting a written resolution of the Board, (i) accelerate or extend the Expiration Date, (ii) modify the Ownership Interest Percentage in the Corporation specified in the first sentence of subparagraph (b)(i) or (iii) modify the definitions of any terms set forth in this Article Fifth; provided, however, that the Board shall not cause there to be such acceleration, extension, change or modification unless it concludes in writing that such action is reasonably necessary or advisable to preserve the Tax Benefits or that the continuation of these restrictions is no longer reasonably necessary for the preservation of the Tax Benefits. Such written resolution shall be filed with the Secretary of the Corporation and shall be mailed by the Secretary to all stockholders of this Corporation within 10 days after the date of any such resolution.

(h) The Corporation, the President and the members of the Board shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the chief executive officer, the chief financial officer or the chief accounting officer of the Corporation or of the Corporation's legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents in making the determinations and findings

contemplated by this Article Fifth and the President and members of the Board shall not be responsible for any good faith errors made in connection therewith.

(i) Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law that might otherwise permit a lesser or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of not less than two-thirds of the shares of the Corporation then entitled to be voted generally in an election of directors, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article Fifth.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The Board is hereby authorized to adopt the initial by-laws of the Corporation. The affirmative vote of the holders of not less than fifty percent (50%) of the shares of the Corporation then entitled to vote generally in an election of directors, voting together as a class, shall be required to adopt, amend or repeal by-laws of the Corporation following the adoption of the initial by-laws.

EIGHTH:

(a) Meetings of stockholders may be held within or without the State of Delaware, as the by-laws may provide.

(b) The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the by-laws of the Corporation.

(c) Elections of directors need not be by written ballot unless the by-laws of the Corporation so provide.

(d) Any director, regardless of class, or the entire Board, may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote on the election of directors.

NINTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or any class of creditors, and/or the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors,

and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders, or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

TENTH: To the fullest extent permitted by the General Corporation Law of the State of Delaware (including, without limitation, Section 102 (b) (7)), as amended from time to time, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or amendment of this Article TENTH or adoption of any provision of the Certificate of Incorporation inconsistent with this Article TENTH shall have prospective effect only and shall not adversely affect the liability of a director of the Corporation with respect to any act or omission occurring at or before the time of such repeal, amendment or adoption of an inconsistent provision.

ELEVENTH: The Corporation shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware (including without limitation, Section 145 thereof), as amended from time to time, indemnify any person, including without limitation, any officer, director, promoter, employee or agent of the Corporation whom it shall have power to indemnify from and against any and all of the expenses, liabilities or other losses of any nature. The indemnification provided in this Article ELEVENTH shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be promoter or director and shall inure to the benefit of the heirs, executors and administrators of such a person.

TWELFTH: The Corporation elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

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

3. This Amended and Restated Certificate of Incorporation herein certified has been duly adopted and written consent has been given in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

4. This Amended and Restated Certificate of Incorporation shall be effective on and as of the date of filing of this Certificate with the office of the Secretary of State of Delaware and shall continue in full force and effect until further changed, altered or amended as therein provided and the manner prescribed by the provisions of the General Corporation Law of the State of Delaware.