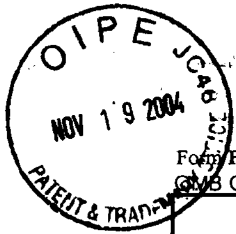

11-29-2004

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Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/2005)

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

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

11-19-04

1. Name of conveying party(ies)/Execution Date(s):

Taylor Group Solutions Integrator, Inc.

- [ ] Individual(s)
- [ ] Association
- [ ] General Partnership
- [ ] Limited Partnership
- [x] Corporation-State
- [ ] Other ____

Citizenship (see guidelines) Delaware

Execution Date(s) March 9, 2000

Additional names of conveying parties attached? [ ] Yes [ ] No

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? [ ] Yes [x] No

Name: ManagedOps.com, Inc.

Internal Address: Suite 332

Street Address: 10 Maguire Road

City: Lexington

State: Massachusetts

Country: USA Zip: 02421

- [ ] Association Citizenship ____
- [ ] General Partnership Citizenship ____
- [ ] Limited Partnership Citizenship ____
- [x] Corporation Citizenship Delaware
- [ ] Other ____ Citizenship ____

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)

3. Nature of conveyance:

- [ ] Assignment
- [ ] Merger
- [ ] Security Agreement
- [x] Change of Name
- [ ] Other ____

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

Reg No. 2377485; Reg. No. 2349360

Additional sheet(s) attached? [ ] Yes [x] No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

MANAGED OPERATIONS; T logo

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

Name: Marcy Romani

Internal Address: Suite 332

Street Address: 10 Maguire Road

City: Lexington

State: Massachusetts Zip: 02421

Phone Number: 781-372-2838

Fax Number: 781-372-3223

Email Address: mromani@navisite.com

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 2.6(b)(6) & 3.41) $65.00

- [ ] Authorized to be charged by credit card
- [ ] Authorized to be charged to deposit account
- [x] Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers ____
Expiration Date ____

b. Deposit Account Number ____

Authorized User Name ____

9. Signature: ____

Signature Date

Name of Person Signing

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

11/26/2004 DBYRNE 00000007 2377485

01 FC:8521 40.00 OP
02 FC:8522 25.00 OP

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

ASSET PURCHASE AGREEMENT

by and among

NAVISITE, INC.,
as Parent,

LEXINGTON ACQUISITION CORP.,
as Buyer

and

SUREBRIDGE, INC.,
as the Seller

May 6, 2004

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "**Agreement**") is dated as of May 6, 2004 by and among **NaviSite, Inc.**, a Delaware corporation ("**Parent**"), **Lexington Acquisition Corp.**, a Delaware corporation ("**Buyer**", and together with Parent, "**NaviSite**"), and **Surebridge, Inc.**, a Delaware corporation ("**Surebridge**", and together with its Subsidiaries (as defined in Section 2.3), the "**Company**").

WHEREAS, Surebridge desires to sell, and NaviSite desires to buy, all of the assets of Surebridge, on the terms and conditions set forth herein; and

WHEREAS, as a condition and inducement to NaviSite to enter into this Agreement and Buyer to assume the liabilities set forth herein, at the Closing (as defined in Section 1.4), Parent, Surebridge and the escrow agent named therein (the "**Escrow Agent**") shall enter into an escrow agreement substantially in the form attached hereto as Exhibit A (with such changes as the Escrow Agent may reasonably request, the "**Escrow Agreement**"), pursuant to which Parent shall place the Escrow Note (as defined in Section 1.2(a)(ii)) in an escrow account to secure certain indemnification obligations to NaviSite.

NOW THEREFORE, in consideration of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I - PURCHASE AND SALE OF ASSETS; CLOSING

Section 1.1. ***Purchase and Sale of Assets***. Except as otherwise provided below and subject to the terms and conditions of this Agreement, Surebridge shall sell, convey, transfer, assign and deliver to Buyer at the Closing, free and clear of all Liens (as hereinafter defined), except for the Permitted Liens (as hereinafter defined), all of its assets and properties of every kind, nature and description (all of such assets and properties being referred to herein as the "**Purchased Assets**"), including, without limitation, the capital stock or other equity interests of each Subsidiary.

As used herein, "Liens" mean liens, rights or options of a third party to acquire assets, security interests, mortgages, encumbrances and restrictions of any kind. As used herein, "Permitted Liens" means (i) such imperfections of title, easements or Liens which do not materially impair the current use of the Purchased Assets, (ii) materialmen's, mechanics', carriers', workmen's, warehousemen's, repairmen's and other like Liens arising in the ordinary course of business, or deposits to obtain the release of such Liens, (iii) Liens for taxes not yet due and payable, or being contested in good faith, (iv) purchase money Liens incurred in the ordinary course of business, and (v) the Liens listed on **Schedule 1.1(a)**.

Notwithstanding the foregoing, the Company shall not transfer to Buyer, and the Purchased Assets shall not include, (a) the charter, bylaws, minute books, stock record books, stock option plans, tax identification numbers, capital stock (other than the capital stock of the

Subsidiaries) and other organizational documents of Surebridge; (b) Surebridge's rights under this Agreement and any other agreement, document or instrument entered into pursuant to this Agreement; and (c) any of the assets listed on **Schedule 1.1(b)** (collectively, "Excluded Assets").

Section 1.2. ***Consideration.***

(a) The consideration to be paid by Parent to Surebridge for the Purchased Assets shall consist of:

(i) a promissory note in the form attached hereto as Exhibit B-1 with an initial principal amount equal to (A) $39,500,000 less (B) the initial principal amount of the Escrow Note (as defined below) as determined in Section 1.2(a)(ii); *provided*, that the initial principal amount of such promissory note as determined in this Section 1.2(a)(i) may be adjusted pursuant to Section 1.2(b) (the "**Primary Note**");

(ii) a promissory note in the form attached hereto as Exhibit B-2 with an initial principal amount equal to twelve and one-half percent (12.5%) of the sum of (A) $40,000,000 plus (B) an amount equal to (i) 3,000,000 multiplied by (ii) the average closing price of the common stock of Parent on the Nasdaq SmallCap Market for the three trading days immediately prior to and the three trading days immediately following the date hereof; *provided*, that the initial principal amount of such promissory note may be adjusted pursuant to Section 1.2(b) (the "**Escrow Note**" and together with the Primary Note, the "**Notes**"); and

(iii) Three Million (3,000,000) shares of Parent's common stock, par value $.01 per share (the "**Parent Shares**").

(b) Subject to NaviSite's right to terminate this Agreement pursuant to Article VIII, the initial principal of the Primary Note and the Escrow Note payable pursuant to Sections 1.2(a)(i) and 1.2(a)(ii), respectively, shall be: (i) increased on a pro rata basis (based on the initial principal amounts of such notes determined pursuant to such sections) by the total amount by which the Aggregate Net Worth of the Company set forth on the audited consolidated financial statements of the Company for the fiscal year ended December 31, 2003 (the "**2003 Audited Financials**") is greater than the Aggregate Net Worth set forth on the Base Balance Sheet (as defined in Section 2.5), or (ii) decreased on a pro rata basis (based on the initial principal amounts of such notes determined pursuant to such sections) by the total amount by which the Aggregate Net Worth of the Company set forth on the 2003 Audited Financials is less than the Aggregate Net Worth of the Company set forth on the Base Balance Sheet; *provided, however*, that no adjustment shall be made pursuant to this Section 1.2(b) if the difference between the Aggregate Net Worth set forth in the 2003 Audited Financials and the Base Balance Sheet (whether positive or negative) is less than or equal to $50,000. "**Aggregate Net Worth**" shall mean the current assets of the Company (net of provision for bad debt) plus restricted cash (to the extent not duplicative) less, to the extent not duplicative, (i) the current liabilities of the Company, (ii) the obligations of the Company under capital leases and (iii) the long-term liabilities of the Company. For example,

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assuming the initial principal of the Primary Note is $32,000,000, if the Aggregate Net Worth set forth on the 2003 Audited Financials is $900,000 and the Aggregate Net Worth set forth on the Base Balance Sheet is $1,000,000, then the initial principal shall be decreased by $100,000 to $31,900,000. Conversely, assuming the initial principal of the Primary Note is $32,000,000, if the Aggregate Net Worth set forth in the 2003 Audited Financials is $1,000,000 and the Aggregate Net Worth set forth on the Base Balance Sheet is $900,000, then the initial principal shall be increased by $100,000 to $32,100,000. In addition, an example with regard to negative amounts is as follows: assuming the initial principal of the Primary Note is $32,000,000, if the Aggregate Net Worth set forth on the 2003 Audited Financials is ($1,100,000) and the Aggregate Net Worth set forth on the Base Balance Sheet is ($1,000,000), then the initial principal shall be decreased by $100,000 to $31,900,000. Conversely, assuming the initial principal of the Primary Note is $32,000,000, if the Aggregate Net Worth set forth in the 2003 Audited Financials is ($1,000,000) and the Aggregate Net Worth set forth on the Base Balance Sheet is ($1,100,000), then the initial principal shall be increased by $100,000 to $32,100,000.

(c) Immediately upon Closing, the Escrow Note shall be deposited by NaviSite into escrow (the "**Escrow Account**") pursuant to the terms of the Escrow Agreement for the purpose of satisfying indemnification claims pursuant to Article IX hereof. Any cash payment made to Surebridge in respect of the Escrow Note prior to the twelve month anniversary hereof shall be delivered to the Escrow Agent for depositing in the Escrow Account on the day on which such amount is deemed paid in respect of the Escrow Note. The Escrow Note and any cash paid pursuant thereto (the "**Cash Escrow**") shall be held in the Escrow Account until 5:00 p.m., Boston time, on that date which is the twelve month anniversary of the Closing Date (as defined in Section 1.4) and shall be maintained and used strictly in accordance with the terms of this Agreement and the Escrow Agreement. At the twelve month anniversary of the Closing Date, the Escrow Note and the Cash Escrow, with such adjustments as set forth in Article IX, shall be distributed to Surebridge in accordance with the Escrow Agreement. Notwithstanding the foregoing, in the event NaviSite has delivered written notice to Surebridge of an indemnification claim as set forth in Article IX prior to such anniversary, the amount necessary to satisfy such claim shall not be distributed and shall continue to be held by the Escrow Agent pursuant to the Escrow Agreement until such claim is resolved as provided in Article IX.

Section 1.3. ***Assumption of Liabilities***. At the Closing, Buyer shall assume and agree to pay when due, perform and discharge in accordance with the terms thereof all Liabilities (as defined in Section 2.9(b)(v) below) of the Company of every kind and nature, whether absolute, contingent, accrued or otherwise and whether due or to become due, and whether arising before or after the Closing (the "**Assumed Liabilities**"). Notwithstanding the foregoing, neither Parent nor Buyer shall have any liability for the following obligations of the Company which shall not be included in "Assumed Liabilities": (a) obligations of Surebridge relating to gain on the sale of the Purchased Assets; (b) the obligations of Surebridge under this Agreement and any agreement, document or instrument entered into by Surebridge in connection with this Agreement; (c) obligations of Surebridge under that certain Personal Guaranty by and among ManagedOps.com, Daniel P. Taylor and Stephen T. Ferranti, dated April 11, 2002; (d)

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obligations of Surebridge under the success bonus agreements; (e) any Employee Plans (as defined in Section 2.10(a)) other than the Blue Cross Blue Shield HMO Plan described in Schedule 1.1(b); and (f) obligations of Surebridge not related to the assets or operations of Surebridge that arise or are incurred after Closing including Delaware franchise taxes and any liabilities relating to the distribution of assets of Surebridge to its shareholders or violations of its charter or bylaws, in each case, occurring after Closing (collectively, the "**Excluded Liabilities**").

Section 1.4. ***Time and Place of Closing***. The closing (the "**Closing**") of the purchase and sale of the Purchased Assets and the other transactions contemplated by this Agreement shall be held at the offices of Browne Rosedale & Lanouette LLP, 31 St. James Avenue, Suite 830, Boston, Massachusetts, on the date that is two (2) business days following the date on which the conditions to Closing set forth in Sections 7.1 and 7.2 of this Agreement have been satisfied or waived in accordance with this Agreement (other than those conditions that are contemplated to be satisfied prior to the Closing), or at such other time or such other place as NaviSite and the Company may mutually determine. The date on which the Closing actually occurs is sometimes referred to herein as the "**Closing Date.**"

Section 1.5. ***Deliveries at Closing.***

(a) At the Closing, Surebridge will deliver or cause to be delivered to NaviSite the following:

(i) executed copies of any Consents obtained, and the Necessary Consents (as defined in Section 7.2(f));

(ii) executed copies of the Registration Rights Agreement (as defined in Section 5.11(a)), the Escrow Agreement, an assignment and assumption agreement in the form of Exhibit C (the "**Assignment and Assumption Agreement**") and a bill of sale in the form of Exhibit D (the "**Bill of Sale**") (collectively, the "**Ancillary Agreements**");

(iii) resignations of the members of the board of directors of each of the Subsidiaries;

(iv) all consents, approvals and authorizations of any Governmental Authority (as defined herein) set forth in Schedule 2.7 or required to be set forth in the related sections of the Company Disclosure Schedule shall have been obtained;

(v) minute books and stock transfer books of the Subsidiaries as are in the Company's or its counsel's possession;

(vi) stock certificates and executed stock powers for all of the outstanding equity securities in each direct Subsidiary of Surebridge;

(vii) each of the certificates, instruments and other documents required to be delivered at the Closing pursuant to Section 7.2 hereof.

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(b) At the Closing, Buyer or Parent, as applicable, will deliver or cause to be delivered to Surebridge the following:

(i) the executed Primary Note;

(ii) stock certificates evidencing all of the Parent Shares;

(iii) executed copies of the Ancillary Agreements to which it is a party; and

(iv) each of the certificates and other documents required to be delivered at the Closing pursuant to Section 7.1 hereof.

(c) At the Closing, Parent will deliver or cause to be delivered to the Escrow Agent the Escrow Note.

Section 1.6. ***<u>Working Capital Adjustment</u>.***For purposes of this Agreement, "**Net Working Capital**" shall mean as of any particular date (i) the value of all current assets, net of provision for bad debt, plus restricted cash (to the extent not duplicative) of the Company as of that date, <u>less</u> (ii) the amount of all current liabilities, including accrued current liabilities not yet due, of the Company as of that date determined in each case in accordance with GAAP (as defined in Section 10.3). A calculation of the Net Working Capital as of March 31, 2004 based on the March Balance Sheet, as adjusted for a decrease of $70,000 in current liabilities (i.e. Net Working Capital of $3,565,212.51)(the "**March Net Working Capital**") is attached hereto as <u>Schedule 1.6</u>. Notwithstanding the foregoing, the Net Working Capital as of the Closing shall (i) exclude current liabilities pursuant to Sections 10.3 and 6.2, (ii) exclude amounts for severance triggered by the transactions contemplated by this Agreement, and (iii) to the extent any liabilities that have not been accrued as of March 31, 2004 are paid prior to the Closing, such payments shall be added back to current assets.

(b) Within twenty (20) days of the Closing Date, NaviSite shall prepare a calculation of the Net Working Capital as of the Closing Date in accordance with GAAP and applying the same accounting principles, policies and practices that were used in the creation of the March Balance Sheet and <u>Schedule 1.6</u>. NaviSite shall deliver to Surebridge a written statement showing such calculation as of the Closing Date within forty-five (45) days following the Closing Date (the "**Closing Statement**"). NaviSite shall provide Surebridge and its representatives with reasonable access to such books and records relating to the Company through the Closing Date and NaviSite personnel as Surebridge reasonably requests in order to permit Surebridge to analyze the Closing Statement.

(c) If within ten (10) days following delivery of the Closing Statement to Surebridge, Surebridge has not given NaviSite written notice of its objection as to the calculation of Net Working Capital as of the Closing Date as reflected on the Closing Statement (which notice shall state the basis of Surebridge's objection), then the Net

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Working Capital as of the Closing Date as so reflected on the Closing Statement shall be binding and conclusive on the parties and shall be the "**Closing Net Working Capital.**"

(d) If Surebridge timely gives NaviSite written notice of objection to the calculation of the Net Working Capital as of the Closing Date as reflected on the Closing Statement, NaviSite and Surebridge shall attempt in good faith to agree upon the Net Working Capital as of the Closing Date, and if such agreement is reached the Net Working Capital so agreed upon shall be the Closing Net Working Capital. If Surebridge and NaviSite fail to resolve the issues raised by such objection within ten (10) days of NaviSite's receipt of such objection, Surebridge and NaviSite shall submit the issues remaining in dispute to Grant Thornton (the "**Independent Accountants**") for resolution applying the principles, policies and practices referred to in Section 1.6(b). If issues are submitted to the Independent Accountants for resolution, (i) Surebridge and NaviSite shall furnish or cause to be furnished to the Independent Accountants and to the other party such work papers and other documents and information relating to the disputed issues as the Independent Accountants may request and are available to that party or its agents and shall be afforded the opportunity to present to the Independent Accountants any material relating to the disputed issues and to discuss the issues with the Independent Accountants; (ii) the determination by the Independent Accountants of the Net Working Capital as of the Closing Date, as set forth in a notice to be delivered to both Surebridge and NaviSite within sixty (60) days of the submission to the Independent Accountants of the issues remaining in dispute, shall be final, binding and conclusive on the parties and shall be the Closing Net Working Capital; and (iii) NaviSite shall pay all of the fees and costs of the Independent Accountants for such determination, unless Surebridge had no reasonable basis for objecting to the Closing Statement, in which case the fees and costs of the Independent Accountants shall be paid by the party that does not prevail.

(e) If, after finally determination according to this Section 1.6, the Closing Net Working Capital is greater than the March Net Working Capital, then the principal amounts of the Primary Note and Escrow Note shall be increased on a pro rata basis (based on the then outstanding principal amounts of such notes) by the amount of such excess. If, after finally determination according to this Section 1.6, the Closing Net Working Capital is less than the March Net Working Capital, then the principal amounts of the Primary Note and Escrow Note shall be decreased on a pro rata basis (based on the then outstanding principal amounts of such notes) by the amount of such shortfall. Notwithstanding the foregoing, no adjustment shall be made to the principal amounts of the Primary Note and Escrow Note pursuant to this Section 1.6 if the difference between the March Net Working Capital and the Closing Net Working Capital (whether positive or negative) is less than or equal to $25,000.

(f) The parties agree to act in good faith and takes all actions necessary to cause the cancellation of any existing Notes and the issuance of replacement Notes reflecting the adjustments to the principal amounts required by Section 1.6.

Section 1.7. ***Allocation***. Within 30 days of the final determination of the Closing Net Working Capital pursuant to Section 1.6, NaviSite and Surebridge shall mutually allocate the purchase price (and all other capitalized costs) among the Purchased Assets. Such allocation

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shall be made in accordance with the provisions of Section 1060 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and shall be binding upon NaviSite and Surebridge for all purposes (including financial accounting purposes, financial and regulatory reporting purposes and tax purposes). NaviSite and Surebridge also each agree to file IRS Form 8594 consistent with the foregoing and in accordance with Section 1060 of the Code. In the event that a dispute arises between Surebridge and NaviSite as to the allocation of the purchase price under this Section 1.7, the parties shall attempt in good faith to resolve such dispute. If such dispute is not resolved within thirty (30) days thereafter, the parties shall submit the dispute to the Independent Accountants for resolution, which resolution shall be final, conclusive and binding on the parties. Notwithstanding anything in this Agreement to the contrary, the fees and expenses of the Independent Accountants shall be borne by NaviSite.

ARTICLE II - REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company Disclosure Schedule shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Article II. The disclosures in any section or subsection of the Company Disclosure Schedule shall qualify other sections and subsections in this Article II to the extent it is reasonably apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections. Except as set forth in the Company Disclosure Schedule attached hereto and delivered by the Company, the Company hereby represents and warrants to NaviSite as of the date hereof (or, if made as of a specified date, as of such date) and as of the Closing Date, as follows:

Section 2.1. ***Existence; Good Standing; Authority.***

(a) Surebridge is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Surebridge has all requisite corporate power and authority and all necessary governmental licenses, authorizations, consents and approvals to own, operate, lease and encumber its properties and carry on its business as currently operated and conducted. Surebridge is duly licensed or qualified to do business as a foreign corporation and is in good standing under the laws of each other jurisdiction in which the character or ownership of its properties or in which the transaction or character of its business makes such qualification necessary, except where the failure to be so licensed or qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect. Schedule 2.1 hereto sets forth a true, correct and complete list of all foreign jurisdictions in which Surebridge is so qualified or licensed and in good standing. The copies of Surebridge's certificate of incorporation and by-laws, each as amended to date and in full force and effect, have been provided or made available to NaviSite's counsel, and are complete and correct, and no amendments thereto are pending. Surebridge is not in violation of any provision of its certificate of incorporation or by-laws. The books and records, minute books, stock record books and other similar records of Surebridge, all of which have been made available to NaviSite's counsel and NaviSite, are true, correct and complete.

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(a) Surebridge owns directly or indirectly all of the outstanding shares of capital stock of Surebridge Service Inc., a Delaware corporation, Surebridge Acquisition Corp., a Delaware corporation, ManagedOps, Inc., a Delaware corporation, and World Wide Underpants, LLC, a New Hampshire limited liability company (each, a "**Subsidiary**" and collectively, the "**Subsidiaries**"). Neither Surebridge nor any Subsidiary owns directly or indirectly any interest or investment (whether equity or debt) in any other Person (other than investments in short-term investment-grade securities).

(b) Each of the Subsidiaries is a corporation or limited liability company validly existing and in good standing under the laws of the state of its organization and has all requisite corporate power and authority to own, operate, lease and encumber its properties and carry on its business as currently conducted. Each Subsidiary is duly licensed or qualified to do business as a foreign corporation or limited liability company, and is in good standing in each other jurisdiction in which the character or ownership of its properties or in which the transaction or character of its business makes such qualification necessary, except where the failure to be so licensed or qualified would not, individually or in the aggregate, have a Material Adverse Effect. The copies of the organizational documents of each such Subsidiary, in each case as amended to date and in full force and effect and made available to NaviSite's counsel, are true, complete and correct, and no amendments thereto are pending. Except as set forth on Schedule 2.3, no Subsidiary is in violation of any provision of its certificate of incorporation or by laws (or other similar charter documents or operating agreement). The books and records, minute books, stock record books and other similar records of each Subsidiary, all of which have been made available to NaviSite's counsel and NaviSite, are true, correct and complete.

Section 2.4. ***No Conflict, Consents***. Except as set forth on Schedule 2.4 and assuming the consents, approvals and authorizations contemplated by Sections 2.7 and 4.3 are obtained and are in full and effect and notices have been duly given, none of the execution, delivery or the performance by Surebridge of this Agreement and the other agreements, documents and instruments contemplated hereby, nor the consummation by the Company of the transactions contemplated hereby: (w) results in the creation or imposition of any Lien on any of the property held by Surebridge or any of its Subsidiaries; (x) conflicts with, contravenes or results in a breach of any provisions of the Charter or by-laws of Surebridge or the organizational documents of any Subsidiary, each as presently in effect; (y) requires consent to assignment or otherwise, as a result of the transactions contemplated hereby (including to maintain in full force and effect any of the Material Contracts as a result of the transactions contemplated hereby), violates, or conflicts with, or results (or will violate, conflict with or result) in a breach of any provision of, or constitutes a default (or an event which, with or without notice or lapse of time or both, would constitute a default) or gives rise to any right of termination, cancellation or acceleration, change of control rights, modification, notification, enhancement of rights of third parties, revocation of grant of rights or assets, placement into or release from escrow of any assets of Surebridge or any of its Subsidiaries or acceleration of any right or obligation of Surebridge or any of its Subsidiaries or a loss of any benefit to which Surebridge or any of its Subsidiaries is entitled under any of the terms, conditions or provisions of any Material Contract (as defined in Section 2.13) to which Surebridge or any Subsidiary is a party or by which Surebridge or any Subsidiary or any of their respective properties is bound or affected; or (z) violates any order,

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have been prepared in accordance with GAAP consistently applied throughout all periods indicated, and present fairly (or when delivered will present fairly) in all material respects the consolidated financial condition, cash flows and operating results of the Company as of the dates and for the periods indicated therein, and are consistent with the books and records of the Company.

(c) As of the date hereof, all liabilities of the Company of a type that would be required to be shown on the Financial Statements (including the notes thereto, where applicable) in accordance with GAAP (whether direct, indirect, accrued, absolute, contingent, asserted, unasserted or otherwise) have been (other than liabilities of less than $10,000 individually or $25,000 in the aggregate) (i) stated or adequately reserved or accrued against on the Base Balance Sheet or the notes thereto, (ii) reflected on Schedule 2.5, or (iii) incurred after the date of the Base Balance Sheet in the ordinary course of business consistent with past practices.

Section 2.6. ***Absence of Certain Changes***. Except as set forth on Schedule 2.6, from the date of the Base Balance Sheet to the date of this Agreement, the Company has operated only in the ordinary course of business consistent with past practices and there has not been any:

(a) event, occurrence or development which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect other than developments generally in the industry in which the Company operates;

(b) event or development that would, individually or in the aggregate, reasonably be expected to prevent or materially delay the performance of this Agreement or any of the Ancillary Agreements by Surebridge;

(c) any action taken by Surebridge or any Subsidiary during the period from January 1, 2004 through the date of this Agreement that, if taken during the period from the date of this Agreement through the Closing Date, would constitute a breach of Section 5.1;

(d) exchange in, reclassification, split or subdivision of the Company's authorized or issued capital stock; grant of any option, right to purchase or similar right regarding the capital stock of the Company; or purchase, redemption, retirement, or other acquisition by the Company of any such capital stock; or

(e) declaration or payment of any dividend or other distribution or payment in respect of the capital stock of the Company.

Section 2.7. ***Consents and Approvals.*** Except as set forth on Schedule 2.7, the execution, delivery and performance of this Agreement by Surebridge will not require any consent, approval, permit, authorization, waiver or other action by, or filing with or notification to, any federal, state, local, or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body (a "**Governmental Authority**"), except the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), if applicable.

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Section 2.8. ***Litigation***. Except as set forth on Schedule 2.8, as of the date of this Agreement there is no litigation, action, suit, proceeding, inquiry, claim, arbitration or investigation pending or, to the Company's knowledge, threatened in writing against the Company or any of its assets or property or any of its directors or officers in their capacities as such or for which the Company is obligated to indemnify a third party. The Company is not a party to or subject to the provisions of any order, writ, injunction, judgment or decree of any court or Governmental Authority or any arbitration ruling or any settlement or similar agreement or written arrangement with ongoing obligations relating to a dispute (or the resolution of a dispute) with any third party.

Section 2.9. ***Taxes***.

(a) Except as set forth on Schedule 2.9:

(i) Surebridge and each Subsidiary has timely filed or been included in, or will timely file or be included in, all material Tax Returns required to be filed by them or in which they are to be included with respect to Taxes for any period ending on or before the date of this Agreement, taking into account any extension of time to file granted to or obtained on behalf of Surebridge or any Subsidiary;

(ii) Surebridge and each Subsidiary have paid or caused to be paid all Taxes and other assessments reflected in such Tax Returns that have become due and payable, except those contested in good faith as set forth on Schedule 2.9(a)(ii). The Company has made provision, in accordance with GAAP, for all Taxes owed or accrued through the date of this Agreement;

(iii) The Company has withheld and paid all Taxes required to be withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party under all applicable Tax Laws, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed and have, within the time and manner prescribed by Law, registered for the purpose of each withholding Tax in the relevant territory or jurisdiction;

(iv) There are no Liens for Taxes upon the assets or properties of the Company or any Subsidiary except for (a) statutory Liens for current Taxes not yet due and (b) Liens for Taxes being contested in good faith (to the extent that such Liens are set forth on Schedule 2.9(iv) hereto);

(v) The Company has not requested any extension of time within which to file any Tax Return in respect of any taxable year which has not since been filed, and no outstanding waivers or comparable consents regarding the application of the statute of limitations with respect to any Taxes or Tax Returns has been given by or on behalf of the Company;

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(vi) The Company (a) is not required to include in income in any taxable period ending after the Closing any adjustment pursuant to Section 481(a) of the Code, by reason of any voluntary or involuntary change in accounting method (nor has any Governmental Authority proposed any such adjustment or change of accounting method); (b) has not made an election, or is not required, to treat any of its assets as tax-exempt bond financed property or tax-exempt use property under Section 168 of the Code or any comparable provision of foreign, state or local law; or (c) has not filed a consent pursuant to former Section 341(f) of the Code for (or any corresponding provision of state or local law) or agreed to have former Section 341(f) of the Code (or any corresponding provision of state or local law) applied to the disposition of any asset;

(vii) No power of attorney has been granted by or with respect to the Company with respect to any matter relating to Taxes;

(viii) The Company is not a party to any agreement, contract or arrangement that will result, separately or in the aggregate, in the payment of any "excess parachute payments" within the meaning of Section 280G of the Code and no action by the Company, whether pursuant to this Agreement or otherwise, shall result in the making of any such payment;

(ix) The Company has not requested or received a ruling or determination from any Governmental Authority or signed a closing or other agreement with any Governmental Authority, in either case with respect to Taxes;

(x) The Company is not a party to, is not bound by, or does not have any obligation under, any Tax sharing agreement, Tax indemnification agreement or similar contract or arrangement (collectively, "**Tax Indemnification Agreements**"); as of the date of this Agreement, the Company has no knowledge of any potential Liability to any Person as a result of, or pursuant to, any such Tax Indemnification Agreement, including any tax Indemnification Agreement set forth on Schedule 2.9(x);

(xi) The Company has previously delivered or made available to NaviSite true, correct and complete copies of (a) all audit reports, letter rulings, technical advice memoranda and similar documents issued by a Governmental Authority relating to the United States federal, state, local or foreign Taxes due from or with respect to the Company, (b) all United States federal Tax Returns, and those state, local and foreign Tax Returns filed by the Company or any Subsidiary (or, in each case, on its behalf) for tax periods ending on or after December 31, 2000 and (c) all closing agreements entered into by the Company with any Governmental Authority with respect to Taxes; the Company will deliver to NaviSite all materials with respect to the foregoing for all matters arising after the date hereof.

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(xii) The Company does not have any Liability for Taxes of another Person (other than the affiliated group of which the Company is now the common parent) under Section 1.1502-6 of the Treasury regulations promulgated under the Code (the "**Treasury Regulations**") or any similar provision under state, local or foreign Law, by contract or otherwise;

(xiii) The Company does not have any deferred intercompany gain or loss arising as a result of a deferred intercompany transaction within the meaning of Section 1.1502-13 of the Treasury Regulations (or similar provision under state, local or foreign Law) or any excess loss account under Section 1.1502-19 of the Treasury Regulations (or similar provision of state, local or foreign Law);

(xiv) Since December 31, 2003, neither the Company nor any Subsidiary has incurred any Liability for Taxes other than in the ordinary course of business;

(xv) No claim has been made, nor does the Company reasonably expect that a claim will be made by a Governmental Authority in a jurisdiction where the Company or any Subsidiary does not file Tax Returns that the Company or any Subsidiary is or may be subject to taxation by that jurisdiction;

(xvi) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period described in Section 897(c)(1)(A)(ii) of the Code

(xvii) Neither the Internal Revenue Service (the "**IRS**") nor any other Governmental Authority is asserting as of the date of this Agreement by written notice to the Company or, to the Company's knowledge, threatening as of the date of this Agreement to assert against the Company, any deficiency or claim for any amount of additional Taxes; and

(xviii) No federal, state, local or foreign audits or other administrative proceedings or court proceedings are pending as of the date of this Agreement with regard to any Taxes or Tax Returns of the Company and the Company has not received a written notice prior to the date of this Agreement of any actual or threatened audits or proceedings or is otherwise aware of any such audits or proceedings.

(b) For the purposes of this Agreement:

(i) "***Taxes***" shall mean any United States federal, state or local or non-U.S. income, gross receipts, license, severance, occupation, premium, environmental (including taxes under Code Section 59A), customs duties, profits, disability, registration, alternative or add-on minimum, estimated, withholding, payroll, employment, unemployment, social security (or similar), excise, sales, use, value-added, occupancy, franchise, real property, personal property, business

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and occupation, windfall profits, capital stock, stamp, transfer or other tax, charge, fee or imposition in the nature of Taxes, whether computed on a separate, consolidated, unitary, combined or other basis, including any interest, penalties, additions or assessments with respect thereto, whether disputed or not;

(ii) "***Tax Law***" means the Law (including any applicable regulations or any administrative pronouncement) of any Governmental Authority relating to any Tax;

(iii) "***Tax Returns***" shall means any U.S. federal, state, local or foreign return, declaration, report, claim for refund, amended return, declaration of estimated Tax or information return or statement relating to Taxes, and any schedule, exhibit, attachment or other materials submitted with any of the foregoing, and any amendment thereto;

(iv) "***Law***" means any non-U.S. or United States federal, state or local law, statute, rule, regulation, ordinance, standard, requirement, administrative ruling, order or process (including any zoning or land use law or ordinance, building code, Environmental Law, securities, stock exchange, blue sky, civil rights, employment, labor or occupational health and safety law or regulation or any law, order, rule or regulation applicable to federal contractors) or administrative interpretation thereof, and any court, or arbitrator's order or process; and

(v) "***Liability***" means any debt, liability, commitment or obligation of any kind, character or nature whatsoever, whether known or unknown, secured or unsecured, fixed, absolute, contingent or otherwise, and whether due or to become due.

Section 2.10. ***Employee Benefit Plans.***

(a) Schedule 2.10 hereto contains a true, correct and complete list of each deferred compensation and each bonus or other incentive compensation, stock purchase, stock option and other equity or equity based compensation plan, program, agreement or arrangement; each severance or termination pay, medical, surgical, hospitalization, life insurance and other "welfare plan," fund or program (within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")); each profit sharing, stock bonus or other "pension plan," fund or program (within the meaning of Section 3(2) of ERISA); each employment, "change in control," termination or severance agreement; and each other employee benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to or required to be contributed to by the Company or by any trade or business, whether or not incorporated (an "**ERISA Affiliate**"), that together with the Company would be deemed a "single employer" within the meaning of Section 414(b), (c), (m) or (o) of the Code, or to which the Company or an ERISA Affiliate is party, whether written or oral, for the benefit of any employee or former employee of the Company (the "**Employee Plans**"); *provided* that with respect to Employee Plans

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established or maintained primarily for employees or former employees working outside the United States only material Employee Plans are listed. "**Former Employee Plan**" shall mean any Employee Plans of Surebridge or any Subsidiary sponsored, maintained, or contributed to within the last three years, notwithstanding that such plans are not listed on Schedule 2.10. Neither the Company nor any ERISA Affiliate has any commitment or formal plan, whether legally binding or not, to create any additional material employee benefit plans or modify or change, in any material way, any existing Employee Plans and no condition exists which would prevent the Company from terminating any Employee Plans (other than Employee Plans required to be maintained under applicable Law) without material liability to the Company (other than for benefits accrued at the time of such termination), except to the extent limited by Law.

(b) With respect to each Employee Plan, the Company has heretofore delivered or made specifically available to NaviSite a current, true, correct and complete copy (or, to the extent no such copy exists, an accurate description) thereof (including any amendments thereto) and, to the extent applicable: (i) any related trust agreement or other funding instrument; (ii) the most recent IRS determination letter; (iii) the most recent summary plan descriptions or other reports and summaries required under ERISA or the Code; (iv) any material written communication (or a description of any material oral communications) to participants since January 1, 2003 concerning the Employee Plans; and (v) for the most recent year for which such documents are available, the Form 5500 and attached schedules, audited financial statements and actuarial valuation reports and any attorney response to any auditor request. Each Employee Plan and Former Employee Plan intended to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service and the trusts maintained thereunder are exempt from taxation under Section 501(a) of the Code and, to the knowledge of the Company, no event has occurred or circumstance exists that would reasonably be expected to affect such qualified status. Each Employee Plan and Former Employee Plan intended to satisfy the requirements of Section 501(c)(9) has satisfied such requirements.

(c) None of the Employee Plans or Former Employee Plans is a "multiemployer plan," as such term is defined in Section 3(37) of ERISA (a "**Multiemployer Plan**"), nor is or was any Employee Plan or Former Employee Plan subject to Section 302 or Title IV of ERISA or Section 412 of the Code. No Liability under Title IV or Section 302 of ERISA has been incurred by the Company or any ERISA Affiliate that has not been satisfied in full, and no condition exists that presents a material risk to the Company or any ERISA Affiliate of incurring any such Liability. Neither the Company nor any ERISA Affiliate sponsors, maintains, contributes to or has an obligation to contribute to, or has at any time sponsored, maintained, contributed to or had an obligation to contribute to, any Multiemployer Plan or any pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA.

(d) Except as set forth on Schedule 2.10, neither the Company nor, to the knowledge of the Company, any Employee Plan, any Former Employee Plan, any trust created thereunder, or any trustee or administrator thereof, has engaged in a transaction in connection with which the Company, any Employee Plan, any Former

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Employee Plan, any such trust, or any trustee or administrator thereof, or any party dealing with any Employee Plan or any Former Employee Plan or any such trust could be subject to either a material civil penalty assessed pursuant to Section 409 or 502(i) of ERISA or a material tax imposed pursuant to Section 4975 or 4976 of the Code. To the knowledge of the Company, there has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code and other than a transaction that is exempt under a statutory or administrative exemption) with respect to any Employee Plan or any Former Employee Plan that could result in any material liability to the Company or an ERISA Affiliate.

(e) Except as set forth on Schedule 2.10, each Employee Plan and Former Employee Plan has been operated and administered in all material respects in accordance with its terms and applicable Law, including but not limited to ERISA and the Code, and all contributions required to be made under the terms of any of the Employee Plans or any Former Employee Plan as of the date of this Agreement have been timely made or, if not yet due, have been properly reflected on the Company Financial Statements except for any failure to do so which would not reasonably be expected to result in any material liability to the Company or an ERISA Affiliate.

(f) Except as set forth on Schedule 2.10, no Employee Plan or Former Employee Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for employees or former employees of the Company for periods extending beyond their retirement or other termination of service, other than (i) coverage mandated by applicable Law, (ii) death benefits under any "pension plan," or (iii) benefits the full cost of which is borne by the current or former employee (or his beneficiary). The Company and each ERISA Affiliate are in material compliance with (i) the requirements of the applicable health care continuation and notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the regulations (including proposed regulations) thereunder and any similar state law and (ii) the applicable requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations (including the proposed regulations) thereunder.

(g) Except as set forth on Schedule 2.10, the consummation of the transactions contemplated hereby will not (i) entitle any current or former employee or officer of the Company to severance pay, unemployment compensation or any other payment, (ii) accelerate the time of payment or vesting, or increase the amount of compensation or benefits due any such employee or officer or (iii) prevent the Company from amending or terminating any Employee Plan or Former Employee Plan.

(h) Except as set forth on Schedule 2.10, there are no pending or, to the knowledge of the Company, threatened or anticipated claims by or on behalf of any Employee Plan or Former Employee Plan, by any employee or beneficiary covered under any such Employee Plan or Former Employee Plan with respect to such plan, or otherwise involving any such Employee Plan or Former Employee Plan, including any audit or inquiry by the IRS or United States Department of Labor (other than routine claims for benefits).

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(i) With respect to each Employee Plan and Former Employee Plan that is subject to the Law of any jurisdiction outside the United States (each, a "**Foreign Benefit Plan**"):

(i) all employer and employee contributions to each Foreign Benefit Plan required by Law or by the terms of such Foreign Benefit Plan have been timely made in all material respects, or, if applicable, accrued, in accordance with applicable accounting practices;

(ii) the fair market value of the assets of each funded Foreign Benefit Plan, the Liability of each insurer for any Foreign Benefit Plan funded through insurance or the book reserve established for any Foreign Benefit Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of December 31, 2003, with respect to all current and former participants in such plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Foreign Benefit Plan and no transaction contemplated by this Agreement shall cause such assets or insurance obligations to be less than such benefit obligations;

(iii) the Foreign Benefit Plan has been maintained in all material respects in accordance with all applicable Laws and, if intended to qualify for special tax treatment, the Foreign Benefit Plan meets all requirements for such treatment, except for any failure to do so which would not result in any material liability to the Company; and

(iv) each Foreign Benefit Plan required to be registered has been registered and has been maintained in good standing with applicable Governmental Authorities.

Section 2.11. ***Real and Personal Property***.

(a) Schedule 2.11(a) sets forth a list of all real properties leased by the Company (the "**Leased Real Property**") and all addresses, approximate square footage and expiration dates thereof. True and complete copies of the leases (including all amendments, subordination and non-disturbance agreements, estoppel certificates and related documents) (each, a "**Lease**" and collectively, the "**Leases**") have been delivered or made available to NaviSite. With respect to each Lease required to be listed on Schedule 2.11(a):

(i) the Company has good, valid and enforceable leasehold interests to the leasehold estate in the Leased Real Property granted to the Company pursuant to each pertinent Lease, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity; and

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(ii) each of said Leases has been duly authorized and executed by the Company and is in full force and effect and there is no existing material default by the Company under any of the Leases.

(b) Schedule 2.11(b) sets forth a true, correct and complete list of all equipment, fixtures and trade fixtures of the Company as of March 31, 2004. Except as set forth on Schedule 2.11(b), the Company has good title to all of its tangible personal property and assets shown on the Base Balance Sheet or acquired after the date of the Base Balance Sheet, free and clear of any mortgage, pledge, Lien, conditional sale agreement, security title, encumbrance or other charge (collectively, "**Encumbrances**"), except for (i) assets which have been disposed of to nonaffiliated third parties since December 31, 2003 in the ordinary course of business, (ii) Encumbrances reflected in the Base Balance Sheet, (iii) Encumbrances for current Taxes not yet due and payable, and (iv) Permitted Liens.

(c) The Company does not own, and never has owned, any real property.

Section 2.12. ***Labor and Employment Matters***. Except as set forth in Schedule 2.12 hereto:

(a) There is no:

(i) collective bargaining agreement or any other agreement, whether in writing or otherwise, with any labor organization, union, group or association ("**Labor Organization**") applicable to the employees of the Company and the Company is not subject to any charge, demand, petition or representation proceeding seeking to compel, require or demand it to bargain with any labor union or labor organization nor, as of the date of this Agreement, is there pending or, to the Company's knowledge, threatened, any material labor strike, dispute, walkout, work stoppage, slow down or lockout involving the Company or action, dispute or employment related complaint by or with respect to any employees of the Company;

(ii) unfair labor practice complaint pending or, to the knowledge of the Company, threatened against the Company before the National Labor Relations Board or any other federal, state local or foreign agency;

(iii) pending or, to the knowledge of the Company, threatened representation question or union or labor organizing activities with respect to employees of the Company.

(b) During the past three years, the Company has not effectuated (i) a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company; or (ii) a "mass layoff" (as defined in the WARN Act (which is defined in Section 6.1(d))) affecting any site of employment or facility of the Company; nor has the

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Company been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state, local or foreign Law. The employees of the Company have not suffered an "employment loss" (as defined in the WARN Act) since three months prior to the date of this Agreement.

(c) The Company has at all times and in all material respects properly classified each of their respective employees as employees and each of their independent contractors as independent contractors, as applicable, and no indication has been received from any Governmental Authority that such contractors would be considered employees for employment law or tax purposes at any time.

(d) The Company has at all times paid its respective employees in conformance with applicable federal, state, local and foreign wage and hour laws. There are not presently pending, or to the knowledge of the Company threatened, any claims with respect to working hours or the payment of wages, overtime or any other form of employee compensation.

(e) The Company does not, formally or informally, have a custom or practice of paying ex-gratia severance payments to employees.

Section 2.13. ***Contracts and Commitments*.**

(a) Schedule 2.13 sets forth a true, complete and correct list of the top 25 customers (and their known affiliates) of the Company based on revenues for the fiscal year ended December 31, 2003. Schedule 2.13 sets forth a true, complete and correct list (including all amendments, modifications or supplements with respect thereto) of the following agreements (written or oral) to which Surebridge or any Subsidiary is a party to the extent any such agreement (i) is currently in effect or (ii) has been terminated on or prior to the date hereof but contains provisions that survived such termination and such provisions are currently in effect (other than provisions that customarily survive such termination and do not relate to the principal business purpose of such agreement and which do not create any material or ongoing financial or other liability to NaviSite):

(i) Any loan agreement, note, mortgage, indenture, security agreement and other agreement and instrument relating to the borrowing of money or other agreement (or group of related agreements) that requires the payment by the Company in excess of $75,000, other than any agreement that is otherwise terminable by the Company without penalty or termination fee with no greater than 60 days notice;

(ii) Any agreement (or group of related agreements) between the Company and its top 25 customers (or their known Affiliates) by revenues for the fiscal year ended December 31, 2003;

(iii) Any agreement concerning the establishment or operation of a partnership, joint venture or limited liability company;

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(iv) Any agreement (or group of related agreements) under which it has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness (including capitalized lease obligations) involving more than $50,000 or under which it has imposed (or may impose) an Encumbrance on any of its assets, tangible or intangible;

(v) Any agreement for the disposition of any portion of the assets or business of the Company (other than sales in the ordinary course of business) or any agreement for the acquisition of the assets or business of any other entity (other than purchases in the ordinary course of business);

(vi) Any agreement concerning non-competition, exclusivity, non-solicitation, non-recruitment or other such covenants that restricts any conduct of any business by the Company in each case with respect to geographical area of operations or scope or type of business of the Company (other than (A) non-competition agreements entered into between the Company and its employees or consultants and which do not restrict the Company with respect to non-competition or (B) customer contracts and non-disclosure agreements with standard non-solicitation of employee provisions);

(vii) Any employment or consulting agreement (other than offer letters for at-will employment for employees that do not provide for any severance benefit upon such employee's termination in excess of the Company's standard severance policy set forth on Schedule 2.13);

(viii) Any collective bargaining or similar agreement;

(ix) Any agreement involving any current officer, employee, director or shareholder of the Company (including non-standard provisions in offer letters which provisions require payment by Surebridge in excess of $5,000) or consulting agreement with an individual involving payments by the Company in excess of $85,000 per annum other than agreements entered into in connection with the issuance and exercise of options;

(x) Any buy-sell or barter agreements;

(xi) Any derivative contracts and other hedging arrangements;

(xii) Any acquisition agreement, by means of asset purchase, merger, stock purchase, asset purchase, consolidation or other similar transaction, of a person or business by the Company (each, an "**Acquisition**") pursuant to which (a) there are liabilities or obligations incurred with respect to such Acquisition in excess of $100,000 that are outstanding or contingent as of the date hereof and (b) there exist any outstanding disputes between the Company, on the one hand, and one or more of the selling parties in such Acquisition, on the other hand, which relate to the Acquisition; and

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(xiii) Any other material agreement, including a guarantee, not entered into in the ordinary course of business.

(b) All contracts, agreements and instruments required to be listed in Schedule 2.13 (the "**Material Contracts**") are valid and are in full force and effect and constitute legal, valid and binding obligations of the Company and, to the knowledge of the Company, of the other parties thereto, and are enforceable in accordance with their respective terms subject, in each case, to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally. The Company has no knowledge of, and has not received, any notice regarding termination of any Material Contracts and the Company has no knowledge of any customer which has indicated that it intends to terminate any Material Contract or not renew upon its expiration. The Company is not in default and to the knowledge of the Company, no other party in material default in complying with any provisions of any Material Contract, and to the knowledge of the Company, no condition or event or fact exists which, with notice, lapse of time or both, could constitute a material default thereunder on the part of the Company. The Company has delivered or made available to NaviSite a true, correct and complete copy of each of the Material Contracts.

Section 2.14. *Intellectual Property.*

(a) For purposes of this Agreement,

(i) "**Intellectual Property Assets**" means all of the following, to the extent owned, licensed or used by the Company:

(A) the Products (as defined below);

(B) all patents, patent applications, patent rights, and inventions and discoveries and invention disclosures (whether or not patented) used by or related to the Company (collectively, "**Patents**");

(C) all trade names, trade dress, logos, packaging design, slogans, Internet domain names, registered and unregistered trademarks and service marks and applications used by or related to the Company (collectively, "**Marks**");

(D) all copyrights in both published and unpublished works, including without limitation all compilations, databases and computer programs, and all copyright registrations and applications, and all derivatives, translations, adaptations and combinations of the above used by or related to the Company (collectively, "**Copyrights**");

(E) all know-how, trade secrets, confidential or proprietary information, research in progress, algorithms, data, designs, processes, formulae, drawings, schematics, blueprints, flow charts, models, prototypes, techniques, Company designed reports, Beta testing

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procedures and Beta testing results used by or related to the Company (collectively, "**Trade Secrets**");

(F) all goodwill, franchises, licenses, permits, consents, approvals, technical information, telephone numbers, and claims of infringement against third parties used by or related to the Company (the "**Rights**"); and

(G) all customer lists and telephone numbers, names of potential sales leads, business strategies, outside analysts' plans and reports, outlooks, forecasts and other similar documents used by or related to the Company (collectively, "**Other Intangibles**").

(ii) "**Products**" means those services (including hosting and application management), computer programs, solutions and related documentation sold, marketed, or provided by the Company as of the date hereof.

(iii) "**Nondisclosure Contracts**" means all nondisclosure and/or confidentiality agreements entered into between the Company and persons in connection with disclosures by the Company relating to the Products and the Intellectual Property Assets.

(b) Ownership of Intellectual Property Assets. The Company is the exclusive owner of, and has good, valid and marketable title to all of the Intellectual Property Assets, free and clear of all mortgages, pledges, charges, Liens, equities, security interests, or other encumbrances or agreements, and has the right to use without payment to a third party (except as set forth in Schedule 2.14) all of the Intellectual Property Assets. No claim is pending or, to the Company's knowledge, threatened against the Company and/or its directors, officers, employees, and consultants to the effect that (i) the Company's right, title and interest in and to the Intellectual Property Assets is reduced, invalid or unenforceable by the Company or that any of the Intellectual Property Assets infringes, misappropriates, dilutes or otherwise violates the rights of a third party, or (ii) challenging the Company's ownership or use of, or the validity, enforceability or registerability of, any Intellectual Property Assets and, to the knowledge of the Company, there is no reasonable basis for a claim regarding any of the foregoing. There exists no prior act or current conduct or use by the Company or any third party that would void or invalidate any Intellectual Property Assets owned by the Company that is used or is necessary for the conduct of the Company's business as currently conducted, or give cause to any licensor of Intellectual Property Assets licensed to the Company to terminate or otherwise impair the rights of the Company pursuant to any such license agreement. The Company has not brought or threatened a claim against any person (i) alleging infringement, misappropriation, dilution or any other violation of the Intellectual Property Assets or the Intellectual Property that is the subject of any license agreement, or (ii) challenging any person's ownership or use of, or the validity, enforceability or registerability of, any Intellectual Property Assets and, to the knowledge of the Company, there is no reasonable basis for a claim regarding any of the foregoing. Except as set forth in Schedule 2.14, all former and current employees of the Company

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have executed written instruments with the Company that assign to the Company all rights to any inventions, improvements, discoveries or information relating to the business of the Company. No current or former shareholder, partner, director, officer, employee or contractor of Company (or any of their respective predecessors in interest) has or will have, after giving effect to the transactions contemplated by this Agreement, any legal or equitable right, title or interest in or to, or any right to use, directly or indirectly, in whole or in part, any of the Intellectual Property Assets. All Intellectual Property Assets were developed by either (i) employees of the Company within the scope of their employment, or (ii) independent contractors who have assigned all of their rights in such Intellectual Property Assets to the Company pursuant to a written agreement.

(c) Patents. Schedule 2.14 sets forth a complete and accurate list and summary description of all Patents. All of the issued Patents owned by the Company are currently in compliance with formal legal requirements (including without limitation payment of filing, examination and maintenance fees and proofs of working or use), are valid and enforceable, and are not subject to any maintenance fees or Taxes or actions falling due within ninety (90) days after the Closing Date. In each case where a Patent is held by the Company by assignment, the assignment has been duly recorded with the U.S. Patent and Trademark Office and all other jurisdictions of registration. No issued Patent has been or is now involved in any interference, reissue, re-examination or opposition proceeding. To the Company's knowledge, there is no potentially interfering patent or patent application of any third party.

(d) Trademarks. Schedule 2.14 sets forth a complete and accurate list and summary description of all Marks. Except as set forth on Schedule 2.14, all Marks that have been registered with the United States Patent and Trademark Office and/or any other jurisdiction are currently in compliance with formal legal requirements (including without limitation the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable, and are not subject to any maintenance fees or Taxes or actions falling due within ninety (90) days after the Closing Date. In each case where a Mark is held by the Company by assignment, the assignment has been duly recorded with the U.S. Patent and Trademark Office and all other jurisdictions of registration. No registered Mark has been or is now involved in any opposition, invalidation or cancellation proceeding and, to the Company's knowledge, no such action is threatened with respect to any of the Marks. All products and materials containing a Mark bear the proper notice where permitted by Law. No Marks have been abandoned by the Company, and no Marks are the subject of a pending application for registration that is based on the Company's use of, or bona fide intent to use, such Marks. To the knowledge of the Company, there has been no prior use of such Marks by any third party which would confer upon said third party superior rights in such Marks, and the Company has adequately policed the Marks against third party infringement so as to maintain the validity of such Marks.

(e) Copyrights. Schedule 2.14 sets forth a complete and accurate list and summary description of all Copyrights. All Copyrights that have been registered with the United States Copyright Office are identified on such Schedule and are currently in compliance with formal legal requirements, are valid and enforceable, and are not

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subject to any fees or Taxes or actions falling due within ninety (90) days after the Closing Date. In each case where a Copyright is held by the Company by assignment, the assignment has been duly recorded with the U.S. Copyright Office and all other jurisdictions of registration. None of the source or object code, algorithms, or structure included in the Products is copied from, based upon, or derived from any other source or object code, algorithm or structure in violation of the rights of any third party. Any substantial similarity of the Products to any computer program owned by any third party did not result from the Products being copied from, based upon, or derived from any such computer software program in violation of the rights of any third party.

(f) Trade Secrets. Except as set forth on Schedule 2.14, the Company has taken all reasonable measures (including, without limitation, entering into appropriate confidentiality and nondisclosure agreements with all officers, directors, employees, and consultants of the Company and any other persons with access to the Trade Secrets) to protect the secrecy, confidentiality and value of all Trade Secrets. To the knowledge of the Company, there has not been any breach by any party to any such confidentiality or non-disclosure agreement. To the Company's knowledge, the Trade Secrets have not been disclosed by the Company to any person or entity other than employees or contractors of the Company who needed to know and use the Trade Secrets in the course of their employment or contract performance, and then only pursuant to a written agreement containing non-disclosure obligations that adequately protect Company's proprietary interests in such Trade Secrets. To the Company's knowledge, the Company has the right to use, free and clear of claims of third parties, all Trade Secrets. To the knowledge of the Company, no third party has asserted that the use by the Company of any Trade Secret violates the rights of any third party. To the knowledge of the Company, no third Person that is a party to any agreement with the Company or any of its Subsidiaries containing obligations of non-disclosure with respect to such Trade Secrets is in breach or default thereof.

(g) Other Intangibles. The Company has provided to NaviSite access to all of its Other Intangibles used by the Company.

(h) Exclusivity of Rights. The Company has the exclusive right to use, license, distribute, transfer and bring infringement actions with respect to the Intellectual Property Assets, except for the rights of any licensor or supplier of licensed Intellectual Property Assets referred to in Schedule 2.14. Except as set forth on Schedule 2.14, the Company (i) has not licensed or granted to anyone rights of any nature to use, promote, market, sell, distribute or license any of its Intellectual Property Assets; and (ii) is not obligated to and does not pay royalties or other fees to anyone for the Company's ownership, use, license or transfer of any of its Intellectual Property Assets. The Intellectual Property Assets, and, to the knowledge of the Company, the Intellectual Property owned by third Persons that is the subject of a license agreement, has been duly maintained, is valid and subsisting, in full force and effect and has not been cancelled, expired or abandoned.

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(i) Affirmative Obligations. Except as set forth in Schedule 2.14, the Company has no obligation to any other person to maintain, modify, improve or upgrade the Products.

(j) Infringement. None of the Intellectual Property Assets of the Company or the Products or the modifications made by the Company to the Products sold by the Company (excluding any third-party rights or products incorporated into such Products for which the Company has a valid license) infringes or is alleged to infringe any patent, trademark, service mark, trade name, copyright or other proprietary right or is a derivative work based on the work of any other person, except as set forth in Schedule 2.14.

Section 2.15. ***Environmental Matters.***

(a) The Company is in material compliance with Environmental Laws (which compliance includes, but is not limited to, the possession by the Company of all permits and other governmental authorizations required under applicable Environmental Laws, and compliance with the terms and conditions thereof). The Company has not received any written notice, report or other information regarding any actual or alleged material violation of Environmental Laws, or any material liabilities or potential material liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to the Company or its facilities arising under Environmental Laws. There is no Environmental Claim pending or, to the knowledge of the Company, threatened against the Company. There are no past or present actions, activities, circumstances, conditions, events or incidents which reasonably would be expected to form the basis of an Environmental Claim against the Company.

(b) "***Environmental Claim***" means any action, investigation or notice by any Person alleging potential Liability (including potential Liability for investigatory costs, Cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, release or threatened release of any hazardous materials at any location, whether or not owned or operated by the Company, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

(c) "**Environmental Laws**" means all applicable federal, state and local statutes or laws, judgments, orders, regulations, licenses, permits, rules and ordinances relating to pollution or protection of health, safety or the environment, including, but not limited to the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resources Conservation and Recovery Act (42 U.S.C. §6901 et. seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et. seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et. seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), and other similar state and local statutes.

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Section 2.16. ***Insurance***. Schedule 2.16 sets forth a true and correct summary of the insurance policies or binders held by, or for the benefit of, the Company and its directors, officers, employees and agents, including the underwriter of such policies and the amount of coverage thereunder. The Company has delivered or made available to NaviSite true, correct and complete copies of such policies and binders. Except as set forth in Schedule 2.16 hereto, (a) all such policies or binders are in full force and effect and no premiums due and payable thereon are delinquent, (b) there are no pending material claims against such insurance policies or binders by the Company as to which the insurers have denied Liability, (c) the Company has complied in all material respects with the provisions of such policies and (d) there exist no material claims under such insurance policies or binders that have not been properly and timely submitted by the Company to its insurers. Except as set forth in Schedule 2.16 hereto, the insurance coverage provided by such policies or insurance will not terminate or lapse by reason of the transactions contemplated by this Agreement and, following the Closing Date, the Company will continue to be covered under such policies for events occurring prior to the Closing Date. Except as set forth in Schedule 2.16 hereto, no such policy provides for or is subject to any currently enforceable retroactive rate or premium adjustment or loss sharing arrangement arising wholly or partially out of events arising prior to the date hereof. The Company maintains insurance coverage in such amounts and covering such risks as are in accordance with normal industry practice for companies engaged in businesses similar to that of the Company (taking into account the cost and availability of such insurance). Schedule 2.16 sets forth a list of all claims for losses exceeding $50,000 submitted to insurers during the 18-month period ending on the date of this Agreement.

Section 2.17. ***Brokers***. The Company has not entered into any contract entitling any agent, broker, investment banker, financial advisor or other firm or person to any broker's, finder's, success fee or any other commission or similar fee in connection with the transactions contemplated hereby.

Section 2.18. ***Compliance with Laws. Except as set forth on Schedule 2.18:***

(a) The Company is not in default or violation of, and to the knowledge of the Company, no event has occurred with respect to the Company which, with the lapse of time or the giving of notice or both, would result in the violation of or default under, any Law applicable to Company or by which any property or asset of Company is bound, except for any such conflicts, defaults or violations that would not, individually or in the aggregate, have a Material Adverse Effect. The Company has not received any written notice or written communication from any Governmental Authority alleging noncompliance with any applicable Law. The Company is not subject to reporting or registration under the Securities Exchange Act of 1934, as amended (the **"Exchange Act"**).

(b) To the knowledge of the Company, neither the Company nor any of its directors, officers, agents or employees has in the past three years (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns or violated

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any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iii) made any other unlawful payment.

(c) The Company is in possession of all authorizations, licenses, permits, certificates, and approvals of any Governmental Authority necessary for the Company to own, lease and operate its properties or to carry on its respective businesses substantially as it is being conducted as of the date hereof (the "**Company Permits**"), and all such Company Permits are valid, and in full force and effect, except where the failure to have, or the suspension or cancellation of, or failure to be valid or in full force and effect of, any of the Company Permits would not, individually or in the aggregate, reasonably be expected to (A) prevent or materially delay consummation of the transactions contemplated hereby, (B) otherwise prevent or materially delay performance by the Company of any of its material obligations under this Agreement or any Ancillary Agreement or (C) result in a Material Adverse Effect.

Section 2.19. ***Transactions with Affiliates.*** Except as provided on Schedule 2.19, there are no loans, leases or other agreements or transactions between the Company or any present or former stockholder, director, officer or employee of the Company, or to the Company's knowledge, any person controlled by such officer, director, employee or stockholder or his or her immediate family. Except as set forth in Schedule 2.19 hereto, to the knowledge of the Company, as of the date hereof none of such persons has any direct or indirect ownership interest in any firm or entity, except for less than a 1% interest in any publicly-held corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company. Except as set forth in Schedule 2.19 hereto, no employee, officer or director of the Company and no member of the immediate family of such persons is directly or indirectly interested in any Material Contract with the Company or has or claims to have any interest in the Intellectual Property Assets of the Company.

Section 2.20. ***[Intentionally Omitted.]***.

Section 2.21. ***Books and Records***. The books and records, minute books, stock record books and similar records of Surebridge and its Subsidiaries contain (as applicable) complete and accurate records of all actions taken since January 2000 at any meeting of Surebridge's shareholders, board of directors or any committee thereof, and all written consents executed in lieu of the holding of such meeting, other than with respect to recent meetings or written consents for which summaries of such meetings and actions have been provided to NaviSite (other than with respect to the transactions contemplated hereby).

Section 2.22. ***Bank Accounts***. Schedule 2.22 sets forth the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company maintains safe deposit boxes, checking accounts or other accounts of any nature the available balance of which customarily exceeds $5,000, and from which it has obtained a letter of credit, line of credit, equity line or other such financing.

Section 2.23. ***Securities Law Matters***.

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(a) Surebridge is an "Accredited Investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (collectively with the rules and regulations promulgated thereunder, the "**Securities Act**"). Surebridge is acquiring the Parent Shares and the Notes for its own account, for investment, and not with a current view to any "distribution" thereof within the meaning of Regulation D and the Securities Act other than pursuant to an effective registration statement or a valid exemption from registration under the Securities Act. Surebridge is able to bear the economic risk of loss of its investment in Parent. Surebridge represents that by reason of its or its management's or board's business or financial experience, Surebridge has the capacity to protect its own interests in connection with the transactions contemplated hereby. Surebridge has had a reasonable opportunity to review Parent's Public Filings and a reasonable opportunity to discuss NaviSite's business, management, financial affairs and operations with officers and management of NaviSite and has had the opportunity to review NaviSite's operations and facilities. Surebridge also has had the opportunity to ask questions of, and receive answers from, NaviSite and its management regarding the terms and conditions of Surebridge's investment in the Parent Shares and the Notes.

(b) Surebridge understands that because the Parent Shares and the Notes have not been registered under the Securities Act nor under securities or "blue sky" laws of any jurisdiction, it cannot dispose of any or all of such securities unless such securities are subsequently registered under the Securities Act or exemptions from such registration are available. Surebridge understands that the Parent Shares and the Notes are being offered and sold pursuant to an exemption from registration under the Securities Act based in part upon the Company's representations contained in this Agreement. Surebridge understands that the Parent Shares and the Notes are subject to certain restrictions on transfer. Surebridge further understands that Parent may, as a condition to the transfer of any of such securities, require that the request for transfer be accompanied by an opinion of counsel as described below. Surebridge understands that each certificate representing the Parent Shares will bear a legend in substantially the form provided below (in addition to any legend required under applicable state securities laws and any appropriate legends with respect to the contractual restrictions and limitations on transferability).

> THE SHARES REPRESENTED HEREBY HAVE BEEN ACQUIRED BY THE HOLDER NAMED HEREON FOR THE HOLDER'S OWN ACCOUNT FOR INVESTMENT; AND SUCH SECURITIES MAY NOT BE PLEDGED, SOLD OR IN ANY OTHER WAY TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS IN EFFECT AT THAT TIME, OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT.

Section 2.24. *<u>Rule 145 Compliance</u>*. As of the date hereof and as of Closing,

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(i) neither this Agreement nor any plan or other agreement provides for dissolution of Surebridge;

(ii) neither this Agreement nor any plan or other agreement provides for the pro rata or similar distribution of the Parent Shares or the Notes; and

(iii) the transfer of the Purchased Assets is not part of a pre-existing plan for the distribution of the Parent Shares or the Notes to be delivered pursuant to the transactions contemplated hereby.

Section 2.25. ***Disclaimer of Other Representations and Warranties; Knowledge; Disclosure.***

(a) **NONE OF THE COMPANY OR ITS REPRESENTATIVES HAVE MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO THE COMPANY OR THE BUSINESS OF THE COMPANY OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS ARTICLE II.**

(b) Without limiting the generality of the foregoing, none of the Company or such representatives of the Company has made, and shall not be deemed to have made, any representations or warranties in the materials relating to the business of the Company made available to NaviSite or in any presentation of the business of the Company in connection with the transactions contemplated hereby, and no statement contained in any of such materials or made in any such presentation shall be deemed a representation or warranty hereunder or otherwise. It is understood that any cost estimates, projections or other predictions, any data, any financial information or any memoranda or offering materials or presentations, made available by the Company and its representatives are not and shall not be deemed to be or to include representations or warranties of the Company, provided that the foregoing shall not alter any of the express representations and warranties in this Article II.

(c) Whenever a representation or warranty made by a party hereof refers to the "knowledge" (or words of similar import), such knowledge shall be deemed to refer to the actual knowledge which the members of the board of directors, the executive officers and other persons listed on Schedule 2.25 making such representation and warranty possess.

ARTICLE III - INTENTIONALLY LEFT BLANK

ARTICLE IV - REPRESENTATIONS AND WARRANTIES OF NAVISITE

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NaviSite Disclosure Schedule shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Article IV. The disclosures in any section or subsection of NaviSite Disclosure Schedule shall qualify other sections and subsections in this Article IV to the extent it is reasonably apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections. Except as set forth in NaviSite Disclosure Schedule attached hereto and delivered by NaviSite, NaviSite hereby represents and warrants to the Company as of the date hereof (or, if made as of a specified date, as of such date) and as of the Closing Date, as follows.

Section 4.1. ***Existence; Good Standing; Authority***.

(a) Each of Buyer and Parent is a corporation is duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Each of Buyer and Parent has all requisite corporate power and authority and all necessary governmental licenses, authorizations, consents and approvals to own, operate, lease and encumber its properties and carry on its business as currently operated and conducted. Each of Buyer and Parent is duly licensed or qualified to do business as a foreign corporation, and is in good standing under the laws of any other jurisdiction in which the character or ownership of its properties or in which the transaction or character of its business makes such qualification necessary, except where the failure to be so licensed or qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect. Each of Buyer and Parent is not in violation of any provision of its certificate of incorporation or bylaws.

(b) Each of Buyer and Parent has the corporate power and authority to execute and deliver this Agreement and each agreement, document and instrument to be executed and delivered by or on behalf of each of Parent and Buyer pursuant to this Agreement and the Ancillary Agreements and to carry out the transactions contemplated hereby and thereby. The execution and delivery of this Agreement, the performance by each of Buyer and Parent of its obligations hereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of each of Buyer and Parent. No other corporate or similar action on the part of each of Buyer and Parent is necessary to authorize the execution and delivery of this Agreement by Buyer or Parent or the consummation by Buyer or Parent of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and Parent and, assuming the due authorization, execution and delivery of this Agreement by the Company, this Agreement constitutes a legal, valid and binding obligation of Buyer and Parent, enforceable against Buyer and Parent in accordance with its terms.

Section 4.2. ***No Conflict***. Neither the execution and delivery by Buyer or Parent of this Agreement and the other agreements, documents and instruments contemplated hereby, nor the consummation by Buyer or Parent of the transactions in accordance with the terms hereof and thereof, conflicts with or results in a breach of any provisions of Buyer's or Parent's certificate of incorporation or by-laws or other organizational documents. Except as set forth on Schedule 4.2, the execution and delivery by Buyer or Parent of this Agreement and the other agreements, documents and instruments contemplated hereby, and the consummation by Buyer

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or Parent of the transactions in accordance with the terms hereof and thereof, will not violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, lease, contract or other agreement to which Buyer or Parent is a party, or by which Buyer or Parent or any of its properties is bound, except, in each case, as would not have a Material Adverse Effect.

Section 4.3. ***Consents and Approvals***. Except as set forth on Schedule 4.3, the execution, delivery and performance of this Agreement by NaviSite will not require any consent, approval, permit, authorization or other action by, or filing with or notification to, any Governmental Authority, except the notification requirements of the HSR Act, if applicable.

Section 4.4. ***Litigation***. As of the date of this Agreement, other than as set forth in Parent's Public Filings (as defined in Section 4.6 hereof) or as set forth on Schedule 4.4, there is no litigation, action, suit, proceeding, inquiry, claim, arbitration or investigation pending or, to NaviSite's knowledge, threatened in writing, against NaviSite, or any of its assets or property or any directors or officers in their capacities as such or for which NaviSite is obligated to indemnify a third party. NaviSite is not a party to or subject to the provisions of any order, writ, injunction, judgment or decree or any court or Governmental Authority or any arbitration ruling or any settlement or similar agreement or written arrangement with ongoing payment obligations relating to any dispute (or the resolution of a dispute) with any third party.

Section 4.5. ***Brokers***. NaviSite has not incurred or become liable for any broker's commission or finder's fee relating to or in connection with this Agreement or the transactions contemplated hereby.

Section 4.6. ***Securities Law Matters.***

(a) Parent has timely filed with the Securities and Exchange Commission (the "**SEC**") all material forms, statements, reports and documents (the "**Public Filings**") required to be filed by it since January 1, 2003 under the Exchange Act, and the rules and regulations thereunder, (a) all of which, as amended, if applicable, complied when filed in all material respects with all applicable requirements of the appropriate act and the rules and regulations thereunder, and (b) none of which, as amended, if applicable, contained, when filed, any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made and at the time they were made, not misleading.

(b) Parent's reports, statements and documents filed by Parent pursuant to the Exchange Act, and its rules and regulations, as well as all filings and documents incorporated by reference therein, have been made available to the Company via the SEC's website at www.sec.gov or upon the specific request by the Company.

(c) The Parent Shares, when issued in accordance with this Agreement, will be duly authorized, validly issued, fully paid and non-assessable and will be issued in compliance with applicable federal, state and foreign securities laws and all

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requirements set forth in contracts and when delivered by Parent to the Company pursuant to this Agreement, will be free and clear of any and all Encumbrances, other than Encumbrances resulting from this Agreement.

(d) The Notes when issued in accordance with this Agreement will be duly authorized and validly issued in compliance with applicable federal, state and foreign securities laws and all requirements set forth in contracts, and when delivered by Parent to the Company pursuant to this Agreement, will be free and clear of any and all Encumbrances, other than Encumbrances resulting from this Agreement.

Section 4.7. ***Absence of Material Changes***. Since the date of the last Public Filing by Parent, there has been no event which had or could reasonably be expected to have a Material Adverse Effect on Parent, other than developments generally in the industry in which Parent operates.

Section 4.8. ***Conduct of Business***. Except as set forth in its Public Filings and since the date of the last Public Filing, NaviSite has not (i) incurred any material obligation or liability (absolute or contingent) other than in the ordinary course of business and in amounts consistent with past practices; (ii) canceled, without payment in full, any material notes, loans or other obligations receivable or other debts or claims held by it other than in the ordinary course of business and in amounts consistent with past practices; (iii) sold, assigned, transferred, abandoned, mortgaged, pledged or subjected to Lien any of its material properties, tangible or intangible, or rights under any material contract, permit, license, franchise or other agreement; (iv) conducted its business in a manner materially different from its business as conducted on such date; or (v) declared, made or paid or set aside for payment any cash or non-cash distribution on any shares of its capital stock. Except as disclosed in its Public Filings, NaviSite owns, possesses or has obtained all governmental, administrative and third-party licenses, permits, certificates, registrations, approvals, consents and other authorizations necessary to own or lease (as the case may be) and operate their properties, whether tangible or intangible, and to conduct their business or operations as currently conducted, except such licenses, permits, certificates, registrations, approvals, consents and authorizations the failure of which to obtain would not have a Material Adverse Effect on NaviSite.

Section 4.9. ***Compliance with Laws***. Neither Buyer nor Parent is in default or violation of any Law applicable to it or by which any property or asset of Buyer or Parent is bound, except for any such conflicts, defaults or violations that would not, individually or in the aggregate, have a Material Adverse Effect on Buyer or Parent. Neither Buyer nor Parent has received any written notice or written communication from any Governmental Authority alleging noncompliance with any applicable Law.

Section 4.10. ***Financial Statements***. The financial statements of Parent and the related notes contained in the Public Filings present fairly, in accordance with generally accepted accounting principles (except as may be indicated in the notes thereto and, in the case of unaudited quarterly financial statements, as permitted by Regulation S-X under the Exchange Act), the consolidated financial position of Parent as of the dates indicated and for the respective periods indicated therein (subject in the case of unaudited statements to normal and recurring year-end adjustments), and the results of its operations and cash flows for the periods therein

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specified. Such financial statements (including the related notes) have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods therein specified, except as disclosed in the Public Filings.

Section 4.11. ***Nasdaq Listing***. Parent's common stock is registered pursuant to Section 12(g) of the Exchange Act and is listed on the Nasdaq SmallCap Market. Parent is in compliance with the continued listing requirements of the Nasdaq Marketplace Rules and has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the common stock under the Exchange Act or delisting the common stock from the Nasdaq SmallCap Market other than in connection with a quotation of Parent's common stock on the Nasdaq National Market or the American Stock Exchange. Parent knows of no reason why the Parent Shares will not be eligible for listing on Nasdaq.

Section 4.12. ***Contracts and Commitments of NaviSite***. Except as set forth on Schedule 4.12, all material contracts, agreements and instruments of NaviSite are valid and are in full force and effect and constitute legal, valid and binding obligations of NaviSite and, to the knowledge of NaviSite, of the other parties thereto, and are enforceable in accordance with their respective terms subject, in each case, to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally. NaviSite has no knowledge of, and has not received, any written notice regarding termination of any such material contracts, agreements or instruments. Neither NaviSite nor, to the knowledge of NaviSite, is any other party in material default in complying with any provisions of any such material contract, agreement or instrument, and to the knowledge of NaviSite, no condition or event or fact exists which, with notice, lapse of time or both, could constitute a material default thereunder on the part of NaviSite.

Whenever a representation or warranty made by Buyer or Parent hereof refers to the "knowledge" (or words of similar import), such knowledge shall be deemed to refer to the actual knowledge which the members of the board of directors, the executive officers and other persons listed on Schedule 4.12 making such representation and warranty possess.

ARTICLE V - CERTAIN COVENANTS OF THE PARTIES

Section 5.1. ***Conduct of Business Prior to Closing***. Surebridge agrees that, between the date hereof and the Closing Date, the Company shall continue to operate in the ordinary course of business, consistent with past practices, except as described in Schedule 5.1 as otherwise contemplated by this Agreement. In furtherance of the foregoing, except with the prior written consent of Parent, which consent will not be unreasonably withheld:

(a) The Company (i) shall use good faith reasonable efforts to (x) preserve intact its current business organization, (y) keep available the services of its current officers and employees and (z) maintain its relations and goodwill with all suppliers, customers, landlords, creditors, employees and other persons having business relationships with the Company, and (ii) shall pay its debts, taxes and other liabilities when due and perform other material obligations when due, except in the ordinary course

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of business consistent with past practices or if the Company is disputing the liability or obligation in good faith;

(b) The Company shall keep in full force all insurance policies;

(c) The Company shall not declare, accrue (other than regularly accruing dividends in the ordinary course), make, set aside or pay any dividend (whether payable in cash, stock, property or a combination thereof) or make any other distribution in respect of any shares of capital stock, shall not repurchase, redeem or otherwise reacquire any shares of capital stock or other securities and shall not enter into any agreement with respect to the voting of its capital stock;

(d) The Company shall not sell, issue or authorize the issuance of (i) any capital stock or other security or (ii) any instrument convertible into or exchangeable for any capital stock or other security;

(e) None of Surebridge or any Subsidiary shall amend or permit the adoption of any amendment to such party's certificate of incorporation or bylaws or operating agreement or other such organizational documents, or effect any recapitalization, reclassification of shares or membership interests, stock split, reverse stock split or similar transaction, other than those amendments listed on Schedule 5.1;

(f) The Company shall not form any subsidiary or acquire any equity interest or other interest in any other entity;

(g) The Company shall not enter into any contract which contains any non-compete or exclusivity provisions with respect to any line of business or geographic area with respect to the Company or any of its Subsidiaries or which restricts the conduct of any line of business by the Company or any of its Subsidiaries or any geographic area in which the Company or any of its Subsidiaries may conduct business, or which otherwise restricts operation of the Company's business, in each case in any material respect, in each case other than non-compete agreements signed by employees incident to their employment by the Company or any of its Subsidiaries;

(h) The Company shall not make or approve any capital expenditure in excess of $50,000, except for such capital expenditures included in and contemplated by the Company's budget as set forth in Schedule 5.1(h), which has been approved by the Company's board of directors;

(i) The Company shall not (i) enter into, or permit any of the assets owned or used by it to become bound by, any (A) contract other than in the ordinary course of business or (B) Material Contract unless it is a customer contract, provided that the Company has provided notice via email to Ken Drake and one or more designated representatives of Parent at least one business day prior to execution of such customer contract, (ii) amend, cancel or prematurely terminate, or waive any material right or remedy under, or request any material change in, any Material Contract other than in the ordinary course of business consistent with past practice and in the case of a Material

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Contract that is a customer contract, if the Company has provided notice via email to Ken Drake and one or more designated representatives of Parent at least one business day prior to execution.

(j) The Company shall not waive, release, assign, settle or compromise any material claims, or any material litigation or arbitration;

(k) The Company shall not (i) acquire, lease or license any right or other asset from any other person, (ii) sell or otherwise dispose of or encumber, or lease or license, any right or other asset to any other person, or (iii) waive or relinquish any right, except for assets acquired, leased, licensed or disposed of by the Company in the ordinary course of business consistent with past practice or pursuant to existing Material Contracts. The Company shall not modify, amend or terminate, or waive, release or assign any material rights or claims with respect to any confidentiality or standstill agreement to which the Company is a party;

(l) Other than amounts that may be borrowed under the Company's existing credit agreement with Silicon Valley Bank (subject to borrowing limits as of the date hereof), the Company shall not incur or guarantee any other indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person for borrowed money;

(m) The Company shall not (i) establish, adopt or amend any employee benefit plan, (ii) pay any bonus (except for the payment of bonuses listed on Schedule 5.1(m) on the date hereof or bonuses to be paid in connection with the transactions contemplated by this Agreement as in existence as of the date hereof and previously made available to NaviSite) or make any profit-sharing payment, cash incentive payment or similar payment to, or increase the amount of the wages, salary, commissions, benefits or other compensation or remuneration payable or to become payable to, any of its directors, officers, employees or consultant, (iii) grant any rights to severance or termination pay to, or enter into any agreement to provide severance benefits with, any director, officer or other employee of the Company, (iv) establish, adopt, enter into of or amend of any thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer or employee, except for the issuance of new stock options to new, non-executive employees in the ordinary course of business consistent with past practice and except for the termination of existing stock options, or to the extent required by applicable Law, or (v) take any affirmative action to amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any Employee Plans;

(n) The Company shall not change any of its methods, procedures, policies or principles of accounting or accounting practices;

(o) The Company shall not fail to be in material compliance with the terms of instruments evidencing indebtedness owed by the Company;

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(p) The Company shall not write up, write down or write off the book value of any assets;

(q) The Company shall not make any material tax election or settlement or compromise of any liability for Taxes, if such election, settlement or compromise would have the effect of increasing the Tax liability of Surebridge or any of its Subsidiaries after the Closing Date or decreasing any Tax attribute of Surebridge or any Subsidiary existing on the Closing Date;

(r) The Company shall not (A) pre-pay any debt, or pay, discharge or satisfy any material claims, liabilities or obligations (absolute, accrued, contingent or otherwise), except in the ordinary course of business consistent with past practice and in accordance with their terms, or (B) fail to collect notes or accounts receivable except in the ordinary course of business consistent with past practice or enter into a factoring or discounting arrangement with a third party with respect to accounts receivable; and

(s) The Company shall not enter into any agreement, commitment or undertaking to do any of the activities prohibited by the foregoing provisions.

Section 5.2. ***Access to Information.***

(a) Without undue disruption of its business, between the date of this Agreement and the Closing Date, the Company shall give NaviSite and its representatives reasonable access upon reasonable notice and during times mutually convenient to NaviSite and senior management of the Company to the facilities, properties, employees, books, and records of the Company as from time to time may be reasonably requested. Notwithstanding the foregoing, no information or knowledge obtained by NaviSite during the course of any investigation conducted by NaviSite pursuant to this Section 5.2(a) shall: (i) affect or be deemed to modify in any respect any of the representations or warranties of the Company set forth in this Agreement (or in any certificate, instrument or other document delivered by the Company to NaviSite in connection with the transactions contemplated hereby), or the conditions to the obligations of the parties to consummate the transactions contemplated hereby in accordance with the terms and conditions hereof, or (ii) be deemed to amend or supplement the Company Disclosure Schedule, prevent or cure any misrepresentations, breach of warranty or breach of covenant by the Company.

(b) Any such investigation by NaviSite shall not unreasonably interfere with any of the businesses or operations of the Company. NaviSite shall not, prior to the Closing Date, have any contact whatsoever with respect to the Company or with respect to the transactions contemplated by this Agreement with any partner, lender, ground lessor, vendor, supplier, employee or consultant of the Company, except in consultation with the Company and then only with the express prior approval of the Company, which approval shall not be unreasonably withheld. All requests by NaviSite for access or information shall be submitted or directed exclusively to an individual or individuals to be designated by the Company.

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Section 5.3. ***Confidentiality***. The parties shall adhere to the terms and conditions of that certain Mutual Confidentiality Agreement dated November 12, 2003 by and between Surebridge and Parent (the "**Confidentiality Agreement**").

Section 5.4. ***Regulatory and Other Authorizations; Consents.***

(a) The Company and NaviSite shall as soon as reasonably practicable use their good faith commercially reasonable efforts to obtain their respective authorizations, consents, orders, waivers and approvals and provide those notices necessary for their execution and delivery of, and the performance of their obligations pursuant to, this Agreement. The Company shall give any notices to third parties and use all commercially reasonable efforts to obtain any third party consents required to be listed on Schedules 2.4 or 2.7. In the event that either party shall fail to obtain any third party consent described in the first sentence of this Section 5.4, such party shall use reasonable efforts, and shall take reasonable actions to minimize any adverse effect upon NaviSite (and Surebridge, upon or after the Closing), and their respective businesses resulting, or which could reasonably be expected to result after the Closing, from the failure to obtain such consent.

(b) If required by the HSR Act and if the appropriate filing of a Pre-Merger Notification and Report Form pursuant to the HSR Act has not been filed prior to the date hereof, each party hereto agrees to make an appropriate filing of a Pre-Merger Notification and Report Form with respect to the transactions contemplated by this Agreement as soon as commercially practicable and to supply promptly any additional information and documentary material that may be requested pursuant to the HSR Act. The parties hereto will not take any action that will have the effect of delaying, impairing or impeding the receipt of any required approvals and shall promptly respond to any requests for additional information from any Governmental Authority or filings in respect thereof. Notwithstanding anything to the contrary herein, nothing in this Section 5.4 shall require NaviSite or the Company to agree to (i) the imposition of conditions, (ii) the requirement of divestiture of assets or property or (iii) the requirement of expenditure of money by NaviSite or the Company to a third party in exchange for any such consent. NaviSite shall pay all filing and related fees in connection with any such filings which must be made by any of the parties under the HSR Act.

(c) NaviSite shall use its good faith commercially reasonable efforts to assist and cooperate with the Company, at the Company's request, in obtaining the consents of third parties required to be listed in Schedules 2.4 or 2.7, including (i) providing to such third parties such financial statements and other financial information as such third parties may reasonably request, and (ii) executing agreements to effect the assumption of such agreements on or before the Closing Date. NaviSite's exercise of commercially reasonable efforts pursuant to the previous sentence shall not require NaviSite to pay any amounts to any third party.

Section 5.5. ***Further Action***. Each of the parties hereto shall use its respective commercially reasonable efforts to take or cause to be taken all appropriate action, do or cause to be done all things necessary, proper or advisable, and execute and deliver such documents and

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other papers, as may be required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated by this Agreement. Surebridge agrees that it shall use its good faith commercially reasonable efforts to assist and cooperate with Parent in the preparation of any registration statement, proxy statement, offering memoranda, information statement, filing with the SEC or document prepared for investors or stockholders, and shall furnish to Parent all information reasonably required with respect to the transactions contemplated hereby or other transactions not contemplated by this Agreement, including using reasonable efforts to cause to be delivered to Parent (i) the Company's independent public accountants' consent to include the Company's financial statements in any filing, prospectus, information statement or similar document of Parent; and (ii) comfort letters from the Company's independent public accountant at such times and on such dates and in form and substance reasonably satisfactory to Parent. Notwithstanding any confidentiality obligations pursuant to Section 5.3 or the Confidentiality Agreement, prior to Closing and without the Company's prior written consent, NaviSite shall be permitted to use the Company's confidential information (i) in any documents described in this Section 5.5 to the extent that such information would reasonably be required to be disclosed in a registration statement on Form S-4; provided, however, that NaviSite shall notify the Company at least two days prior to using such information and provide a copy of the documents, or drafts of the documents, in which such confidential information is to be used or disclosed or (ii) in discussions or otherwise in connection with any potential merger or acquisition transaction if the recipient of such information executes a confidentiality agreement with Parent under which they agree to maintain the confidentiality of such information.

Section 5.6. ***Press Releases***. The parties agree to issue Press Releases in the form attached as Exhibit E promptly following execution of this Agreement. The parties hereto will not, and will cause each of their Affiliates and representatives not to issue or cause the publication of any other press release or other public announcement with respect to this Agreement or the transactions contemplated hereby without the prior written consent of all of the parties hereto which consent shall not be unreasonably withheld; *provided, however*, that Parent may, without the prior consent of the other parties hereto, issue or cause publication of any such press release or public announcement to the extent that Parent, in good faith, reasonably determines, after consultation with outside legal counsel, such action to be required by Law or by the rules of any applicable self-regulatory organization, in which event Parent will use its commercially reasonable efforts to allow Surebridge reasonable time to comment on such press release or public announcement in advance of its issuance.

Section 5.7. ***No Solicitation***.

(a) Except as otherwise provided herein, unless and until this Agreement shall have been terminated in accordance with its terms, Surebridge agrees and covenants that the Company shall not, directly or indirectly, initiate, solicit or encourage any inquiries, participate in any discussions or negotiations, or the making or implementation of any proposal or offer with respect to a merger, acquisition, or similar transaction involving the purchase of the Company, all or substantially all of the assets of the Company, or the capital stock of the Company (an "**Acquisition Proposal**"). The Company shall, as promptly as practicable (and in no event later than 48 hours after receipt thereof), advise NaviSite of any inquiry received by it relating to any potential

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Acquisition Proposal and of the material terms of any proposal or inquiry, including the identity of the person and its affiliates making the same, that it may receive in respect of any such potential Acquisition Proposal, or of any information requested from it or of any negotiations or discussions being sought to be initiated with it.

(b) From the date of this Agreement until the earlier of the Closing or one year from the date of this Agreement, NaviSite shall not, and shall ensure that its directors, officers, employees, partners, agents, Affiliates, advisors or representatives shall not, directly or indirectly, (i) solicit for employment or employ any officer, employee or consultant of the Company, (ii) encourage, induce or attempt to induce any officer, employee or consultant of the Company to terminate his or her employment or consulting relationship with the Company, (iii) interfere with the business or operations of the Company, or (iv) take or fail to take any actions with the purpose of adversely affecting the Company's business relationships with its customers and suppliers or goodwill.

Section 5.8. ***Notice of Breaches***.

(a) From the date of this Agreement until the Closing, the Company shall promptly deliver to NaviSite supplemental information known to the Company concerning events or circumstances occurring subsequent to the date hereof which would render any representation, warranty or statement made by the Company under this Agreement, inaccurate or incomplete in any material respect at any time after the date of this Agreement until the Closing. No such supplemental information shall be deemed to avoid or cure any misrepresentation or breach of warranty or constitute an amendment of any representation, warranty or statement in this Agreement or any Schedule hereto.

(b) From the date of this Agreement until the Closing, NaviSite shall promptly deliver to the Company supplemental information known to NaviSite concerning events or circumstances occurring subsequent to the date hereof which would render any representation, warranty or statement made by NaviSite under this Agreement, inaccurate or incomplete in any material respect at any time after the date of this Agreement until the Closing. No such supplemental information shall be deemed to avoid or cure any misrepresentation or breach of warranty or constitute an amendment of any representation, warranty or statement in this Agreement or any Schedule hereto.

(c) From the date of this Agreement until the Closing, each party shall promptly notify the other in writing of any pending or, to the knowledge of such party, threatened action, suit, arbitration or other proceeding or investigation by any Governmental Authority or any other person (A) challenging or seeking material damages in connection with the transactions contemplated hereby or (B) seeking to restrain or prohibit the consummation of the transactions contemplated hereby or otherwise limit the right of NaviSite to own or operate all or any portion of the businesses or assets of Surebridge or any of its Subsidiaries, which in either case would reasonably be expected to result in a Material Adverse Effect prior to or after the Closing.

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Section 5.9. ***Conveyance Taxes; Costs***. NaviSite shall be liable for and shall hold the Company harmless against any transfer, value added, excise, stock transfer, stamp, recording, registration and any similar taxes that become payable in connection with the acquisition by Buyer of the Purchased Assets and other transactions contemplated hereby, and the applicable parties shall file such applications and documents as shall permit any such tax to be assessed and paid on or prior to the Closing Date in accordance with any available pre-sale filing procedure.

Section 5.10. ***Books and Records***. NaviSite shall, until the seventh anniversary of the Closing Date, retain all books, records and other documents pertaining to the Purchased Assets or business of Surebridge and each of its Subsidiaries transferred to NaviSite on the Closing Date and to make the same available for inspection and copying by the Company or any representative of the Company at the expense of the Company during the normal business hours of NaviSite upon reasonable request and upon reasonable notice.

Section 5.11. ***Registration and Distribution of Parent Shares.***

(a) In connection with the execution of this Agreement, Parent and the Company shall execute and deliver the registration rights agreement in the form attached hereto as Exhibit F (the "**Registration Rights Agreement**").

(b) Except with the prior written consent of Parent, which consent may be granted or withheld in the sole discretion of Parent, Surebridge shall not sell, transfer, assign, convey, encumber, gift, distribute or otherwise dispose ("**Transfer**") of the Parent Shares, the Notes or the Conversion Shares for a period of one (1) year after the Closing Date (the "**Lockup**"); provided, however, if NaviSite does not make payments of at least Nine Million Five Hundred Thousand Dollars ($9,500,000) of the aggregate outstanding principal of the Primary Note and the Escrow Note, collectively, within 180 days of the Closing Date or an event of default occurs under either such Note, the Lockup shall become null and void solely with respect to restrictions on sales and Surebridge may sell the Parent Shares and/or any shares issuable upon conversion of the Notes at any time thereafter. In addition, Surebridge may Transfer the Parent Shares, the Primary Note, the Escrow Note and/or any shares issuable upon conversion of the Notes without restriction by this Section 5.11 at any time after the first anniversary of the Closing Date.

Section 5.12. ***Approval of Transactions; Fiduciary Out***.

(a) Surebridge shall use its reasonable best efforts to obtain, as promptly as practicable, all necessary approvals, either at a special meeting of shareholders or pursuant to a written shareholder consent executed by Surebridge shareholders representing greater than 50% of the votes required to approve this Agreement and the transactions contemplated hereby, all in accordance with the applicable requirements of the Delaware General Corporate Law. In connection with such special meeting of shareholders or written shareholder consent, Surebridge shall provide to its shareholders the recommendation of its directors that the shareholders vote in favor of the adoption of this Agreement, subject to the provisions of Section 5.12(b) below. Copies of any written consent of Surebridge's shareholders pursuant to Section 228 of the DGCL shall be delivered to NaviSite with a certificate of Surebridge's

secretary certifying as to the accuracy of the written consent and that the written consent has been received by Surebridge and included in the books and records of Surebridge.

(b) If, prior to the Closing and prior to obtaining the necessary vote of Surebridge's stockholders approving this Agreement and the transactions contemplated hereby, (i) Surebridge's directors shall determine in good faith by a majority vote that any written proposal from a third party for a transaction to purchase all or substantially all of the stock or assets of the Company received after the date of this Agreement is more favorable to Surebridge's shareholders than the transactions contemplated by this Agreement (including any adjustment to the terms and conditions of such transaction proposed in writing by NaviSite in response to such proposed transaction) and are

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secretary certifying as to the accuracy of the written consent and that the written consent has been received by Surebridge and included in the books and records of Surebridge.

(b) If, prior to the Closing and prior to obtaining the necessary vote of Surebridge's stockholders approving this Agreement and the transactions contemplated hereby, (i) Surebridge's directors shall determine in good faith by a majority vote that any written proposal from a third party for a transaction to purchase all or substantially all of the stock or assets of the Company received after the date of this Agreement is more favorable to Surebridge's shareholders than the transactions contemplated by this Agreement (including any adjustment to the terms and conditions of such transaction proposed in writing by NaviSite in response to such proposed transaction) and is in the best interest of Surebridge's shareholders (a "**Superior Proposal**"), and (ii) Surebridge has received advice from legal counsel that failure to enter into such a competing transaction would constitute a breach of Surebridge's directors' fiduciary duties, then Surebridge's directors may withdraw their recommendation to vote in favor of this Agreement and may terminate this Agreement. Surebridge may not terminate this Agreement pursuant to this Section 5.12(b) once its stockholders have approved this Agreement and the transactions contemplated hereby, whether by written consent or otherwise.

Section 5.13. ***Delivery of Financial Statements***. For each fiscal quarter ending on or after March 31, 2004 and on or before the date that is 10 business days prior to the Closing Date, Surebridge shall deliver to NaviSite an unaudited comparative consolidated balance sheet at the last day of such fiscal quarter and unaudited comparative consolidated statements of income and cash flows of the Company, for such quarter and the year-to-date period then ended (including for the comparable quarter and the comparable year-to-date periods for the prior year), and for each monthly period ending after the date hereof, Surebridge shall deliver to NaviSite an unaudited consolidated balance sheet and the related unaudited consolidated statements of income and cash flows within 20 days of the end of such monthly period (each, an "**Unaudited Company Interim Financial Statements**").

Section 5.14. ***FIRPTA Certification***. Prior to the Closing Date, Surebridge shall deliver to NaviSite an affidavit from the Company, also delivered to the Internal Revenue Service, that the Company is not, and has not been, a "U.S. real property holding corporation" in accordance with the Treasury Regulations under Section 897 and 1445 of the Code, so that Buyer is exempt from withholding any portion of the Purchase Price.

Section 5.15. ***Use of Name***. Following the Closing, NaviSite shall have the right to use the name "Surebridge, Inc." and any other derivations thereof, and Surebridge agrees to take all actions reasonable necessary, including changing the legal name of Surebridge to a name that is not similar to such name within 30 days after the Closing, to allow NaviSite to exercise such right.

Section 5.16. ***Endorsement of Checks, Etc***. Surebridge hereby authorizes NaviSite following the Closing to endorse for deposit only its name on and collect for NaviSite's account any checks received in payment of any accounts included in the Purchased Assets, and any refunds of deposits, prepaid expenses and similar amounts included in the Purchased Assets. If

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any amounts due to NaviSite are received by Surebridge, Surebridge will turn the same over to NaviSite. Surebridge will hold such funds in trust exclusively for the benefit of NaviSite, and Surebridge will promptly deliver such funds to NaviSite.

Section 5.17. ***Rule 145***. From the date hereof until the first anniversary of the Closing Date, neither Surebridge nor its Board of Directors or similar representatives of Surebridge shall adopt resolutions relative to a plan or agreement providing for dissolution of the Surebridge entity or for the pro rata or similar distribution of the Parent Shares or the Notes to the Surebridge shareholders within the meaning of Rule 145(a)(3)(iii).

Section 5.18. ***Issuance of Parent Shares***. Promptly following the date hereof, Parent shall use its best efforts to obtain the approval of its stockholders by written consent pursuant to, and in compliance with, Section 228 of the DGCL (such written consent to be effective in accordance with Regulation 14C of the Exchange Act) of the issuance of shares of Parent's common stock (i) representing 20% or more of the outstanding shares of Parent's common stock in the transactions contemplated hereby, including as a result of the issuance by Parent to Surebridge of the Parent Shares and upon conversion of the Notes, as required by NASD Rule 4350(i)(1)(C), and (ii) which may result in a change of control of Parent, as required by NASD Rule 4350(i)(1)(B). For clarity purposes only, it shall not be a condition to Closing that Parent obtain an effective vote of its stockholders pursuant to the requirements of this Section 5.18 or otherwise. Surebridge acknowledges and understands that the Notes shall not and may not be convertible into an aggregate number of shares of Parent's common stock that is greater than or equal to (i) 19.9% of that number of shares of Parent's common stock outstanding immediately prior to the Closing less (ii) 3,000,000 shares (the "**Share Cap**") unless and until Parent has obtained the necessary and effective stockholder approval of the matters described in this Section 5.18. Notwithstanding the previous sentence, in the event Parent does not obtain the requisite stockholder approvals, Surebridge shall be entitled to damages hereunder.

Section 5.19. ***Consents***. After the Closing Date, Surebridge and NaviSite will cooperate and will each use commercially reasonable efforts to obtain any consents listed on Schedules 2.4 and 2.7 that are not obtained prior to the Closing Date. Notwithstanding anything to the contrary herein, this Agreement shall not operate to assign any agreement, lease, contract, license, commitment, understanding or undertaking, or any claim, right or benefit arising thereunder or resulting therefrom, if an attempted assignment thereof, without the consent of another party thereto, would constitute a breach, default or other contravention thereof or in any way adversely affect the rights of Surebridge or NaviSite thereunder. In the event that a consent required to assign any such agreement, lease, contract, license, commitment, understanding or undertaking is not obtained on or prior to the Closing Date or if an asset or assets are otherwise not assignable hereunder (each such asset a "**Non-Transferable Asset**"), then, from and after the Closing and, with respect to each such Non-Transferable Asset, until the earlier to occur of (i) such time as such Non-Transferable Asset shall be properly and lawfully transferred or assigned to NaviSite or (ii) such time as the material benefits intended to be transferred or assigned to NaviSite have been procured by alternative means pursuant hereto, (A) the Non-Transferable Assets shall be held by Surebridge in trust exclusively for the benefit of NaviSite to the extent permitted under applicable Law, and Surebridge shall use commercially reasonable efforts to perform and discharge all of the liabilities and other obligations of Surebridge under the terms of all such

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Non-Transferable Assets in effect as of the Closing at NaviSite's expense and (B) Surebridge shall use commercially reasonable efforts to provide or cause to be provided to NaviSite all of the benefits of Surebridge under the terms of such Non-Transferable Assets in effect as of the Closing, including by promptly paying to NaviSite any monies received by Surebridge from and after the Closing under such Non-Transferable Assets attributable thereto. In the event that Surebridge is unable to obtain any consent from any person under any Non-Transferable Asset after the Closing Date through the use of commercially reasonable efforts, NaviSite shall be entitled to procure the material rights and benefits of Surebridge under the terms of such Non-Transferable Asset in effect as of the Closing by alternative means, including, without limitation, by entering into new contracts with third persons or otherwise; provided, however, that in the event that NaviSite shall exercise its rights under this Section 5.19 in respect of any Non-Transferable Asset, the obligations of Surebridge and NaviSite under this Section 5.19 in respect of such Non-Transferable Asset shall thereupon cease and expire.

Section 5.20. ***Certain Tax Matters***.

(a) NaviSite shall prepare and timely file all Tax Returns required to be filed on or after the Closing Date with respect to the Purchased Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. NaviSite's preparation of any such Tax Returns shall be subject to Surebridge's approval for those periods prior to the Closing, which approval shall not be unreasonably withheld. NaviSite shall make such Tax Returns available for Surebridge's review and approval no later than fifteen (15) business days prior to the due date for filing such Tax Return.

(b) Each of NaviSite and Surebridge shall provide the other party with such assistance as may reasonably be requested by the other party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings related to liability for Taxes, and each will retain and provide the requesting party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Any information obtained pursuant to this Section 5.20(b) or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the parties hereto.

Section 5.21. ***NaviSite Debt Financing***. From the date of this Agreement through the Closing Date, NaviSite shall maintain in full force and effect, without impairment of borrowing limits, or any limitation on NaviSite's rights thereunder whatsoever, that certain Accounts Receivable Financing Agreement with Silicon Valley Bank dated May 27, 2003, as amended, and NaviSite shall not take, or fail to take, any action, or permit the occurrence of any event of default, or any event that, with notice or passage of time would constitute, an event of default under such agreement.

Section 5.22. ***Note Payment***. For a period of one year following the Closing, NaviSite shall, within two business days of receiving a written request from Surebridge, pay to Surebridge in immediately available funds such additional amounts up to $800,000 in the aggregate, which Surebridge may request in order to meet Surebridge's tax payment obligations in connection with the sale of its assets pursuant to this Agreement that Surebridge substantiates in writing.

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Payments pursuant to this Section 5.22 shall be deemed a required prepayment of the Primary Note and shall reduce the outstanding principal outstanding thereunder in accordance with its terms. Notwithstanding the foregoing, NaviSite shall not be required to prepay such sums if NaviSite has paid at least $1,300,000 in aggregate principal amount of the Primary Note prior to receipt of the request for a prepayment hereunder.

ARTICLE VI - EMPLOYEE MATTERS

Section 6.1. ***Employees; Benefits.***

(a) NaviSite shall offer employment effective as of the Closing Date to some or all of the employees of the Company in NaviSite's sole discretion on terms and conditions, including provision of salary and benefits, which are comparable to, in the aggregate, similarly situated employees of NaviSite. NaviSite shall make its employment offers at least three (3) business days prior to the Closing Date and shall inform the Company of the employees who accept such offer of employment (the "**Retained Employees**"). The Company shall cooperate with NaviSite's reasonable requests for access to the employees of the Company for purposes of making any employment offers. In this regard, the Company agrees to provide NaviSite, as soon as practical after the date hereof, to the extent not already provided, a true and complete list of all employees of the Company together with their respective names, positions, dates of hire and current salaries.

(b) From and after the Closing Date, NaviSite shall provide the Retained Employees with benefits (including, without limitation, retirement and welfare benefits) that are substantially comparable, in the aggregate, to the benefits provided to NaviSite's existing employees.

(c) From and after the Closing Date, NaviSite shall honor in accordance with their terms those severance agreements between Surebridge or any of its Subsidiaries, on the one hand, and their employees, on the other hand, in effect as of the date hereof and listed on Schedule 6.1(e).

(d) NaviSite shall not, at any time prior to 91 days after the Closing Date, effect a "plant closing" or "mass layoff", as those terms are defined in the Worker Adjustment and Retraining Notification Act of 1988, as amended (the "**WARN Act**"), or take any other action affecting in whole or in part any site of employment of NaviSite which could result in any liability to the Company without fully complying with all of the requirements of the WARN Act and any other applicable foreign, federal, state or other law (a "**WARN Act Violation**"); *provided, however,* if NaviSite engages in a WARN Act Violation, it shall indemnify and hold harmless Surebridge against and in respect of any damages, claims, losses, expenses, costs, obligations or liabilities arising from such WARN Act Violation.

(e) At the Closing, NaviSite shall pay to the Company (upon receipt of a full waiver and release (which release shall also include NaviSite, its Affiliates and

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assigns as released parties to the same extent as the Company)) an amount equal to the final pay, severance pay and accrued but unused vacation time and any other contractual or ordinary course severance payments for employees of the Company who are not offered employment with NaviSite or who are offered employment but do not become Retained Employees (the "**Non-Retained Employees**"), in accordance with (i) applicable law and (ii) the greater of that amount payable under (x) the Company's severance policy set forth on Schedule 6.1(e) and (y) the severance agreements set forth on Schedule 6.1(e). The Company shall not terminate any Retained Employee or Non-Retained Employee, other than those employees listed on Schedule 6.1(e)(A), without NavSite's prior written consent The Company shall be responsible for providing any required or desired notices and shall take any and all other such necessary or appropriate actions to terminate any Retained Employee or any Non-Retained Employee upon NaviSite's request to so terminate. At all times after the date hereof and until the Closing, the Company shall use its good faith efforts to cooperate with NaviSite and ensure that relations with its employees, especially the Retained Employees, remain and continue to be good, and that the services of its employees continue without interruption. In addition, with respect to any Non-Retained Employee who receives an offer of employment from NaviSite but does not accept such offer, at NaviSite's request, the Company shall enter into a transition services agreement with NaviSite pursuant to which the Company shall make available to NaviSite, if permitted by law, at NaviSite's sole cost and expense, the services of those Non-Retained Employees whose continued service NaviSite has requested for a period of up to 12 months following the Closing. Any subsequent terminations by the Company of such employees shall be at NaviSite's full cost and expense. The Company agrees that it will not, without the prior written consent of NaviSite, increase or decrease any compensation (including salary, wages, bonuses or commissions) or amend or modify any severance or bonus agreements that may be paid or payable to any Non-Retained Employee. It being understood that nothing in the forgoing shall require the Company to keep in place any benefit programs or plans. NaviSite acknowledges that following Closing, the Company is not expected to have any employees other than those who may be retained at NaviSite's request hereunder, and that the full cost and expense associated with retaining such employees will be borne by NaviSite. Further, NaviSite shall indemnify and hold harmless the Company, its directors, officers, shareholders and their affiliates against any losses, liabilities, damages or expenses, including legal fees, to which the Company may become subject in connection with providing the forgoing transition services, but only to the extent the Company was neither grossly negligent nor engaged in willful malfeasance. In the event NaviSite shall fail to pay any amounts due to the Company under this Section 6.1(e) within ten (10) days of such amount being due, the Company shall be immediately relieved of all obligations under this Section 6.1(e).

(f) NaviSite shall pay any costs, including termination fees, required to be paid upon the termination of any Employee Plan. In the event Surebridge receives any refund upon the termination of an Employee Plan, Surebridge shall promptly pay NaviSite the amount of such refund.

Section 6.2. ***Officers' and Directors' Indemnification.***

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(a) The Company and NaviSite agree that all rights to exculpation and indemnification existing in favor of, and all limitations on the personal liability of, the directors, officers, employees of the Company ("**Indemnified Persons**") provided for in Surebridge's Charter and by-laws and the organizational documents of each Subsidiary, as applicable, as in effect as of the date hereof with respect to matters occurring prior to and through the Closing, and specifically including the transactions contemplated hereby, shall continue in full force and effect for a period of six (6) years from the Closing; *provided, however*, that all rights to indemnification in respect of any claims (each a "**Claim**") asserted or made within such period shall continue until the disposition of such Claim. Following the Closing, NaviSite will indemnify and hold harmless the Indemnified Persons with respect to acts or omissions occurring prior to and through the Closing to the same extent that Surebridge would have such obligations pursuant to its Charter or by-laws or pursuant to applicable Law, and NaviSite shall advance expenses to each such Indemnified Person in connection with any proceeding involving such Indemnified Person to the fullest extent so permitted upon receipt of any undertaking required by applicable law or the Charter or by-laws, in each case as in effect on the date hereof; *provided* that such indemnification shall be subject to any limitation imposed from time to time under applicable Law for any act of fraud or any international or willful act or omission in bad faith. Following the Closing, NaviSite shall not, and shall not permit any former Surebridge Subsidiary to amend or modify its Charter or by-laws or other organizational documents, as applicable, except as required by applicable Law, if the effect of such amendment or modification would be to lessen or otherwise adversely affect the indemnification rights of such Indemnified Persons as provided therein, and NaviSite shall advance expenses to each such Indemnified Person in connection with any proceeding involving such Indemnified Person to the fullest extent so permitted upon receipt of any undertaking required by Law or in the Charter or by-laws of the organizational documents of the former Surebridge Subsidiaries, as applicable. Similarly, following the Closing, Surebridge shall not amend or modify its Charter or by-laws or other organizational documents, as applicable, except as required by applicable law, if the effect of such amendment or modification would be to lessen or otherwise adversely affect the indemnification rights of such Indemnified Persons as provided therein.

(b) Prior to the Closing, Surebridge shall be permitted to purchase an extended reporting period endorsement under Surebridge's existing directors' and officers' liability insurance coverage for the Surebridge's directors and officers in a form acceptable to Surebridge which shall provide such directors and officers with coverage for six (6) years following the Closing of not less than the existing coverage under, and have other terms not materially less favorable to, the insured persons than the directors' and officers' liability insurance coverage presently maintained by Surebridge; *provided, however*, that Surebridge shall not pay or agree to pay a premium for such insurance in excess of $90,000. This Section 6.2 is intended to benefit each of the Indemnified Persons and their respective heirs and personal representatives, each whom shall be entitled to enforce the provisions hereof.

ARTICLE VII - CONDITIONS TO CLOSING

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Section 7.1. ***Conditions to Obligations of the Company***. The obligations of the Company to consummate the transactions contemplated by this Agreement for the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

(a) All covenants contained in this Agreement to be complied with by Buyer or Parent on or before the Closing shall have been complied with in all material respects, and the Company shall have received a certificate of each of Buyer and Parent to such effect signed by a duly authorized officer of Buyer or Parent, as applicable.

(b) The representations and warranties of Buyer and Parent contained in this Agreement that are qualified as to materiality, "Material Adverse Effect" or other words of similar effect shall be true and correct in all respects, and all other representations and warranties of Parent and Buyer contained in this Agreement shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the time of Closing, with the same force and effect as though such representations and warranties had been made on and as of time of Closing (except for representations and warranties that are made as of a specified date or time, which shall be true and correct only as of such specific date or time) and the Company shall have received a certificate to such effect signed by an authorized officer of Parent.

(c) Any waiting period (and any extension thereof) under the HSR Act applicable to the transactions to be consummated at the Closing shall have expired or been terminated.

(d) No Governmental Authority or court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) that is in effect and has the effect of making the transactions contemplated by this Agreement for the Closing illegal or otherwise restraining or prohibiting consummation of such transactions.

(e) NaviSite shall have received the authorizations, orders, approvals and consents of Governmental Authorities and material third parties described in Schedule 4.3, if any.

(f) This Agreement and the transactions contemplated hereby shall have been approved by the holders of at least fifty percent (50%) of the voting stock of Company, plus the requisite approval of any shareholders holding capital stock that have separate class or series vote with respect to the transactions contemplated hereby.

(g) Parent shall have made a preliminary filing with the SEC under Regulation 14C of the Exchange Act in accordance with Section 5.18.

(h) Buyer shall have delivered to the Company instruments of transfer reasonably acceptable to the Company pursuant to which Buyer shall assume the Assumed Liabilities, including the Assignment and Assumption Agreement.

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Section 7.2. ***Conditions to Obligations of NaviSite***. The obligations of NaviSite to consummate the transactions contemplated by this Agreement for the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

(a) All covenants contained in this Agreement to be complied with by the Company on or before the Closing shall have been complied with in all material respects, and NaviSite shall have received a certificate of the Company to such effect signed by a duly authorized officer of the Company.

(b) The representations and warranties of the Company contained in this Agreement that are qualified as to materiality, "Material Adverse Effect" or other words of similar effect shall be true and correct in all respects, and all other representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the time of Closing, with the same force and effect as though such representations and warranties had been made on and as of time of Closing (except for representations and warranties that are made as of a specified date or time, which shall be true and correct only as of such specific date or time) and NaviSite shall have received a certificate to such effect signed by an authorized officer of the Company.

(c) Any waiting period (and any extension thereof) under the HSR Act applicable to the transactions to be consummated at the Closing shall have expired or been terminated.

(d) No Governmental Authority or court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement for the Closing illegal or otherwise restraining or prohibiting consummation of such transactions.

(e) The Company, as applicable, shall have received the authorizations, orders, approvals and consents of Governmental Authorities described in Schedule 2.7.

(f) NaviSite shall have received from the Company the consents set forth on Schedule 7.2(f) (the "**Necessary Consents**"), and none of such Necessary Consents shall have been withdrawn or rescinded and such other consents as are in the Company's possession.

(g) NaviSite shall have received the audited financial statements of the Company for the fiscal year ended December 31, 2002.

(h) NaviSite shall have received the Audited 2003 Financials of the Company and the Aggregate Net Worth of the Company based on the Audited 2003 Financials is not more than $5,000,000 less than the Aggregate Net Worth of the Company based on the Base Balance Sheet (a "**Material Adverse Financial Change**").

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(i) NaviSite shall have received the Unaudited Company Interim Financial Statements required to be delivered to it pursuant to Section 5.13.

(j) Surebridge shall have delivered to NaviSite such bills of sale, assignments and other instruments of transfer reasonably acceptable to NaviSite necessary to transfer title to the Purchased Assets to NaviSite as contemplated by Article I, free and clear of all Liens, except for the Permitted Liens.

(k) Surebridge shall have delivered to NaviSite confirmation that the warrant held by Silicon Valley Bank for purchase of shares of Surebridge's common stock is an Excluded Liability hereunder or a copy of an amendment to the warrant, such amendment to provide that the warrant shall not be assigned to an acquiring entity, or that such warrant shall not be exercisable for securities of an acquiring entity in the event of a sale of all or substantially all of the assets of the Company.

Section 7.3. ***Inability to Deliver Closing Certificates.*** In the event NaviSite or the Company cannot deliver any certificate contemplated by Sections 7.1(a), 7.1(b), 7.2(a) or 7.2(b), the applicable party shall deliver a closing certificate to the other parties outlining the reasons for such party's inability to comply with the closing condition(s) and confirming compliance otherwise with the applicable closing condition. Any certificate delivered pursuant to this Section 7.3 shall be deemed to satisfy the closing conditions in Section 7.1 or 7.2, as applicable, but shall not be deemed to cure the breach of any representation, warranty or covenant and the breaching party shall remain liable for such breach.

ARTICLE VIII - TERMINATION

Section 8.1. ***Termination***. This Agreement may be terminated or the transactions contemplated hereby may be abandoned at any time prior to the Closing Date:

(a) at any time, by the mutual written consent of the Company and NaviSite;

(b) if any Governmental Authority shall have issued an order, decree or ruling or taken any other action which permanently restrains, enjoins or otherwise prohibits the transactions contemplated hereby and such order, decree, ruling or other action shall have become final and non-appealable;

(c) if the transactions contemplated hereby shall not have been consummated by June 30, 2004 (the "**End Date**"); *provided, however*, that the right to terminate this Agreement pursuant to this clause shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Closing to occur on or before such date and such action or failure to act constitutes a material breach of this Agreement;

(d) by NaviSite, if there is a Material Adverse Financial Change;

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(e) by NaviSite, if since the date of this Agreement, there shall have been any event, development or change of circumstance that constitutes, has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Change of the Company and such Material Adverse Change is not cured within five days after written notice thereof;

(f) by the Company, if since the date of this Agreement, there shall have been any event, development or change of circumstance that constitutes, has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Change of NaviSite and such Material Adverse Change is not cured within five days after written notice thereof; and

(g) by NaviSite if (A) the Company's directors shall have withdrawn, or adversely modified, its recommendation of the transactions contemplated hereby or this Agreement (or determined to do so in accordance with Section 5.12); (B) the Company's directors shall have determined to recommend to the Company's shareholders that they approve an Acquisition Proposal other than that contemplated by this Agreement or shall have determined to accept a Superior Proposal; (C) a tender offer or exchange offer that, if successful, would result in any person or group becoming a beneficial owner of 20% or more of the outstanding shares of the Company's common stock is commenced (other than by NaviSite or an affiliate of NaviSite) and the directors fail to recommend that the shareholders of the Company not tender their common stock in such tender or exchange offer; (D) any person (other than any current shareholder, NaviSite or an affiliate of NaviSite) or group becomes after the date hereof the beneficial owner of 20% or more of the outstanding shares of the Company's common stock; or (E) for any reason within its control the Company fails to hold the Company's shareholder meeting or delivery written consents by June 25, 2004.

Section 8.2. ***Effect of Termination***.

(a) Limitation on Liability. In the event of termination of this Agreement by either the Company or NaviSite as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of the Company or NaviSite or their respective Subsidiaries, officers or directors except (x) with respect to Section 5.3, Section 10.2, and this Section 8.2 and (y) with respect to any liabilities or damages incurred or suffered by a party as a result of the willful and material breach by the other party of any of its representations, warranties, covenants or other agreements set forth in this Agreement or any Ancillary Agreement.

(b) NaviSite Expenses. The Company and NaviSite agree that if this Agreement is terminated by NaviSite pursuant to Sections 8.1(c), 8.1(d), 8.1(e) and 8.1(g), then the Company shall pay NaviSite an amount equal to the sum of NaviSite's third party expenses up to $350,000.

(c) Seller Expenses. The Company and NaviSite agree that if this Agreement is terminated by the Company pursuant to Section 8.1(c) and 8.1(f), then

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NaviSite shall pay the Company an amount equal to the sum of the Company's third party expenses up to $350,000.

(d) Payment of Expenses. Payment of expenses pursuant to Section 8.2(b) and 8.2(c) shall be made not later than two business days after delivery to the other party of notice of demand for payment and a documented itemization setting forth in reasonable detail all Expenses of the party entitled to receive payment (which itemization may be supplemented and updated from time to time by such party until the 30th day after such party delivers such notice of demand for payment, but only for amounts incurred prior to the date of termination, but which description shall not include a detailed description of legal fees and services rendered). In any proceedings concerning payment of amounts due under this Section 8.2(d), the party prevailing in such proceeding shall be entitled to recover its Expenses from the other party incurred in connection therewith.

(e) Termination Fee. In addition to any payment required by the foregoing provisions of this Section 8.2, in the event that this Agreement is terminated pursuant to Section 8.1(g) then the Company shall pay to NaviSite immediately upon such termination, in the case of a termination by the Company, or within two business days thereafter, in the case of a termination by NaviSite, a termination fee of $1,650,000.

(f) All Payments. All payments under Sections 8.2(b), 8.2(c) or 8.2(e) shall be made by wire transfer of immediately available funds to an account designated by the party entitled to receive payment.

Section 8.3. ***Waiver***. At any time prior to the Closing, NaviSite and the Company may (a) extend the time for the performance of any of the obligations or other acts of the other party hereto, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto or (c) waive compliance with any of the agreements of the other party or conditions to its own obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Waiver of any term or condition of this Agreement by a party shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition by such party, or a waiver of any other term or condition of this Agreement by such party.

ARTICLE IX - SURVIVAL; INDEMNIFICATION

Section 9.1. ***Survival.*** The parties agree that the representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing until twelve months after the Closing Date (the "**Cut-Off Date**"). No claim for indemnification hereunder may be brought after the Cut-Off Date, except for claims (x) of which the Company has been notified in writing with reasonable specificity by NaviSite prior to the Cut-Off Date, and (y) of which NaviSite has been notified in writing with reasonable specificity by the Company prior to the Cut-Off Date.

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Section 9.2. ***Indemnification of NaviSite.*** Subject to Section 9.1, NaviSite shall be indemnified and held harmless against and in respect of any and all damages, claims, demands, losses, expenses, costs, obligations and liabilities, including without limitation reasonable attorneys' fees (collectively, "**Losses**"), which arise or result from any breach of any of the representations or warranties contained in Article II or the failure of the Company to perform any of its covenants or agreements contained herein. Notwithstanding the foregoing,

(a) there shall be no indemnification of NaviSite until the aggregate amount of Losses incurred by NaviSite exceed $250,000 (the "**Threshold**"), at which time the full amount of Losses incurred shall be subject to indemnification hereunder;

(b) there shall be no indemnification payments hereunder that exceed in the aggregate the principal amount of the Escrow Note (the "**Indemnification Cap**");

(c) there shall be no indemnification of NaviSite with respect to Losses arising out of breaches of the representations or warranties contained in Article II to the extent that the Company has made a corresponding reserve for such Losses on the Base Balance Sheet or the March Balance Sheet, provided that such reserves are specifically identified on such balance sheets; and

(d) there shall be no indemnification of NaviSite for punitive damages, speculative damages, special damages, incidental damages or lost profits.

In determining the foregoing thresholds and in otherwise determining the amount of any Losses for which NaviSite is entitled to assert a claim for indemnification hereunder, the amount of any such Losses shall be determined after deducting therefrom the amount of any insurance proceeds and other third party recoveries received by NaviSite in respect of such Losses (which recoveries NaviSite agrees to use commercially reasonable efforts to obtain). If an indemnification adjustment is received by NaviSite pursuant to this Article IX, and NaviSite later receives insurance proceeds or other third party recoveries in respect of the related Losses, NaviSite shall immediately pay to the Company a sum equal to the lesser of (y) the actual amount of such insurance proceeds or other third party recoveries or (z) the actual amount of the indemnification adjustment previously made with respect to such Losses.

Section 9.3. ***Procedure for Indemnification of NaviSite.***

(a) Upon receipt by the Escrow Agent of a certificate signed by any officer of NaviSite (a "**NaviSite Certificate**"):

(i) stating that Losses exist in an aggregate amount greater than the Threshold for claims against the Escrow Account, and

(ii) specifying in reasonable detail the individual items included in the amount of Losses in such claim, the date each such item was paid, properly accrued or arose and the nature of the misrepresentation, breach of warranty or claim to which such item is related,

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(b) As soon as practicable following the earlier of: (i) receipt of written authorization from the Company and NaviSite with respect to the disposition of such claim or receipt of written notice of a final decision or order of a court of competent jurisdiction with respect to such claim (in either case, a "**Distribution Directive**"); or (ii) the close of business on the thirtieth (30th) day following receipt by the Escrow Agent of a NaviSite Certificate to which the Company has not objected in accordance with this Section 9.4, the Escrow Agent shall record, (A) in the event of its receipt of a Distribution Directive, the amount of the Losses stipulated in the Distribution Directive or, (B) in the event that a Written Escrow Objection (as herein defined) is not received by the close of business on the thirtieth (30th) day following the Escrow Agent's receipt of a NaviSite Certificate, the amount of the Losses set forth in NaviSite Certificate. The Escrow Agent shall record such amounts on a register that is attached to and made a part of the Escrow Note (the "**Loss Adjustments**"), and the Loss Adjustments shall thereafter constitute a reduction in the principal due under the Escrow Note.

(c) At the time of delivery of any NaviSite Certificate to the Escrow Agent, a duplicate copy of such NaviSite Certificate shall be delivered to the Company, and for a period of thirty (30) days after such delivery to the Escrow Agent of such NaviSite Certificate, the Escrow Agent shall not make any adjustment to the Escrow Note in respect of the claims described in such NaviSite Certificate unless the Escrow Agent shall have received written authorization from the Company and NaviSite to make such adjustment. As soon as practicable after the expiration of such thirty (30) day period, the Escrow Agent shall make the Loss Adjustments as contemplated by Section 9.4(b), unless the Company shall object in a written statement to the claim made in NaviSite Certificate specifying in reasonable detail the nature of such objection and the basis therefor, and such statement shall have been delivered to the Escrow Agent and to NaviSite prior to the expiration of such thirty (30) day period (the "**Written Escrow Objection**").

(i) In case the Company shall so object in writing to any claim or claims by NaviSite made in any NaviSite Certificate pursuant to this Article IX, NaviSite shall have twenty (20) days after receipt by the Escrow Agent of an objection by the Company to respond in a written statement to the objection of the Company. If after such twenty (20) day period there remains a dispute as to any claims, the Company and NaviSite shall attempt in good faith for twenty (20) days to agree upon the rights of the respective parties with respect to each of such claims. If the Company and NaviSite should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and shall be furnished to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such memorandum and shall make Loss Adjustments to the Escrow Note in accordance with the terms thereof.

(ii) If no agreement regarding the rights of the respective parties can be reached after good faith negotiation, either the Company or NaviSite may seek to resolve such dispute or claim in a court of competent jurisdiction or seek other legal or equitable resolution in accordance with this Agreement. Notwithstanding the foregoing, either the Company or NaviSite may at any time apply to any court of competent jurisdiction for injunctive relief in

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connection with a claim for indemnification or otherwise to prevent irreparable harm.

Section 9.4. ***NaviSite's Remedies Exclusive.*** Except as set forth in the Registration Rights Agreement, the remedies provided in this Article IX shall be the exclusive remedies of NaviSite after the Closing in connection with the transactions contemplated by this Agreement (other than with respect to a breach of Section 5.17 by Surebridge), including without limitation any breach or non-performance of any representation or warranty contained herein. NaviSite may not commence any suit, action or proceeding against the Company with respect to the subject matter of this Agreement (other than with respect to a breach of Section 5.17 by Surebridge), whether in contract, tort or otherwise, except to enforce NaviSite's express rights under this Article IX. After the Closing, the Escrow Account shall be NaviSite's sole source for satisfaction of the indemnification obligations under this Article IX (other than with respect to a breach of Section 5.17 by Surebridge). Notwithstanding the foregoing, NaviSite may seek to specifically enforce any covenant contained herein.

Section 9.5. ***Priority of Escrow Account.*** Subject to this Article IX and the Escrow Agreement, NaviSite shall be entitled to recover the full amount of all Losses for which it is entitled to indemnification from the Escrow Account in the following order: (i) first from the Cash Escrow, if any, but only to the extent such Losses actually requires a cash payment by NaviSite to a third party who is not an Affiliate of NaviSite; and (ii) second, as a Loss Adjustment against the Escrow Note. In the event that the Losses for which NaviSite is entitled to indemnification did not result in a cash payment to any such third party, then such Losses shall only be satisfied by a Loss Adjustment. NaviSite shall certify in each NaviSite Certificate the amount of any cash payments made to unaffiliated third parties as a result of any Losses for which it seeks indemnification hereunder.

ARTICLE X - GENERAL PROVISIONS

Section 10.1. *Notices*. All notices, requests, claims, demands and other communications under this Agreement will be in writing and will be deemed given if delivered personally, or the next business day if sent by overnight courier (providing proof of delivery), or on the same business day if sent via facsimile on a business day during normal business hours to the parties at the following addresses (or at such other address for a party as specified by like notice):

Prior to Closing if to the Company, to:

Surebridge, Inc.
10 McGuire Road, Suite 332
Lexington, MA 02421
Attn: Kim Trask, Esq.
Facsimile: (781) 372-3223

with copy to:

TRADEMARK
REEL: 003082 FRAME: 0494

Goodwin Procter LLP
Exchange Place
Boston, MA 02109
Attn: Stuart M. Cable, P.C.
Facsimile: (617) 523-1231

With an additional copy following closing to:

Surebridge, Inc.
c/o Spectrum Equity Investors, L.P.
One International Place, 29th Floor
Boston, Massachusetts 02110
Attention: Michael J. Kennealy
Facsimile: (617) 464-4601

If to NaviSite, to:

NaviSite, Inc.
400 Minuteman Road
Andover, MA 01810
Attn: Ken Drake, Esq.
Facsimile: (978) 946-7803

with a copy to:

Browne Rosedale & Lanouette LLP
31 St. James Avenue, Suite 830
Boston, MA 02116
Attn: Thomas B. Rosedale, Esq.
Facsimile: (617) 399-6930

Section 10.2. ***Fees and Expenses***. Except as provided otherwise herein, each of NaviSite, on the one hand, and the Company, prior to Closing, on the other hand, shall bear its own expenses in connection with the negotiation and the consummation of the transactions contemplated by this Agreement. Following the Closing, NaviSite shall pay any actual fees or expenses owed by the Company to counsel for the Company that were not paid prior to Closing, including such fees and expenses owed to counsel for the Company related solely to the transaction contemplated hereby, which transaction fees and expenses do not exceed $300,000 in the aggregate. In addition, NaviSite shall pay the actual fees and expenses of one counsel to the preferred stockholders of the Company with respect to the transactions contemplated hereby, such fees and expenses not to exceed $100,000.

Section 10.3. ***Certain Definitions***. For purposes of this Agreement:

(a) An "**Affiliate**" shall mean any affiliate, as defined in Rule 12b-2 under the Exchange Act;

TRADEMARK
REEL: 003082 FRAME: 0495

(b) "**Effect**" means any change, event, violation, inaccuracy, circumstance or effect;

(c) "**GAAP**" means U.S. generally accepted accounting principles, consistently applied;

(d) "**Material Adverse Change**" means a Material Adverse Effect that results in, or would reasonably be expected to result in, either (i) a $5,000,000 decrease in the annualized revenue of the Company or Buyer, as the case may be; or (ii) a $5,000,000 increase in the annualized expenses of the Company or Buyer, as the case may be.

(e) "**Material Adverse Effect**" means any Effect that (a) is materially adverse to the business, assets (including intangible assets), capitalization, financial condition or results of operations of a party, together with its subsidiaries taken as a whole or (b) materially impedes such party's authority to consummate the transactions contemplated hereby in accordance with the terms hereof and applicable Laws, provided that in no event shall any of the following, alone or in combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been or shall be, a Material Adverse Effect: (A) any Effect directly related to the announcement or pendency of the transactions contemplated hereby, including, but not limited to, a decline in Buyer's stock price; (B) any Effect that results from changes affecting any of the industries in which such party operates generally or the United States economy generally which does not have a disproportionate effect on such party; (C) any Effect that results from changes affecting general worldwide economic or capital market conditions which does not have a disproportionate effect on such party; or (D) changes in Laws or regulations or the interpretation thereof;

(f) "**Person**" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity; and

Section 10.4. ***Interpretation***. When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference will be to an Article or Section of, or a Schedule or Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms used herein with initial capital letters have the meanings ascribed to them herein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by

TRADEMARK
REEL: 003082 FRAME: 0496

succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

Section 10.5. ***Counterparts and Facsimile Signatures***. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. This Agreement may be executed by facsimile signature.

Section 10.6. ***Amendments and Waivers***. This Agreement may not be amended or modified, nor may compliance with any condition or covenant set forth herein be waived, except by a writing duly and validly executed by NaviSite and the Company or in the case of a waiver, the party waiving compliance. No waiver by any party with respect to any default, misrepresentation or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence.

Section 10.7. ***Entire Agreement; Severability***. This Agreement (including the exhibits, schedules, documents and instruments referred to herein) and the Confidentiality Agreement constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. If any term, condition or other provision of this Agreement is found to be invalid, illegal or incapable of being enforced by virtue of any rule of law, public policy or court determination, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

Section 10.8. ***Third Party Beneficiaries***. Except as expressly provided in this Agreement, each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the parties hereto and their respective successors and permitted assigns.

Section 10.9. ***Governing Law***. This Agreement will be governed by, and construed in accordance with, the internal laws of the State of Delaware regardless of the laws that might otherwise govern under applicable principles of conflict of laws.

Section 10.10. ***Assignment***. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, in whole or in part, by operation of law or otherwise by the parties hereto without the prior written consent of the other party; provided that the Company may assign its rights under this Agreement to its stockholders in connection with the dissolution of the Company on or after the first anniversary of the Closing. Any assignment

TRADEMARK
REEL: 003082 FRAME: 0497

in violation of the preceding sentence will be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.11. ***Consent to Jurisdiction***. Each of the parties hereby consents to personal jurisdiction, service of process and exclusive venue in the federal or state courts of the State of Delaware for any claim, suit or proceeding arising under this Agreement, or in the case of a third party claim subject to indemnification hereunder, in the court where such claim is brought.

Section 10.12. ***Mutual Drafting***. The parties hereto are sophisticated and have been represented by attorneys throughout the transactions contemplated hereby who have carefully negotiated the provisions hereof. As a consequence, the parties do not intend that the presumptions of Laws relating to the interpretation of contracts against the drafter of any particular clause should be applied to this Agreement or any agreement or instrument executed in connection herewith, and therefore waive their effects.

Section 10.13. ***Remedies***. It is specifically understood and agreed that any breach of the provisions of this Agreement or any other agreement executed and delivered pursuant to this Agreement by any party hereto will result in irreparable injury to the other parties hereto, that the remedy at law alone will be an inadequate remedy for such breach, and that, in addition to any other remedies which they may have, such other parties may enforce their respective rights by actions for specific performance (to the extent permitted by Law). Notwithstanding anything to the contrary contained in this Agreement, except as provided in Article IX, NaviSite has no right to set-off or otherwise alter the amounts due under, or terms of, the Primary Note or the Escrow Note as a result of any action or inaction of the Company under this Agreement.

Section 10.14. ***Bulk Sales Law***. NaviSite waives compliance by the Company with the provisions of any applicable bulk sales, fraudulent conveyance or other Law for the protection of creditors in connection with the transactions contemplated hereby.

[Remainder of page intentionally left blank]

TRADEMARK
REEL: 003082 FRAME: 0498

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

COMPANY:
SUREBRIDGE, INC.

By: ______________________
Name:
Title:

BUYER:
LEXINGTON ACQUISITION CORP.

By: ______________________
Name:
Title:

PARENT:
NAVISITE, INC.

By: ______________________
Name:
Title:

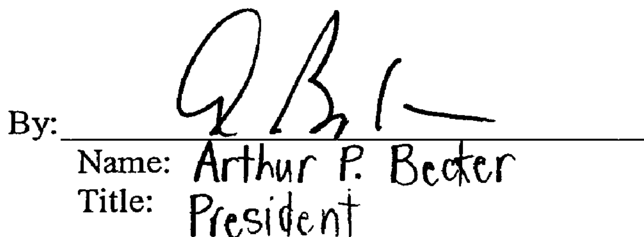
TRADEMARK
REEL: 003082 FRAME: 0499

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

COMPANY:
SUREBRIDGE, INC.

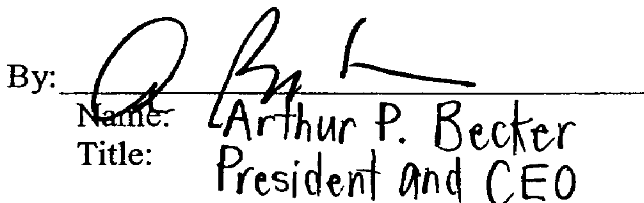
By:______________________________
Name:
Title:

BUYER:
LEXINGTON ACQUISITION CORP.



By:______________________________
Name: Arthur P. Becker
Title: President

PARENT:
NAVISITE, INC.



By:______________________________
Name: Arthur P. Becker
Title: President and CEO

LIBC/1916348.13

Schedule 2.14
Intellectual Property

2.14(b) see list of employees who did not sign an assignment of rights agreement with Surebridge in Section 2.14(f) below in this Schedule. In some cases, Surebridge grants its customer ownership of the copyrights in tangible work product specifically developed for such customers. Surebridge does not have any registered copyrights. See Schedule 2.13(i)

2.14(c) Patents – Application: Security Services Architecture For An Application Hosting Facility. The invention provides a security services achitecture that provides the ability to handle complex, multi-domain authentication relationships and configuration data in an easy to set up and efficient to provision manner.

2.14(d) Trademarks- Surebridge Trademarks for which TM registrations have been applied for:

Mark	Filing No.	Juris	Status
ALWAYS THERE	76/187302	U.S.	Registered
SUREBRIDGE	75-828203	U.S.	Registered
SUREBRIDGE	833007	Aus	Registered
SUREBRIDGE	1056371	Can	Registered
SUREBRIDGE	1624162	EU	Registered
SUREBRIDGE	422213	Mex	Registered
RAPIDSUCCESS	2529548	US	Registered
MANAGEDOPS.COM	2596858	US	Registered
T logo	2399360	US	Registered
MANAGED OPERATIONS	2377485	US	Registered

NH State Registrations:
DATACARE
OPEN INTEGRATION MODULES
THE TAYLOR GROUP
T logo
RAPID IMPLEMENTATIONS/ENDURING SOLUTIONS
MANAGED OPERATIONS

(1) Surebridge has registered the domain name mysurebridge.com
(2) Surebridge has registered the domain name panoptictech.com
(3) Surebridge has registered the domain name pinnacleis.com
(4) Surebridge has registered the domain name surebridge.com
(5) Surebridge has registered the domain name surebridgehosting.com
(6) Surebridge has registered the domain name surebridgenet.com

Other Surebridge Trademarks owned by Surebridge for which registrations have not been filed:

Clientbridge
SureStart
SureHost

TRADEMARK
REEL: 003082 FRAME: 0501

SureHost Remote
SurePacks
SureAnalytics
SureExtend
Surebridge eMethodology
SureAudit
Meter Free Support
e-XpertConnect
SmartDeploy Architecture
SureRemote
SureSuccess
SureHost Managed Exchange
SureHost Managed Services

2.14(e) – Copyrights: Surebridge owns the copyrights in the work product produced by all of its employees. Except for the employees listed below, Surebridge has entered into "assignment of invention and development" agreements with its employees. In some cases, Surebridge grants its customer ownership of the copyrights in tangible work product specifically developed for such customers. Surebridge does not have any registered copyrights.

2.14(f) - Trade Secrets: Surebridge was aware of a breach of its confidential information by a departing employee, Mike Kean, whereby he disclosed Surebridge's MSBG customer list to Tectura. As a result of this incident, Surebridge entered into the Agreement with Tectura referenced in Schedule 2.19.

See Schedule 2.8 regarding Corio breach of confidentiality.

Employees that have not signed Non-Disclosure and Assignment of Rights Agreements: (T= recent termination from Surebridge.)

Kent Buis (T)
Abhi Ghatak
Doug Hovanec (T)
Cathy Lucas
John McCarvill
Suzzanne McLaughlin (T)
Todd Nashland
Michael Novak
Chris Savage
Christine Schroeder
Harry Smith (T)
Trisha Sullivan
George Valentine (T)
Angel White

2.14(h):

Surebridge has entered into agreements with customers and partners in the ordinary course of business granting licenses to the Surebridge Intellectual Property. Surebridge has received licenses in the ordinary course of business to use intellectual property owned by third parties which require the payment of royalties or other fees.

TRADEMARK
REEL: 003082 FRAME: 0502

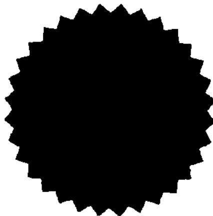
Delaware

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:

"MO ACQUISITION CORP.", A DELAWARE CORPORATION,

WITH AND INTO "MANAGEDOPS.COM, INC." UNDER THE NAME OF "MANAGEDOPS.COM, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIFTH DAY OF MARCH, A.D. 2003, AT 5 O'CLOCK P.M.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3167252 8100M

040588771

AUTHENTICATION: 3289965

DATE: 08-11-04

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 05:00 PM 03/05/2003
030148365 - 3167252

CERTIFICATE OF MERGER

OF

MO ACQUISITION CORP.,
a Delaware corporation

Into

MANAGEDOPS.COM, INC.
a Delaware corporation

The undersigned corporation organized and existing under and by virtue of the General Corporation Law of Delaware, DOES HEREBY CERTIFY:

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

Name	State of Incorporation
ManagedOps.com, Inc.	Delaware
MO Acquisition Corp.	Delaware

SECOND: That an agreement of merger between the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 251 of the General Corporation Law of Delaware.

THIRD: That the name of the surviving corporation of the merger is ManagedOps.com, Inc., a Delaware corporation.

FOURTH: That the Certificate of Incorporation of ManagedOps.com, Inc., a Delaware corporation, shall be the Certificate of Incorporation of the surviving corporation.

FIFTH: That the executed Agreement of Merger is on file at an office of the surviving corporation, the address of which is: ManagedOps.com, Inc. c/o Surebridge, Inc., 10 Maguire Road, Suite 332, Lexington, MA 02421

LIBC/1667462.1

SIXTH: That a copy of the Agreement and Plan of Merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation.

SEVENTH: That this Certificate of Merger shall be effective upon filing with the Secretary of State of the State of Delaware.

[SIGNATURE PAGE FOLLOWS]

Dated: ~~February~~ March 5th, 2003

MANAGEDOPS.COM, INC.

By: [signature]
Name: NICHOLAS A MARTHA
Title: VICE PRESIDENT

State of New Hampshire
Department of State

CERTIFICATE OF AMENDMENT OF

THE TAYLOR GROUP ACCOUNTING SOFTWARE SPECIALISTS, INC.

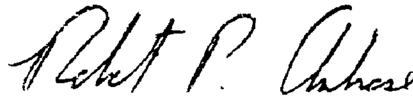
Now known as:

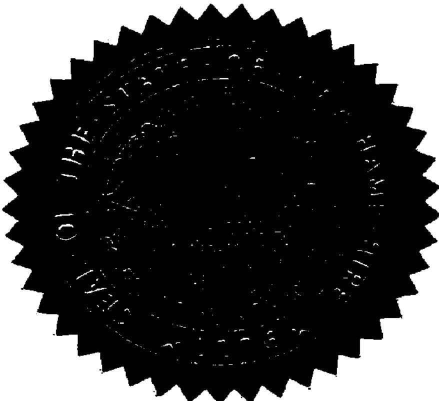
THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.

The undersigned, as Deputy Secretary of State of the State of New Hampshire, hereby certifies that Articles of Amendment to the Articles of Incorporation of THE TAYLOR GROUP ACCOUNTING SOFTWARE SPECIALISTS, INC., duly signed pursuant to the provisions of the New Hampshire Business Corporation Act, have been received in this office.

ACCORDINGLY the undersigned, as such Deputy Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Amendment to the Articles of Incorporation of THE TAYLOR GROUP ACCOUNTING SOFTWARE SPECIALISTS, INC. and attaches hereto a copy of the Articles of Amendment.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 12th day of February A.D. 1999





Robert P. Ambrose
Deputy Secretary of State

FILED

STATE OF NEW HAMPSHIRE

FEB 12 1999

WILLIAM M. GARDNER
NEW HAMPSHIRE
SECRETARY OF STATE

Filing fee: $35.00

Form No. 14
RSA 293-A:10.06

ARTICLES OF AMENDMENT
to the
ARTICLES OF INCORPORATION
of
THE TAYLOR GROUP ACCOUNTING SOFTWARE SPECIALISTS, INC.

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION ADOPTS THE FOLLOWING ARTICLES OF AMENDMENT TO ITS ARTICLES OF INCORPORATION:

FIRST: The name of the Corporation is **The Taylor Group Accounting Software Specialists, Inc.**

SECOND: The text of each amendment adopted is:

"FIRST: The name of the Corporation is "The Taylor Group Solutions Integrator, Inc."

THIRD: If the amendment provides for an exchange, reclassification, or cancellation of issued shares the provisions for implementing the amendment(s) if not contained in the above amendment are: **N/A.**

FOURTH: The amendment(s) were adopted on JANUARY 14, 1999.

FIFTH: (Check one)

A. ____ The amendment(s) were adopted by the incorporators of board of directors without shareholder action and shareholder action was not required.

B. X The amendment(s) were approved by the shareholders.

TRADEMARK
REEL: 003082 FRAME: 0508

Designation (Class or series) of voting group	Number of shares outstanding	Number of votes entitled to be cast	Number of votes indisputably represented at the meeting
Common	**15,750,000**	**15,750,000**	**14,700,000**

Designation (class or series) of voting group	Total number of votes cast: FOR	AGAINST	**OR**	Total number of undisputed votes cast FOR
Common	**14,700,000**	**0**		**14,700,000**

SIXTH: The number cast for the amendment(s) by each voting group was sufficient for approval by each voting group.

Dated: JANUARY 14, 1999

THE TAYLOR GROUP ACCOUNTING
SOFTWARE SPECIALISTS, INC.

By:
Daniel P. Taylor, President

Mail fee and ORIGINAL and ONE EXACT OR CONFORMED COPY to: Secretary of State, State House, Room 204, 107 North Main Street, Concord, NH 03301-4989.

TRADEMARK
REEL: 003082 FRAME: 0509

State of New Hampshire
Department of State

CERTIFICATE OF AMENDMENT OF

THE TAYLOR GROUP ACCOUNTING SOFTWARE SPECIALISTS, INC.

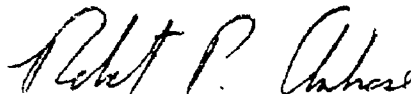
Now known as:

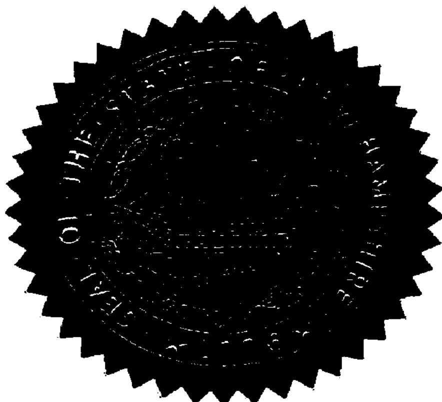
THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.

The undersigned, as Deputy Secretary of State of the State of New Hampshire, hereby certifies that Articles of Amendment to the Articles of Incorporation of THE TAYLOR GROUP ACCOUNTING SOFTWARE SPECIALISTS, INC., duly signed pursuant to the provisions of the New Hampshire Business Corporation Act, have been received in this office.

ACCORDINGLY the undersigned, as such Deputy Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Amendment to the Articles of Incorporation of THE TAYLOR GROUP ACCOUNTING SOFTWARE SPECIALISTS, INC. and attaches hereto a copy of the Articles of Amendment.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 12th day of February A.D. 1999





Robert P. Ambrose
Deputy Secretary of State

FILED
FEB 12 1999
WILLIAM M. GARDNER
NEW HAMPSHIRE
SECRETARY OF STATE

STATE OF NEW HAMPSHIRE

Filing fee: $35.00 Form No. 14
RSA 293-A:10.06

ARTICLES OF AMENDMENT
to the
ARTICLES OF INCORPORATION
of
THE TAYLOR GROUP ACCOUNTING SOFTWARE SPECIALISTS, INC.

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION ADOPTS THE FOLLOWING ARTICLES OF AMENDMENT TO ITS ARTICLES OF INCORPORATION:

FIRST: The name of the Corporation is **The Taylor Group Accounting Software Specialists, Inc.**

SECOND: The text of each amendment adopted is:

"FIRST: The name of the Corporation is "The Taylor Group Solutions Integrator, Inc."

THIRD: If the amendment provides for an exchange, reclassification, or cancellation of issued shares the provisions for implementing the amendment(s) if not contained in the above amendment are: N/A.

FOURTH: The amendment(s) were adopted on JANUARY 14, 1999.

FIFTH: (Check one)

A. _____ The amendment(s) were adopted by the incorporators of board of directors without shareholder action and shareholder action was not required.

B. X The amendment(s) were approved by the shareholders.

TRADEMARK
REEL: 003082 FRAME: 0511

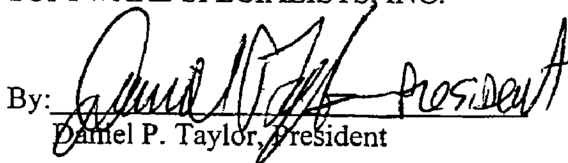
Designation (Class or series) of voting group	Number of shares outstanding	Number of votes entitled to be cast	Number of votes indisputably represented at the meeting
Common	**15,750,000**	**15,750,000**	**14,700,000**

Designation (class or series) of voting group	Total number of votes cast: **FOR**	**AGAINST**	**OR**	Total number of undisputed votes cast FOR
Common	**14,700,000**	**0**		**14,700,000**

SIXTH: The number cast for the amendment(s) by each voting group was sufficient for approval by each voting group.

Dated: JANUARY 14, 1999

THE TAYLOR GROUP ACCOUNTING
SOFTWARE SPECIALISTS, INC.



By: Daniel P. Taylor, President

Mail fee and ORIGINAL and ONE EXACT OR CONFORMED COPY to: Secretary of State, State House, Room 204, 107 North Main Street, Concord, NH 03301-4989.

State of Delaware

Office of the Secretary of State

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 CERTIFICATE OF AMENDMENT OF "THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.", CHANGING ITS NAME FROM "THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC." TO "MANAGEDOPS.COM, INC.", FILED IN THIS OFFICE ON THE EIGHTH DAY OF MARCH, A.D. 2000, AT 10:30 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE NINTH DAY OF MARCH, A.D. 2000.

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

Edward J. Freel, Secretary of State

3167252 8100

001116434

AUTHENTICATION: 0301528

DATE: 03-08-00

CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF
THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.

The Taylor Group Solutions Integrator, Inc, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation by the unanimous written consent of its members, filed with the minutes of the Board, adopted a resolution proposing and declaring advisable the following amendment to the Amended and Restated Certificate of Incorporation:

RESOLVED, that the Amended and Restated Certificate of Incorporation of The Taylor Group Solutions Integrator, Inc. be amended by changing Article I thereof so that, as amended, said Article shall be and read as follows:

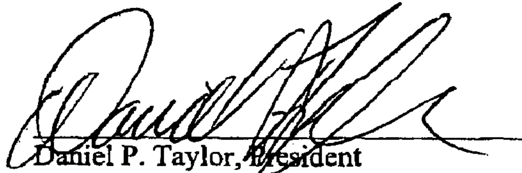
ARTICLE I: The name of the corporation is ManagedOps.com, Inc.

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to said amendment and written notice of the adoption of the amendment has been given as provided in Section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

FOURTH: That this Certificate of Amendment of Amended and Restated Certificate of Incorporation shall be effective on March 9, 2000 at 9:00 a.m.

IN WITNESS WHEREOF, said The Taylor Group Solutions Integrator, Inc. has caused this certificate to be signed by Daniel P. Taylor, its president, this 8th day of March, 2000.



Daniel P. Taylor, President

CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.

The Taylor Group Solutions Integrator, Inc, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation by the unanimous written consent of its members, filed with the minutes of the Board, adopted a resolution proposing and declaring advisable the following amendment to the Amended and Restated Certificate of Incorporation:

RESOLVED, that the Amended and Restated Certificate of Incorporation of The Taylor Group Solutions Integrator, Inc. be amended by changing Article I thereof so that, as amended, said Article shall be and read as follows:

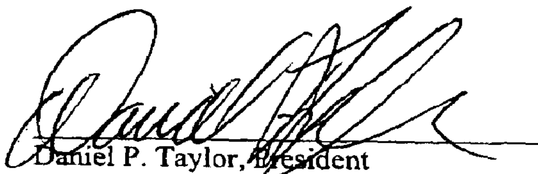
ARTICLE I: The name of the corporation is ManagedOps.com, Inc.

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to said amendment and written notice of the adoption of the amendment has been given as provided in Section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

FOURTH: That this Certificate of Amendment of Amended and Restated Certificate of Incorporation shall be effective on March 9, 2000 at 9:00 a.m.

IN WITNESS WHEREOF, said The Taylor Group Solutions Integrator, Inc. has caused this certificate to be signed by Daniel P. Taylor, its president, this 8th day of March, 2000.



Daniel P. Taylor, President

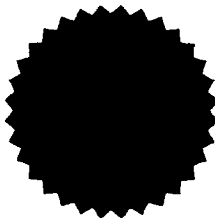
Delaware

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:

"THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.", A NEW HAMPSHIRE CORPORATION,

WITH AND INTO "THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC." UNDER THE NAME OF "THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE SECOND DAY OF FEBRUARY, A.D. 2000, AT 8:30 O'CLOCK A.M.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3167252 8100M

040588771

AUTHENTICATION: 3289964

DATE: 08-11-04

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 08:30 AM 02/02/2000
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CERTIFICATE OF MERGER
OF
THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.
(a New Hampshire corporation)

INTO
THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.
(a Delaware Corporation)

The Taylor Group Solutions Integrator, Inc., a corporation organized and existing under the laws of the State of Delaware ("Taylor DE"), the surviving corporation of the merger of The Taylor Group Solutions Integrator, Inc., a corporation organized and existing under the laws of the State of New Hampshire ("Taylor NH") with and into Taylor DE, hereby certifies, pursuant to Section 252 of the General Corporation Law of the State of Delaware, as follows:

1. The name and state of incorporation of each of the constituent corporations are:

The Taylor Group Solutions Integrator, Inc. ("Taylor NH") - New Hampshire

The Taylor Group Solutions Integrator, Inc. ("Taylor DE") - Delaware.

2. An agreement of merger (the "Agreement of Merger") has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with Section 252(c) of the General Corporation Law of the State of Delaware.

3. The name of the surviving corporation is The Taylor Group Solutions Integrator, Inc., a Delaware corporation.

4. The Certificate of Incorporation of Taylor DE is amended and restated to read in its entirety as set forth in the Amended and Restated Certificate of Incorporation attached as Exhibit A hereto. Such Amended and Restated Certificate of Incorporation shall be the Certificate of Incorporation of the surviving corporation until thereafter amended as provided therein.

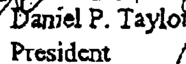
5. The executed Agreement of Merger is on file at the principal office of the surviving corporation located at Two Commerce Drive, Suite 110, Bedford, New Hampshire 03110.

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

7. The authorized capital stock of Taylor NH is 1,000,000 shares of common stock, no par value.

IN WITNESS WHEREOF, The Taylor Group Solutions Integrator, Inc., a Delaware corporation, the surviving corporation, has caused this Certificate of Merger to be executed, under penalties of perjury, by their duly authorized President this 2nd day of February 2000.

THE TAYLOR GROUP
SOLUTIONS INTEGRATOR, INC.
(A Delaware Corporation)



By: ______________________
Daniel P. Taylor
President

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Exhibit A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

THE TAYLOR GROUP SOLUTIONS INTEGRATOR, INC.

The original Certificate of Incorporation by The Taylor Group Solutions Integrator, Inc. (the "Corporation") was filed with the Secretary of State of Delaware on January 28, 2000. This Amended and Restated Certificate of Incorporation has been duly adopted by the Corporation in accordance with Sections 242 and 245 of the General Corporation Laws of the State of Delaware.

ARTICLE I

The name of the corporation is The Taylor Group Solutions Integrator, Inc.

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 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 by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Laws of the State of Delaware.

ARTICLE IV

The total number of shares of capital stock which the Corporation shall have authority to issue is 63,746,164, of which (a) 13,746,164 shares shall be preferred stock, par value $.01 per share ("Preferred Stock"), consisting of 4,490,104 shares of Series A Convertible Participating Preferred Stock (as hereinafter defined) and 9,256,060 shares of Series B Convertible Participating Preferred Stock (as hereinafter defined), and (b) 50,000,000 shares shall be common stock, par value $.01 per share ("Common Stock").

Except as otherwise restricted by this Amended and Restated Certificate of Incorporation, the Corporation is authorized to issue, from time to time, all or any portion of the capital stock of the Corporation which may have been authorized but not issued, to such

Preferred Stock. If at any time when any shares of either Series A Convertible Preferred Stock or Series B Convertible Preferred Stock are outstanding any Convertible Preferred Stock Director Designee should cease to be a Director for any reason, the vacancy shall only be filled by the vote or written consent of the holders of the outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, voting together as a separate class, in the manner and on the basis specified above or as otherwise provided by law. The holders of outstanding shares of Series A Convertible Preferred Stock shall also be entitled to vote for all other Directors of the Corporation together with holders of all other shares of the Corporation's outstanding capital stock entitled to vote thereon, voting as a single class, with each outstanding share of Series A Convertible Preferred Stock entitled to the same number of votes specified in Section A.2(b). Notwithstanding the foregoing, the holders of outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock may, in their sole discretion, determine to elect fewer than two (2) Convertible Preferred Stock Director Designees from time to time, and during any such period the Board of Directors nonetheless shall be deemed duly constituted.

(b) Voting Generally. Each share of Series A Convertible Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which such share of Series A Convertible Preferred Stock could be converted pursuant to Section A.6 hereof on the record date for the vote or written consent of stockholders, if applicable, with fractional votes for fractional shares and appropriate adjustments for stock splits, stock dividends, recapitalizations and the like. Each holder of shares of Series A Convertible Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall vote with holders of the Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders, excluding those matters required to be submitted to a class or series vote pursuant to the terms hereof (including, without limitation, Sections A.2(a) and A.8) or by law.

3. Dividends. Except as otherwise provided in Sections A.6(a) and A.6(b), the holders of outstanding shares of Series A Convertible Preferred Stock shall be entitled to receive, out of any funds legally available therefor, cumulative compounding dividends on the Series A Convertible Preferred Stock payable in cash or, at the option of the Corporation, in additional shares of Series A Convertible Preferred Stock of equivalent value (based upon the Series A Conversion Price at the time of payment of such dividend), at the per share rate of eight percent (8%) per annum on the Series A Convertible Preferred Liquidation Preference Amount (as hereafter defined), adjusted appropriately for stock splits, stock dividends, recapitalizations and the like, subject to proration for partial years on the basis of a 365-day year (the "Series A Convertible Cumulative Dividend"). Such dividends shall accumulate quarterly in arrears commencing as of the date of issuance of the Series A Convertible Preferred Stock, shall be cumulative, to the extent unpaid, whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment therefor, and shall compound on February 1 of each year. Accrued

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and unpaid Series A Convertible Cumulative Dividends may be paid from time to time when and if declared by the Corporation; provided, however, that such dividend shall become due and payable with respect to all outstanding shares of Series A Convertible Preferred Stock as provided in Sections A.4, A.5 and A.6(a). Dividends paid in an amount less than the total amount of dividends at the time accumulated and payable on all outstanding shares of Series A Convertible Preferred Stock shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. Notwithstanding any of the foregoing, (i) no dividend may be declared or paid on any shares of Series A Convertible Preferred Stock unless at the same time a dividend is declared or paid on all outstanding shares of Series B Convertible Preferred Stock, with holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock sharing in any such dividends as if they constituted a single class of stock; and (ii) unless and until the Series A Convertible Cumulative Dividends have been paid in full, and except as otherwise contemplated by Section 6.3 of that certain Stock Purchase and Redemption Agreement, dated as of February 2, 2000 by and between the Corporation and the other parties named therein (the "Purchase Agreement"), (a) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any Common Stock or other capital stock of the Corporation ranking junior to the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock with respect to rights upon a dividend, rights upon a Liquidation Event (as hereafter defined) or Extraordinary Transaction (as hereafter defined), or rights upon a redemption ("Junior Capital Stock"); and (b) no shares of Junior Capital Stock shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof (except for the repurchase of shares of Common Stock from employees or directors of, or consultants to, the Corporation pursuant to agreements under the Stock Option Plan (as hereafter defined) or pursuant to stock restriction agreements executed in connection with shares granted under such Stock Option Plan). All numbers relating to the calculation of dividends pursuant to this Section A.3 shall be subject to equitable adjustment in the event of any stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the Series A Convertible Preferred Stock. If and to the extent such Series A Convertible Cumulative Dividends have been paid in full, the holders of Series A Convertible Preferred Stock shall be entitled to receive additional dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion, provided, however, that no such dividend may be declared or paid on any shares of Series A Convertible Preferred Stock unless at the same time a dividend is declared or paid on all outstanding shares of Series B Convertible Preferred Stock and Common Stock, and vice versa, with holders of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Common Stock sharing in any such additional dividends as if they constituted a single class of stock and with each holder of shares of Series A Convertible Preferred Stock entitled to receive such dividends based on the number of shares of Common Stock into which such shares of Series A Convertible Preferred Stock are then convertible hereunder, as contemplated by Section A.6 of this Article IV.

4. Liquidation.

(a) Liquidation Preference. Upon any liquidation, dissolution or winding up of the Corporation and its subsidiaries, whether voluntary or involuntary (a "Liquidation Event"), each holder of outstanding shares of Series A Convertible Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to stockholders, whether such assets are capital, surplus or earnings, and before any amount shall be paid or distributed to the holders of Common Stock or of any other Junior Capital Stock, an amount in cash equal to (i) $2.7839 per share of Series A Convertible Preferred Stock held by such holder (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like), plus (ii) any accumulated but unpaid dividends to which such holder of outstanding shares of Series A Convertible Preferred Stock is then entitled, if any, pursuant to Sections A.3 and A.5(f) hereof, plus (iii) any interest accrued pursuant to Section A.5(e) hereof to which such holder of Series A Convertible Preferred Stock is entitled, if any (the sum of clauses (i), (ii) and (iii) being referred to herein as the "Series A Convertible Preferred Liquidation Preference Amount"); provided, however, that if upon any Liquidation Event the amounts available for distribution to holders of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and any other class or series of capital stock of the Corporation ranking on liquidation on a parity with the Series A Convertible Preferred Stock are not sufficient to pay all amounts due to such holders upon such Liquidation Event, then such holders shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled; and provided further, however, that if upon any Liquidation Event the holders of the outstanding shares of Series A Convertible Preferred Stock would receive more than the Series A Convertible Preferred Liquidation Preference Amount in the event all of their shares were voluntarily converted into shares of Common Stock immediately prior to such Liquidation Event and such shares of Common Stock received a liquidating distribution or distributions from the Corporation, then each holder of Series A Convertible Preferred Stock shall receive as a distribution from the Corporation in connection with such Liquidation Event, in lieu of the Series A Convertible Preferred Liquidation Preference Amount, an amount equal to the amount that would be paid if such holder's shares of Series A Convertible Preferred Stock were voluntarily converted into Common Stock immediately prior to such Liquidation Event (including with respect to any accrued but unpaid dividends on the Series A Convertible Preferred Stock). The provisions of this Section A.4 shall not in any way limit the right of the holders of Series A Convertible Preferred Stock to elect to convert their shares of Series A Convertible Preferred Stock into shares of Common Stock pursuant to Section A.6 prior to or in connection with any Liquidation Event.

(b) Notice. Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Series A Convertible Preferred Stock notice in accordance with Section A.9 hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail the facts of such Liquidation

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Event, stating in detail the amount(s) per share of Series A Convertible Preferred Stock each holder of Series A Convertible Preferred Stock would receive pursuant to the provisions of Section A.4(a) hereof (both with respect to the amount a holder would receive pursuant to clauses (i), (ii) and (iii) of Section A.4(a) and the amount a holder would receive pursuant to the second proviso of Section A.4(a)) and stating in detail the facts upon which such amounts were determined.

5. <u>Redemption; Preferential Payment in Extraordinary Transactions</u>.

(a) <u>Redemption Events</u>.

(i) <u>Time Based</u>. On February 2, 2005, upon the election of a holder of outstanding shares of Series A Convertible Preferred Stock, the Corporation shall, no later than 120 days after the date of such election, redeem all (but not less than all, other than pursuant to Section A.5(e) below) of such holder's outstanding shares of Series A Convertible Preferred Stock at the Series A Convertible Preferred Redemption Price specified in Section A.5(d); <u>provided, however</u>, that to the extent the Corporation cannot legally effectuate the redemption on such date, the redemption shall take place as soon as practicable thereafter as legally permitted, and the terms of Section A.5(e) herein shall apply to such period during which the redemption is legally prohibited. The foregoing election shall be made by a holder by giving the Corporation written notice of such election. After receipt of such written notice, the Corporation shall as soon as practicable, but in no case more than ten (10) days after its receipt of notice of such election, provide to the holder written notice setting forth the anticipated date for such redemption and the amount the holder will be entitled to receive pursuant to the provisions of Section A.5(d).

(ii) <u>Extraordinary Transactions</u>. Subject to Section A.6(b)(ii), upon the election of a holder of outstanding shares of Series A Convertible Preferred Stock to have such shares redeemed or otherwise to participate in connection with: (A) a merger or consolidation of the Corporation with or into another entity with respect to which less than a majority of the outstanding voting power of the surviving or consolidated entity is held directly or indirectly by stockholders of the Corporation immediately prior to such event, (B) the sale, lease or other disposition (whether in one transaction or in a series of related transactions) of all or substantially all of the properties and assets of the Corporation and its subsidiaries, (C) any purchase by any party (or group of affiliated parties) other than an Investor (as defined in the Purchase Agreement), of shares of capital stock of the Corporation (either through a negotiated stock purchase or a tender for such shares), the effect of which is that such party (or group of affiliated parties) that did not beneficially own a majority of the voting power of the outstanding shares of capital stock of the Corporation immediately prior to such purchase beneficially owns at least a majority of such voting power

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immediately after such purchase, (D) the redemption or repurchase of shares representing a majority of the voting power of the outstanding shares of capital stock of the Corporation, or (E) a public offering not constituting a "QPO" (as defined in Section A.6(b)) (each an "Extraordinary Transaction"), then, as a part of and as a condition to the effectiveness of such Extraordinary Transaction, except with respect to holders of Series A Convertible Preferred Stock that have elected to convert their shares of Series A Convertible Preferred Stock into shares of Common Stock in accordance with the voluntary conversion provisions of Section A.6 prior to the effective date of such Extraordinary Transaction, the Corporation shall, on the effective date of such Extraordinary Transaction either (x) if redemption is elected, on the effective date of such Extraordinary Transaction, redeem all (but not less than all) of the outstanding shares of Series A Convertible Preferred Stock of the electing holder for an amount equal to the aggregate Series A Convertible Preferred Liquidation Preference Amount, such amount to be payable in cash or, at the request of the electing holder, in the same form of consideration as is paid to the holders of Common Stock in such Extraordinary Transaction, and no payment shall be made to the holders of any shares of Junior Capital Stock unless such amount is paid in full or (y) if such holder elects to participate in the relevant transaction (such as a merger) on terms acceptable to it, take such actions as shall be sufficient to facilitate such participation (including executing a merger agreement including an exchange ratio reflecting the provisions hereof) on terms giving effect to such holder's right to the aggregate Series A Convertible Liquidation Preference Amount, in which event such amount shall be paid in cash or, at the election of such holder, in the same form of consideration as is paid to the holders of Common Stock in such Extraordinary Transaction, but in preference to and before any amount is paid or otherwise distributed to the holders of any shares of Junior Capital Stock, in which event such preferential amount shall be deemed to have been distributed to the holder of the Series A Convertible Preferred Stock as if in a Liquidation Event.

Notwithstanding any of the foregoing, if upon any Extraordinary Transaction in which a holder of outstanding shares of Series A Convertible Preferred Stock elects to be redeemed or participate, a holder of outstanding shares of Series A Convertible Preferred Stock would receive more than the Series A Convertible Liquidation Preference Amount in the event its shares were voluntarily converted into Common Stock immediately prior to such Extraordinary Transaction and such shares of Common Stock were purchased or otherwise participated in such Extraordinary Transaction, then such holder of Series A Convertible Preferred Stock shall instead receive from the Corporation or the relevant purchaser, as applicable, upon such holder's election to redeem or otherwise participate in such Extraordinary Transaction, an amount equal to the amount per share that would be paid if the shares of Common Stock receivable upon voluntary conversion (including, if applicable, any accrued but

unpaid dividends in accordance with Section A.6(a)) of the Series A Convertible Preferred Stock were being acquired in the Extraordinary Transaction at the same price per share as is paid for other shares of Common Stock, which amount shall be paid in the same form of consideration as is paid to holders of Common Stock, as if such holder's shares of Series A Convertible Preferred Stock had been converted into the number of shares of Common Stock issuable upon the conversion of such share of Series A Convertible Preferred Stock immediately prior to such Extraordinary Transaction.

The foregoing election shall be made by a holder by giving the Corporation prior written notice thereof within ten (10) days of its receipt of written notice from the Corporation as provided in Section A.5(c). The provisions of this Section A.5 shall not in any way limit the right of the holders of Series A Convertible Preferred Stock to elect to convert their shares into shares of Common Stock pursuant to Section A.6 prior to or in connection with any Extraordinary Transaction.

(b) Valuation of Distribution Securities. Any securities or other consideration to be delivered to the holders of the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock if so elected in connection with a redemption or upon any Extraordinary Transaction in accordance with the terms hereof shall be valued as follows:

(i) If traded on a nationally recognized securities exchange or inter-dealer quotation system, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30 calendar day period ending three (3) business days prior to the closing of such Extraordinary Transaction;

(ii) If traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30 calendar day period ending three (3) business days prior to the closing of such Extraordinary Transaction; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of not less than a Two Thirds Interest of the outstanding shares of Series A Convertible Preferred Stock, provided that if the Corporation and the holders of not less than a Two Thirds Interest of the outstanding shares of Series A Convertible Preferred Stock are unable to reach agreement, then by independent appraisal by a mutually agreed to investment banker, the fees of which shall be paid by the Corporation.

(c) Notice by Corporation. Prior to the occurrence of any Extraordinary Transaction, the Corporation will furnish each holder of outstanding shares of Series A

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Convertible Preferred Stock notice in accordance with Section A.9 hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail all material terms of such Extraordinary Transaction, including without limitation the consideration to be delivered in connection with such Extraordinary Transaction, the valuation of the Corporation at the time of such Extraordinary Transaction and the identities of the parties to the Extraordinary Transaction.

(d) Purchase Date and Price. Any date upon which a redemption is to occur in accordance with Section A.5(a) shall be referred to as a "Series A Convertible Preferred Redemption Date." The price for each share of Series A Convertible Preferred Stock redeemed or acquired pursuant to this Section A.5 shall be the per share Series A Convertible Preferred Liquidation Preference Amount or such greater per share amount as may be payable pursuant to the second paragraph of Section A.5(a)(ii), if applicable (the "Series A Convertible Preferred Redemption Price"); provided, however, that if at a Series A Convertible Preferred Redemption Date shares of Series A Convertible Preferred Stock are unable to be redeemed (as contemplated by Section A.5(e) below), then holders of Series A Convertible Preferred Stock that have requested redemption pursuant to Section A.5(a) shall also be entitled to interest and dividends pursuant to Sections A.5(e) and (f) below. The aggregate applicable redemption price elected to be payable in cash pursuant to Section A.5(a) shall be payable in cash in immediately available funds to the respective holders of the Series A Convertible Preferred Stock on the Series A Convertible Preferred Redemption Date (subject to Section A.5(e)), except as otherwise contemplated by Section A.5(a)(ii). Upon any redemption or purchase of the Series A Convertible Preferred Stock as provided herein, holders of fractional shares shall receive proportionate amounts in respect thereof. Until the aggregate applicable redemption price has been paid for all shares of Series A Convertible Preferred Stock for which a request for redemption has been made: (A) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any capital stock of the Corporation; and (B) except as permitted by Section A.8(k), no shares of capital stock of the Corporation (other than the Series A Convertible Preferred Stock in accordance with this Section A.5 and the Series B Convertible Preferred Stock in accordance with Section B.5) shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

(e) Redemption Prohibited. If, at a Series A Convertible Preferred Redemption Date, the Corporation is prohibited under the General Corporation Laws of the State of Delaware from redeeming such shares of Series A Convertible Preferred Stock for which redemption is required hereunder, then it shall redeem such shares on a pro-rata basis among the requesting holders of Series A Convertible Preferred Stock in proportion to the full respective redemption amounts to which such holders are entitled hereunder to the extent possible and shall redeem the remaining shares to be redeemed as soon as the Corporation is not prohibited from redeeming some or all of such shares

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under the General Corporation Laws of the State of Delaware, subject to the last paragraph of Section A.8; provided, that in the event that on a proposed Series A Convertible Preferred Redemption Date there exist shares of Series B Convertible Preferred Stock required to be redeemed under Sections B.5, then the shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, as applicable, to be redeemed shall be redeemed by the Corporation on a pro-rata basis among the holders of such shares in proportion to the aggregate redemption amounts to which they are entitled with respect to such shares and, as to which each such holder's shares shall be redeemed, relative to such holder's holdings of shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock. Any shares of Series A Convertible Preferred Stock not redeemed shall remain outstanding and entitled to all of the rights and preferences provided in this Article IV. The Corporation shall take such action as shall be necessary or appropriate to review and promptly remove any impediment to its ability to redeem shares of Series A Convertible Preferred Stock under the circumstances contemplated by this Section A.5(e). In the event that the Corporation fails to redeem shares for which redemption is required pursuant to this Section A.5, then (i) if such failure is due to a prohibition of such redemption under the General Corporation Laws of the State of Delaware, then during the period from the applicable Series A Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable per share dividend on such shares shall be adjusted to twelve percent (12%) per annum, with such dividend to increase to fifteen percent (15%) on the date which is 365 days following the Series A Convertible Preferred Redemption Date or (ii) if such failure is due to any reason other than that described in subclause (i) above, then during the period from the applicable Series A Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable redemption price and any dividend accrued but unpaid on the Series A Convertible Preferred Stock shall bear interest at the rate of twelve percent (12%) per annum, with such interest to accrue daily in arrears and to be compounded annually and to increase by one percent (1%) upon the expiration of each 180 day period that such shares remain outstanding; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "Maximum Permitted Rate"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess.

(f) Dividend After Series A Convertible Preferred Redemption Date. From and after a Series A Convertible Preferred Redemption Date, no shares of Series A Convertible Preferred Stock subject to redemption shall be entitled to dividends, if any, as contemplated by Section A.3; provided, however, that in the event that such shares of Series A Convertible Preferred Stock are unable to be redeemed and continue to be outstanding in accordance with Section A.5(e), such shares shall continue to be entitled to dividends and interest thereon as provided in Sections A.3 and A.5(e) until the date on which such shares are actually redeemed by the Corporation.

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(g) Surrender of Certificates. Upon receipt of the applicable Series A Convertible Preferred Redemption Price by certified check or wire transfer (in the event such price is to be paid in cash), each holder of shares of Series A Convertible Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, duly assigned or endorsed for transfer (or accompanied by duly executed stock powers relating thereto), or, in the event the certificate or certificates are lost, stolen or missing, shall deliver an affidavit or agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith (an "Affidavit of Loss") with respect to such certificates at the principal executive office of the Corporation or the office of the transfer agent for the Series A Convertible Preferred Stock or such office or offices in the continental United States of an agent for redemption as may from time to time be designated by notice to the holders of Series A Convertible Preferred Stock, and each surrendered certificate shall be canceled and retired; provided, however, that if the Corporation is prohibited from redeeming any shares of Series A Convertible Preferred Stock as provided in Section A.5(e), a holder whose shares are not so redeemed in full shall not be required to surrender said certificate(s) to the Corporation until said holder has received a new stock certificate for those shares of Series A Convertible Preferred Stock not so redeemed.

6. Conversion. The holders of the Series A Convertible Preferred Stock shall have the following conversion rights:

(a) Conversion Upon Election of Holders. Any holder of shares of Series A Convertible Preferred Stock shall be entitled at any time, without the payment of any additional consideration, to cause all or part of such holder's outstanding shares of Series A Convertible Preferred Stock to be converted into the number of fully paid and nonassessable shares of Common Stock (including any resulting fractional shares) which results from multiplying the number of shares of Series A Convertible Preferred Stock which are being converted by a fraction, the numerator of which is the per share Series A Conversion Value (as defined in this Section A.6(a)) of the Series A Convertible Preferred Stock, and the denominator of which is the per share Series A Conversion Price (as defined in this Section A.6(a)) in effect for the Series A Convertible Preferred Stock at the time of conversion (which fraction shall hereinafter be referred to as the "Series A Common Stock Conversion Rate"), with fractional shares treated proportionally as provided above (the "Series A Conversion Shares"). Upon the filing of this Amended and Restated Certificate of Incorporation with the office of the Secretary of State of the State of Delaware, the "Series A Conversion Price" per share of Series A Convertible Preferred Stock shall be $2.7839, and the per share "Series A Conversion Value" of Series A Convertible Preferred Stock shall be $2.7839. The Series A Conversion Price per share of Series A Convertible Preferred Stock and the Series A Common Stock Conversion Rate (as defined in this Section A.6(a)) shall be subject to adjustment from time to time as provided in Section A.7 hereof. If a holder of shares of Series A Convertible Preferred Stock elects to convert

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any outstanding shares of Series A Convertible Preferred Stock at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such accumulated but unpaid dividends and other amounts shall be paid in full by the Corporation in connection with such conversion, in cash, or at the election of the Corporation, in additional shares of Common Stock. For purposes of effecting the foregoing, in the event the Corporation elects to pay any accumulated but unpaid dividends in the form of additional shares of Common Stock, then with respect to such dividends the holder of such shares of Series A Convertible Preferred Stock shall receive the number of fully paid and nonassessable shares of Common Stock (including any resulting fractional shares) which results from dividing the accumulated but unpaid Series A Convertible Cumulative Dividend, as the numerator, by the Series A Conversion Price, as the denominator, with fractional shares treated proportionately as provided above.

(b) Automatic Conversion. The following provisions of this Section A.6(b) shall terminate and be of no further force and effect after February 2, 2005.

(i) Upon a Qualified Public Offering. Each share of Series A Convertible Preferred Stock shall automatically be converted, without the payment of any additional consideration, into shares of Common Stock as of, and in all cases subject to, the closing of the Corporation's first underwritten offering to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, provided that (i) such registration statement covers the offer and sale of Common Stock of which the aggregate gross proceeds attributable to sales for the account of the Corporation exceed $30,000,000, at a price per share equal to at least $8.00 (as appropriately adjusted for any stock split, combination, reorganization, recapitalization, stock dividend, or similar event); (ii) such offering is underwritten by a nationally recognized investment banking firm reasonably acceptable to the holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock; and (iii) such Common Stock is listed for trading on either the New York Stock Exchange or the Nasdaq National Market (a "QPO" or a "Qualified Public Offering"); provided, that if a closing of a QPO occurs, all outstanding shares of Series A Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior to such closing at the Series A Common Stock Conversion Rate. Any such conversion shall be at the Series A Common Stock Conversion Rate in effect upon the closing of a QPO. If the holders of shares of Series A Convertible Preferred Stock are required to convert the outstanding shares of Series A Convertible Preferred Stock pursuant to this Section A.6(b)(i) at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall not be paid and the rights of a holder to such dividends shall be deemed to have expired in connection with such conversion.

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(ii) Upon a Qualified Extraordinary Transaction. Each share of Series A Convertible Preferred Stock shall automatically be converted, without the payment of any additional consideration, into shares of Common Stock as of, and in all cases subject to, the closing of the Corporation's first QET (as defined below); provided, that if a closing of a QET occurs, all outstanding shares of Series A Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock as provided herein immediately prior to such closing. Any such conversion shall be at the Series A Common Stock Conversion Rate in effect upon the closing of the QET. "QET" or "Qualified Extraordinary Transaction" shall mean any of the transactions set forth in subparagraphs (A) through (D) below, provided that (i) at the closing of such transaction the holders of Series A Conversion Shares (the "Conversion Holders") receive per share consideration with a value (as determined in Section A.5(b) with respect to securities) greater than or equal to $8.00 (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like), and (ii) such consideration is in the form of cash and/or unrestricted equity securities of a corporation and, if in the form of unrestricted equity securities, then such securities to be issued to the Conversion Holders in connection with such closing are traded on either the New York Stock Exchange or the Nasdaq National Market. The following transactions (each an Extraordinary Transaction) shall be deemed a QET if the conditions set forth in clauses (i) and (ii) of the immediately preceding sentence are satisfied:

(A) the sale, lease or other disposition of (whether in one transaction or a series of related transactions) all or substantially all of the properties and assets of the Corporation and its subsidiaries;

(B) a merger or consolidation of the Corporation with or into another entity with respect to which less than a majority of the outstanding voting power of the surviving or consolidated corporation is held directly or indirectly by stockholders of the Corporation immediately prior to such event;

(C) any purchase by any party (or group of affiliated parties) other than an Investor of shares of capital stock of the Corporation (either through a negotiated stock purchase or a tender for such shares), the effect of which is that such party (or group of affiliated parties) that did not beneficially own a majority of the voting power of the outstanding shares of capital stock of the Corporation immediately prior to such purchase beneficially owns at least a majority of such voting power immediately after such purchase; or

(D) the redemption or repurchase of shares representing a majority of the voting power of the outstanding shares of capital stock of the Corporation.

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If the holders of shares of Series A Convertible Preferred Stock are required to convert their outstanding shares of Series A Convertible Preferred Stock pursuant to this Section A.6(b)(ii) at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall not be paid and the rights of a holder to such dividends shall be deemed to have expired in connection with such conversion.

(c) Procedure for Voluntary Conversion. Upon election to convert pursuant to Section A.6(a), a holder of Series A Convertible Preferred Stock shall surrender the certificate or certificates representing its Series A Convertible Preferred Stock being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the Series A Convertible Preferred Stock or such office or offices in the continental United States of an agent for conversion as may from time to time be designated by notice to the holders of the Series A Convertible Preferred Stock by the Corporation, or shall deliver an Affidavit of Loss with respect to such certificates. The issuance by the Corporation of Common Stock upon a conversion of Series A Convertible Preferred Stock pursuant to Section A.6(a) hereof shall be effective as of the surrender of the certificate or certificates for the Series A Convertible Preferred Stock to be converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or as of the delivery of an Affidavit of Loss. Upon surrender of a certificate representing Series A Convertible Preferred Stock for conversion, or delivery of an Affidavit of Loss, the Corporation shall issue and send by hand delivery, by courier or by first class mail (postage prepaid) to the holder thereof or to such holder's designee, at the address designated by such holder, certificates for the number of shares of Common Stock to which such holder shall be entitled upon conversion, plus a cash payment in the amount of any accumulated but unpaid dividends, if applicable, and other amounts as contemplated by Section A.6(a) in respect of the shares of Series A Convertible Preferred Stock. The issuance of certificates for Common Stock upon conversion of Series A Convertible Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such Common Stock. If a conversion of Series A Convertible Preferred Stock upon a Liquidation Event or an Extraordinary Transaction occurs and a holder of Common Stock issued upon such conversion elects to participate, then such holder's outstanding shares of Series A Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior thereto, provided that the Corporation shall make appropriate provisions for the Common Stock issued upon such conversion to be treated on the same basis as all other Common Stock in such Liquidation Event or Extraordinary Transaction. In the event of an automatic conversion upon a QPO or QET, the provisions of Section A.6(d) shall apply.

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(d) Procedure for Automatic Conversion. As of, and in all cases subject to, the closing of a QPO or QET (the "Automatic Conversion Date"), all outstanding shares of Series A Convertible Preferred Stock shall be converted automatically into shares of Common Stock at the Series A Common Stock Conversion Rate and without any further action by the holders of such shares and whether or not the certificates representing such shares of Series A Convertible Preferred Stock are surrendered to the Corporation or its transfer agent; provided, however, that all holders of Series A Convertible Preferred Stock shall be given prior written notice of the occurrence of a QPO or QET in accordance with Section A.9 hereof; and provided further, that in the event of a QET, such holders shall be given an opportunity to exercise the rights provided in Section A.5(a)(ii) by giving the Corporation written notice thereof. On the Automatic Conversion Date, all rights with respect to the Series A Convertible Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an Affidavit of Loss thereof to receive certificates for the number of shares of Common Stock into which such Series A Convertible Preferred Stock has been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. Upon surrender of such certificates or Affidavit of Loss the Corporation shall issue and deliver to such holder, promptly (and in any event in such time as is sufficient to enable such holder to participate in such QPO or QET) at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series A Convertible Preferred Stock surrendered are convertible on the Automatic Conversion Date.

(e) Reservation of Stock Issuable Upon Conversion. The 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 Series A Convertible 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 Series A Convertible 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 Series A Convertible Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(f) No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Series A Convertible Preferred Stock in any manner which would interfere with the timely conversion of any shares of Series A Convertible Preferred Stock.

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7. Adjustments. The Series A Conversion Price of the Series A Convertible Preferred Stock in effect from time to time shall be subject to adjustment from and after February 2, 2000 and regardless of whether any shares of Series A Convertible Preferred Stock are then issued and outstanding as follows:

(a) Dividends and Stock Splits. If the number of shares of Common Stock (which term for purposes of this Section A.7 shall include all common stock of the Corporation) outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the date such payment is made or such change is effective, the Series A Conversion Price of the Series A Convertible Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Series A Convertible Preferred Stock shall be increased in proportion to such increase of outstanding shares of Common Stock.

(b) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination or reverse split of the outstanding shares of Common Stock, then, on the effective date of such combination or reverse split, the Series A Conversion Price of the Series A Convertible Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of any shares of Series A Convertible Preferred Stock shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

(c) Other Adjustments. In the event the Corporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event lawful and adequate provision shall be made so that the holders of Series A Convertible Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities of the Corporation which they would have received had their Series A Convertible Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section A.7 as applied to such distributed securities.

(d) Reorganization, etc. If the Common Stock issuable upon the conversion of the Series A Convertible Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section A.7), then and in each such event the holder of each share of

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Series A Convertible Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the number of shares of Common Stock into which such shares of Series A Convertible Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(e) Mergers and Other Reorganizations. Unless such transaction is an Extraordinary Transaction in which all of the holders of Series A Convertible Preferred Stock elect redemption or otherwise to participate (in which case Section A.5(a)(ii) shall apply and this subsection shall not apply), if at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section A.7) or a merger or consolidation of the Corporation with or into another corporation or the sale of all or substantially all of the Corporation's properties and assets to any other person, then, as part of and as a condition to the effectiveness of such reorganization, merger, consolidation or sale, lawful and adequate provision shall be made so that the holders of the Series A Convertible Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Convertible Preferred Stock the number of shares of stock or other securities or property of the Corporation or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of Common Stock would have been entitled in connection with such capital reorganization, merger, consolidation, or sale. In any such case, appropriate provisions shall be made with respect to the rights of the holders of the Series A Convertible Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section A.7 (including, without limitation, provisions for adjustment of the applicable Series A Conversion Price and the number of shares purchasable upon conversion of the Series A Convertible Preferred Stock) shall thereafter be applicable, as nearly as may be, with respect to any shares of stock, securities or assets to be deliverable thereafter upon the conversion of the Series A Convertible Preferred Stock.

(f) Sale of Common Stock. In the event the Corporation shall at any time, or from time to time, issue, sell or exchange any shares of Common Stock (including treasury shares held by the Corporation but excluding the Excluded Shares (as such term is defined below)), for a consideration per share less than the Series A Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares, then, and thereafter successively upon each such issuance, sale or exchange, the Series A Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares shall forthwith be reduced to an amount determined by multiplying such Series A Conversion Price by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of

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such additional shares of Common Stock (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than the Series A Convertible Preferred Stock) that are then vested and in the money), plus (B) the number of shares of Common Stock which the net aggregate consideration received by the Corporation for the total number of such additional shares of Common Stock so issued would purchase at the Series A Conversion Price (prior to adjustment), and

(ii) the denominator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such additional shares of Common Stock (excluding any unvested shares and any treasury shares held by the Corporation but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series A Convertible Preferred Stock) that are then vested and in the money), plus (B) the number of such additional shares of Voting or Nonvoting Common Stock so issued.

The term "Excluded Shares" shall mean (A) up to an aggregate of 7,027,800 shares of Common Stock (as appropriately adjusted for any stock split, combination, reorganization, recapitalization, reclassification, stock distribution, stock dividend or similar event) issued or issuable in connection with, or upon the exercise of, options or other awards granted or to be granted to employees, officers or directors of the Corporation pursuant to The Taylor Group Solutions Integrator, Inc. Employee Stock Option Plan (the "Stock Option Plan"), including shares of Common Stock issued in replacement of shares of such Common Stock repurchased or issuable upon the exercise of options granted in replacement, exchange, or reissuance of options to purchase shares of such Common Stock, to the extent permitted under the Stock Option Plan, (B) securities issued as a result of any stock split, stock dividend, reclassification or reorganization or similar event with respect to the Common Stock, or (C) shares of Common Stock issued upon conversion of, or as a dividend on, the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock.

(g) Sale of Options, Rights or Convertible Securities. In the event the Corporation shall at any time or from time to time issue options, warrants or rights to subscribe for shares of Common Stock, or issue any securities convertible into or exchangeable for shares of Common Stock (other than any options or warrants for Excluded Shares), for a consideration per share (determined by dividing the Net Aggregate Consideration (as determined below) by the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible or exchangeable securities were exercised or converted to the fullest extent permitted by their terms) less than the Series A Conversion Price in effect immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities, the

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Series A Conversion Price in effect immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities shall be reduced to an amount determined by multiplying such Series A Conversion Price by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series A Convertible Preferred Stock) that are vested and in the money), plus (B) the number of shares of Common Stock which the total amount of consideration received by the Corporation for the issuance of such options, warrants, rights or convertible or exchangeable securities plus the minimum amount set forth in the terms of such security as payable to the Corporation upon the exercise, conversion or exchange thereof (the "Net Aggregate Consideration") would purchase at the Series A Conversion Price prior to adjustment, and

(ii) the denominator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series A Convertible Preferred Stock) that are vested and in the money), plus (B) the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible or exchangeable securities were exercised, converted or exchanged.

(h) Expiration or Change in Price. If the consideration per share provided for in any options, warrants or rights to subscribe for shares of Common Stock, or any securities convertible into or exercisable or exchangeable for shares of Common Stock (other than with respect to any Excluded Shares), changes at any time other than as a result of any event described in Section A.7(a) or (b) above, the Series A Conversion Price in effect at the time of such change shall be readjusted to the Series A Conversion Price which would have been in effect at such time had such options, warrants, rights or convertible or exchangeable securities provided for such changed consideration per share (determined as provided in Section A.7(g)), at the time initially granted, issued or sold; provided, that such adjustment of the Series A Conversion Price will be made only as and to the extent that the Series A Conversion Price effective upon such adjustment remains less than or equal to the Series A Conversion Price that would be in effect if such options, warrants, rights or convertible or exchangeable securities had not been issued. No adjustment of the Series A Conversion Price shall be made under this

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Section A.7 upon the issuance of any additional shares of Common Stock which are issued pursuant to the exercise of any options, warrants or other subscription or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities if an adjustment shall previously have been made upon the issuance of such options, warrants, rights or convertible or exchangeable securities. Any adjustment of the Series A Conversion Price shall be recomputed if, as, and when the rights to acquire shares of Common Stock upon exercise, conversion or exchange of the options, warrants, rights or convertible or exchangeable securities which gave rise to such adjustment expire or are canceled without having been exercised, converted or exchanged, so that the Series A Conversion Price effective immediately upon such cancellation or expiration shall be equal to the Series A Conversion Price in effect immediately before the time of the issuance of the expired or canceled options, warrants, rights or convertible or exchangeable securities, with such additional adjustments as would have been made to that Series A Conversion Price had the expired or canceled options, warrants, rights or convertible or exchangeable securities not been issued.

(i) Calculations. All calculations under this Section A.7 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(j) Certificate. Upon the occurrence of each adjustment or readjustment pursuant to this Section A.7, the 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 Series A Convertible Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon written request at any time of any holder of Series A Convertible Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Series A Conversion Prices before and after such adjustment or readjustment, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Series A Convertible Preferred Stock.

8. Covenants. So long as any shares of Series A Convertible Preferred Stock and/or Series B Convertible Preferred Stock shall be outstanding, the Corporation shall not, without first having provided written notice of such proposed action to each holder of outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock and having obtained the affirmative vote or written consent of either (i) both of the Convertible Preferred Stock Director Designees or (ii) the holders of a majority in interest of the total outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, voting together as a separate class, with each share of outstanding Series A Convertible Preferred Stock and Series B Convertible Preferred Stock entitling the holder thereof to one vote per share of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock held by such holder:

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(a) amend, alter or repeal any provision of, or add any provision to, Article IV of this Amended and Restated Certificate of Incorporation, or otherwise amend, alter or repeal any provision of, or add any provision to, this Amended and Restated Certificate of Incorporation if such latter action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any of the Series A Convertible Preferred Stock or the Series B Convertible Preferred Stock;

(b) except to the extent contemplated under the Corporation's Stock Option Plan, authorize or issue, or obligate itself to issue, any shares of capital stock of the Corporation, including but not limited to any convertible debt or other debt with any equity participation or any other equity security senior to or on a parity with the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock in any respect, or otherwise issue any other capital stock of the Corporation;

(c) form for any purpose a new subsidiary of the Corporation, or permit any existing subsidiary of the Corporation to issue any capital stock, other than to the Corporation;

(d) effect any Liquidation Event or any Extraordinary Transaction;

(e) create, incur, assume, become liable for, or permit to exist any indebtedness for borrowed money in excess of $15,000,000;

(f) make any material investment in another business entity, enter into any joint venture or similar arrangement, or make or permit any loans or advances to, or guarantees for the benefit of, any person, except for reasonable advances to employees in the ordinary course of business consistent with past practice;

(g) enter into any business which is substantially different than the business conducted by the Corporation on the date of filing of this Amended and Restated Certificate of Incorporation or not reasonably compatible therewith, and which business constitutes a material change in the Corporation's line of business;

(h) enter into or become subject to any agreement or arrangement (including, without limitation, by way of amendment or modification), or take any other action, that eliminates, amends, restricts or otherwise adversely affects the rights of the holders of the Series A Convertible Preferred Stock or the Series B Convertible Preferred Stock or the Corporation's ability to perform its obligations hereunder or;

(i) adopt any new or amend any existing stock plan (including, without limitation, the Stock Option Plan);

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(j) enter into any transaction involving payments to be made to or by the Corporation from or for the benefit of any of its stockholders, Directors, officers, key management employees or any person controlling, controlled by, under common control with or otherwise affiliated with, or a member of a family of, any such person (an "Affiliate"), other than (A) compensation paid to a Director in his or her capacity as a Director or a member of a committee of the Board of Directors; (B) compensation authorized by the Corporation's compensation committee of the Board of Directors (and approved by the Board of Directors) to be paid to an officer, employee or Affiliate for services performed by such officer, employee or Affiliate; (C) amounts paid in connection with that certain First Amended and Restated Lease Agreement, dated as of April 1, 2000, by and between the Corporation and Royal Troon, LLC; or (D) amounts paid in connection with the Corporation's indemnification obligations set forth in Section 6 of the Purchase Agreement;

(k) directly or indirectly redeem, purchase, or otherwise acquire for consideration any shares of its Common Stock or any other class of its capital stock, except for (i) the redemption of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock pursuant to and as provided in this Amended and Restated Certificate of Incorporation, (ii) the repurchase of shares of Common Stock from employees or directors of, or consultants to, the Corporation, pursuant to agreements under the Stock Option Plan under which the Corporation has the option or obligation to repurchase such shares upon the occurrence of certain events, including termination of employment, or (iii) the redemption of shares of Common Stock as contemplated by and provided for in the Purchase Agreement;

(l) declare or pay any dividends or make any distributions of cash, property or securities of the Corporation with respect to any shares of its Common Stock or any other class of its capital stock; other than (A) dividends payable by the Corporation solely in Common Stock; (B) dividends payable to the holders of Series A Convertible Preferred Stock or Series B Convertible Preferred Stock; or (C) payments made in accordance with Section 6.3 of the Purchase Agreement; or

(m) enter into any agreement to do any of the foregoing.

Further, the Corporation shall not, by amendment of this Amended and Restated Certificate of Incorporation or through any Extraordinary Transaction or other reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, agreement or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Article IV and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series A Convertible Preferred Stock and the Series B Convertible Preferred Stock against impairment. Without limitation of the foregoing, the Corporation shall take such action as shall be

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necessary or appropriate, to the extent reasonably within its control, to remove promptly any impediments to its ability to redeem Series A Convertible Preferred Stock and/or Series B Convertible Preferred Stock under the circumstances contemplated by Section A.5(e) and B.5(e). Any successor to the Corporation shall agree, as a condition to such succession, to carry out and observe the obligations of the Corporation hereunder with respect to the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock.

9. Notice.

(a) Liquidation Events, Extraordinary Transactions, Etc. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any of the transactions identified in clause (ii) hereof, or (ii) any Liquidation Event (as defined in Section A.4), any Extraordinary Transaction (as defined in Section A.5), or any QPO (as defined in Section A.6), the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Series A Convertible Preferred Stock at least twenty (20) business days prior to such record date specified therein or the expected effective date of any such transaction, whichever is earlier, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event, Extraordinary Transaction, or QPO is expected to become effective, (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event, and (D) in the event of a QET, a description of the rights provided to the holder's of shares of Series A Convertible Preferred Stock to make an election under Section A.5(b)(ii), including the time period within which such election must be made.

(b) Waiver of Notice. The holder or holders of not less than a Two Thirds Interest of the outstanding shares of Series A Convertible Preferred Stock may, at any time upon written notice to the Corporation, waive any notice provisions specified herein for the benefit of such holders, and any such waiver shall be binding upon all holders of such securities.

(c) General. In the event that the Corporation provides any notice, report or statement to any holder of Common Stock the Corporation shall at the same time provide a copy of any such notice, report or statement to each holder of outstanding shares of Series A Convertible Preferred Stock.

10. No Reissuance of Series A Convertible Preferred Stock. No share or shares of Series A Convertible Preferred Stock acquired by the Corporation by reason of redemption,

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purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

11. Contractual Rights of Holders. The various provisions set forth herein for the benefit of the holders of the Series A Convertible Preferred Stock shall be deemed contract rights enforceable by them, including without limitation, one or more actions for specific performance.

B. SERIES B CONVERTIBLE PREFERRED STOCK

1. Designation. A total of 9,256,060 shares of the Corporation's Preferred Stock shall be designated as a series known as Series B Convertible Preferred Stock, par value $.01 per share (the "Series B Convertible Preferred Stock"). All of the preferential amounts to be paid to the holders of the Series B Convertible Preferred Stock as provided in this Section B shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any property of the Corporation to, the holders of any other equity securities of the Corporation, whether now or hereafter authorized, other than the Series A Convertible Preferred Stock which shall rank on a parity with the Series B Convertible Preferred Stock in connection with any event referred to in Sections B.3, B.4 or B.5.

2. Election of Directors; Voting.

(a) Election of Directors. The holders of outstanding shares of Series B Convertible Preferred Stock shall, voting together with the Series A Convertible Preferred Stock as a separate class, be entitled to jointly elect two (2) Directors of the Corporation. Such Directors shall be the candidates receiving the greatest number of affirmative votes of the outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock (the "Convertible Preferred Stock Director Designees"), with votes cast against such candidates and votes withheld having no legal effect. The election of the Convertible Preferred Stock Director Designees by the holders of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock shall occur (i) at the annual meeting of holders of the Corporation's capital stock, (ii) at any special meeting of holders of the Corporation's capital stock, (iii) at any special meeting of holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock called by holders of a majority of the outstanding shares of either the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock, or (iv) by the written consent of holders of not less than a Two-Thirds Interest of the total outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock. If at any time when any shares of either Series A Convertible Preferred Stock or Series B Convertible Preferred Stock are outstanding any Convertible Preferred Stock Director Designee should cease to be a Director for any reason, the vacancy shall only be filled by the vote or written consent of the holders of the outstanding shares of Series A Convertible Preferred Stock and Series B

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Convertible Preferred Stock, voting together as a separate class, in the manner and on the basis specified above or as otherwise provided by law. The holders of outstanding shares of Series B Convertible Preferred Stock shall also be entitled to vote for all other Directors of the Corporation together with holders of all other shares of the Corporation's outstanding capital stock entitled to vote thereon, voting as a single class, with each outstanding share of Series B Convertible Preferred Stock entitled to the same number of votes specified in Section B.2(b). Notwithstanding the foregoing, the holders of outstanding shares of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock may, in their sole discretion, determine to elect fewer than two (2) Convertible Preferred Stock Director Designees from time to time, and during any such period the Board of Directors nonetheless shall be deemed duly constituted.

(b) Voting Generally. Each share of Series B Convertible Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which such share of Series B Convertible Preferred Stock could be converted pursuant to Section B.6 hereof on the record date for the vote or written consent of stockholders, if applicable, with fractional votes for fractional shares and appropriate adjustments for stock splits, stock dividends, recapitalizations and the like. Each holder of shares of Series B Convertible Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the by-laws of the Corporation and shall vote with holders of the Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders, excluding those matters required to be submitted to a class or series vote pursuant to the terms hereof (including, without limitation, Sections A.8 and B.2(a)) or by law.

3. Dividends. Except as otherwise provided in Sections B.6(a) and B.6(b), the holders of outstanding shares of Series B Convertible Preferred Stock shall be entitled to receive, out of any funds legally available therefor, cumulative compounding dividends on the Series B Convertible Preferred Stock payable in cash or, at the option of the Corporation, in additional shares of Series B Convertible Preferred Stock of equivalent value (based upon the Series B Conversion Price at the time of payment of such dividend), at the per share rate of eight percent (8%) per annum on the Series B Convertible Preferred Liquidation Preference Amount (as hereafter defined), adjusted appropriately for stock splits, stock dividends, recapitalizations and the like, subject to proration for partial years on the basis of a 365-day year (the "Series B Convertible Cumulative Dividend"). Such dividends shall accumulate quarterly in arrears commencing as of the date of issuance of the Series B Convertible Preferred Stock, shall be cumulative, to the extent unpaid, whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment therefor, and shall compound on February 1 of each year. Accrued and unpaid Series B Convertible Cumulative Dividends may be paid from time to time when and if declared by the Corporation; provided, however, that such dividends shall become due and payable with respect to all outstanding shares of Series B Convertible Preferred Stock as provided in Sections B.4, B.5 and B.6(a). Dividends paid in an amount less than the total amount of dividends at the time accumulated and payable on all outstanding shares of Series B

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Convertible Preferred Stock shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. Notwithstanding any of the foregoing, (i) no dividend may be declared or paid on any shares of Series B Convertible Preferred Stock unless at the same time a dividend is declared or paid on all outstanding shares of Series A Convertible Preferred Stock, with holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock sharing in any such dividends as if they constituted a single class of stock; and (ii) unless and until the Series B Convertible Cumulative Dividends have been paid in full, and except as otherwise contemplated by Section 6.3 of the Purchase Agreement, (a) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any Junior Capital Stock; and (b) no shares of Junior Capital Stock shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof (except for the repurchase of shares of Common Stock from employees or directors of, or consultants to, the Corporation pursuant to agreements under the Stock Option Plan or pursuant to stock restriction agreements executed in connection with shares granted under such Stock Option Plan). All numbers relating to the calculation of dividends pursuant to this Section B.3 shall be subject to equitable adjustment in the event of any stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the Series B Convertible Preferred Stock. If and to the extent such Series B Convertible Cumulative Dividends have been paid in full, the holders of Series B Convertible Preferred Stock shall be entitled to receive additional dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion, provided, however, that no such dividend may be declared or paid on any shares of Series B Convertible Preferred Stock unless at the same time a dividend is declared or paid on all outstanding shares of Series A Convertible Preferred Stock and Common Stock, and vice versa, with holders of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Common Stock sharing in any such additional dividends as if they constituted a single class of stock and with each holder of shares of Series B Convertible Preferred Stock entitled to receive such dividends based on the number of shares of Common Stock into which such shares of Series B Convertible Preferred Stock are then convertible hereunder, as contemplated by Section B.6 of this Article IV.

4. Liquidation.

(a) Liquidation Preference. Upon any Liquidation Event, each holder of outstanding shares of Series B Convertible Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to stockholders, whether such assets are capital, surplus or earnings, and before any amount shall be paid or distributed to the holders of Common Stock or of any other Junior Capital Stock, an amount in cash equal to (i) $4.0514 per share of Series B Convertible Preferred Stock held by such holder (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like), plus (ii) any accumulated but unpaid dividends to which such holder of outstanding shares of Series B Convertible Preferred Stock is then entitled, if any, pursuant to Sections B.3 and B.5(f) hereof, plus (iii) any interest accrued pursuant to Section B.5(e) hereof to which such holder of Series B Convertible

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Preferred Stock is entitled, if any (the sum of clauses (i), (ii) and (iii) being referred to herein as the "Series B Convertible Preferred Liquidation Preference Amount"); provided, however, that if upon any Liquidation Event the amounts available for distribution to holders of Series B Convertible Preferred Stock, Series A Convertible Preferred Stock and any other class or series of capital stock of the Corporation ranking on liquidation on a parity with the Series B Convertible Preferred Stock are not sufficient to pay all amounts due to such holders upon such Liquidation Event, then such holders shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled; and provided further, however, that if upon any Liquidation Event the holders of the outstanding shares of Series B Convertible Preferred Stock would receive more than the Series B Convertible Preferred Liquidation Preference Amount in the event all of their shares were voluntarily converted into shares of Common Stock immediately prior to such Liquidation Event and such shares of Common Stock received a liquidating distribution or distributions from the Corporation, then each holder of Series B Convertible Preferred Stock shall receive as a distribution from the Corporation in connection with such Liquidation Event, in lieu of the Series B Convertible Preferred Liquidation Preference Amount, an amount equal to the amount that would be paid if such holder's shares of Series B Convertible Preferred Stock were voluntarily converted into Common Stock immediately prior to such Liquidation Event (including with respect to any accrued but unpaid dividends on the Series B Convertible Preferred Stock). The provisions of this Section B.4 shall not in any way limit the right of the holders of Series B Convertible Preferred Stock to elect to convert their shares of Series B Convertible Preferred Stock into shares of Common Stock pursuant to Section B.6 prior to or in connection with any Liquidation Event.

(b) Notice. Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Series B Convertible Preferred Stock notice in accordance with Section B.9 hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail the facts of such Liquidation Event, stating in detail the amount(s) per share of Series B Convertible Preferred Stock each holder of Series B Convertible Preferred Stock would receive pursuant to the provisions of Section B.4(a) hereof (both with respect to the amount a holder would receive pursuant to clauses (i), (ii) and (iii) of Section B.4(a) and the amount a holder would receive pursuant to the second proviso of Section B.4(a)) and stating in detail the facts upon which such amounts were determined.

5. Redemption; Preferential Payment in Extraordinary Transactions.

(a) Redemption Events.

(i) Time Based. On February 2, 2005, upon the election of a holder of outstanding shares of Series B Convertible Preferred Stock, the Corporation shall, no later than 120 days after the date of such election, redeem all (but not

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less than all, other than pursuant to Section B.5(e) below) of such holder's outstanding shares of Series B Convertible Preferred Stock at the Series B Convertible Preferred Redemption Price specified in Section B.5(d); provided, however, that to the extent the Corporation cannot legally effectuate the redemption on such date, the redemption shall take place as soon as practicable thereafter as legally permitted, and the terms of Section B.5(e) herein shall apply to such period during which the redemption is legally prohibited. The foregoing election shall be made by a holder by giving the Corporation written notice of such election. After receipt of such written notice, the Corporation shall as soon as practicable, but in no case more than ten (10) days after its receipt of notice of such election, provide to the holder written notice setting forth the anticipated date for such redemption and the amount the holder will be entitled to receive pursuant to the provisions of Section B.5(d).

(ii) Extraordinary Transactions. Subject to Section B.6(b)(ii), upon the election of a holder of outstanding shares of Series B Convertible Preferred Stock to have such shares redeemed or otherwise to participate in connection with an Extraordinary Transaction, then, as a part of and as a condition to the effectiveness of such Extraordinary Transaction, except with respect to holders of Series B Convertible Preferred Stock that have elected to convert their shares of Series B Convertible Preferred Stock into shares of Common Stock in accordance with the voluntary conversion provisions of Section B.6 prior to the effective date of such Extraordinary Transaction, the Corporation shall, on the effective date of such Extraordinary Transaction either (x) if redemption is elected, on the effective date of such Extraordinary Transaction, redeem all (but not less than all) of the outstanding shares of Series B Convertible Preferred Stock of the electing holder for an amount equal to the aggregate Series B Convertible Preferred Liquidation Preference Amount, such amount to be payable in cash or, at the request of the electing holder, in the same form of consideration as is paid to the holders of Common Stock in such Extraordinary Transaction, and no payment shall be made to the holders of any shares of Junior Capital Stock unless such amount is paid in full or (y) if such holder elects to participate in the relevant transaction (such as a merger) on terms acceptable to it, take such actions as shall be sufficient to facilitate such participation (including executing a merger agreement including an exchange ratio reflecting the provisions hereof) on terms giving effect to such holder's right to the aggregate Series B Convertible Liquidation Preference Amount, in which event such amount shall be paid in cash or, at the election of such holder, in the same form of consideration as is paid to the holders of Common Stock in such Extraordinary Transaction, but in preference to and before any amount is paid or otherwise distributed to the holders of any shares of Junior Capital Stock, in which event such preferential amount shall be deemed to have been distributed to the holder of the Series B Convertible Preferred Stock as if in a Liquidation Event.

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Notwithstanding any of the foregoing, if upon any Extraordinary Transaction in which a holder of outstanding shares of Series B Convertible Preferred Stock elects to be redeemed or participate, a holder of outstanding shares of Series B Convertible Preferred Stock would receive more than the Series B Convertible Liquidation Preference Amount in the event its shares were voluntarily converted into Common Stock immediately prior to such Extraordinary Transaction and such shares of Common Stock were purchased or otherwise participated in such Extraordinary Transaction, then such holder of Series B Convertible Preferred Stock shall instead receive from the Corporation or the relevant purchaser, as applicable, upon such holder's election to redeem or otherwise participate in such Extraordinary Transaction, an amount equal to the amount per share that would be paid if the shares of Common Stock receivable upon voluntary conversion (including, if applicable, any accrued but unpaid dividends in accordance with Section B.6(a)) of the Series B Convertible Preferred Stock were being acquired in the Extraordinary Transaction at the same price per share as is paid for other shares of Common Stock, which amount shall be paid in the same form of consideration as is paid to holders of Common Stock, as if such holder's shares of Series B Convertible Preferred Stock had been converted into the number of shares of Common Stock issuable upon the conversion of such share of Series B Convertible Preferred Stock immediately prior to such Extraordinary Transaction.

The foregoing election shall be made by a holder by giving the Corporation prior written notice thereof within ten (10) days of its receipt of written notice from the Corporation as provided in Section B.5(c). The provisions of this Section B.5 shall not in any way limit the right of the holders of Series B Convertible Preferred Stock to elect to convert their shares into shares of Common Stock pursuant to Section B.6 prior to or in connection with any Extraordinary Transaction.

(b) Valuation of Distribution Securities. Any securities or other consideration to be delivered to the holders of the Series B Convertible Preferred Stock if so elected in connection with a redemption or upon any Extraordinary Transaction in accordance with the terms hereof shall be valued in the manner provided in Section A.5(b).

(c) Notice by Corporation. Prior to the occurrence of any Extraordinary Transaction, the Corporation will furnish each holder of outstanding shares of Series B Convertible Preferred Stock notice in accordance with Section B.9 hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail all material terms of such Extraordinary Transaction, including without limitation the consideration to be delivered in connection with such Extraordinary Transaction, the valuation of the Corporation at the time of such Extraordinary Transaction and the identities of the parties to the Extraordinary Transaction.

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(d) Purchase Date and Price. Any date upon which a redemption is to occur in accordance with Section B.5(a) shall be referred to as a "Series B Convertible Preferred Redemption Date." The price for each share of Series B Convertible Preferred Stock redeemed or acquired pursuant to this Section B.5 shall be the per share Series B Convertible Preferred Liquidation Preference Amount or such greater per share amount as may be payable pursuant to the second paragraph of Section B.5(a)(ii), if applicable (the "Series B Convertible Preferred Redemption Price"); provided, however, that if at a Series B Convertible Preferred Redemption Date shares of Series B Convertible Preferred Stock are unable to be redeemed (as contemplated by Section B.5(e) below), then holders of Series B Convertible Preferred Stock that have requested redemption pursuant to Section B.5(a) shall also be entitled to interest and dividends pursuant to Sections B.5(e) and (f) below. The aggregate applicable redemption price elected to be payable in cash pursuant to Section B.5(a) shall be payable in cash in immediately available funds to the respective holders of the Series B Convertible Preferred Stock on the Series B Convertible Preferred Redemption Date (subject to Section B.5(e)), except as otherwise contemplated by Section B.5(a)(ii). Upon any redemption or purchase of the Series B Convertible Preferred Stock as provided herein, holders of fractional shares shall receive proportionate amounts in respect thereof. Until the aggregate applicable redemption price has been paid for all shares of Series B Convertible Preferred Stock for which a request for redemption has been made: (A) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any capital stock of the Corporation; and (B) except as permitted by Section A.8(k), no shares of capital stock of the Corporation (other than the Series B Convertible Preferred Stock in accordance with this Section B.5 and the Series B Convertible Preferred Stock in accordance with Section B.5) shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

(e) Redemption Prohibited. If, at a Series B Convertible Preferred Redemption Date, the Corporation is prohibited under the General Corporation Laws of the State of Delaware from redeeming such shares of Series B Convertible Preferred Stock for which redemption is required hereunder, then it shall redeem such shares on a pro-rata basis among the requesting holders of Series B Convertible Preferred Stock in proportion to the full respective redemption amounts to which such holders are entitled hereunder to the extent possible and shall redeem the remaining shares to be redeemed as soon as the Corporation is not prohibited from redeeming some or all of such shares under the General Corporation Laws of the State of Delaware, subject to the last paragraph of Section A.8; provided, that in the event that on a proposed Series B Convertible Preferred Redemption Date there exist shares of Series A Convertible Preferred Stock required to be redeemed under Sections A.5, then the shares of Series B Convertible Preferred Stock and Series A Convertible Preferred Stock, as applicable, to be redeemed shall be redeemed by the Corporation on a pro-rata basis among the

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holders of such shares in proportion to the aggregate redemption amounts to which they are entitled with respect to such shares and, as to which each such holder's shares shall be redeemed, relative to such holder's holdings of shares of Series B Convertible Preferred Stock and Series A Convertible Preferred Stock. Any shares of Series B Convertible Preferred Stock not redeemed shall remain outstanding and entitled to all of the rights and preferences provided in this Article IV. The Corporation shall take such action as shall be necessary or appropriate to review and promptly remove any impediment to its ability to redeem shares of Series B Convertible Preferred Stock under the circumstances contemplated by this Section B.5(e). In the event that the Corporation fails to redeem shares for which redemption is required pursuant to this Section B.5, then (i) if such failure is due to a prohibition of such redemption under the General Corporation Laws of the State of Delaware, then during the period from the applicable Series B Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable per share dividend on such shares shall be adjusted to twelve percent (12%) per annum, with such dividend to increase to fifteen percent (15%) on the date which is 365 days following the Series B Convertible Preferred Redemption Date or (ii) if such failure is due to any reason other than that described in subclause (i) above, then during the period from the applicable Series B Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable redemption price and any dividend accrued but unpaid on the Series B Convertible Preferred Stock shall bear interest at the rate of twelve percent (12%) per annum, with such interest to accrue daily in arrears and to be compounded annually and to increase by one percent (1%) upon the expiration of each 180 day period that such shares remain outstanding; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "Maximum Permitted Rate"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess.

(f) Dividend After Series B Convertible Preferred Redemption Date. From and after a Series B Convertible Preferred Redemption Date, no shares of Series B Convertible Preferred Stock subject to redemption shall be entitled to dividends, if any, as contemplated by Section B.3; provided, however, that in the event that such shares of Series B Convertible Preferred Stock are unable to be redeemed and continue to be outstanding in accordance with Section B.5(e), such shares shall continue to be entitled to dividends and interest thereon as provided in Sections B.3 and B.5(e) until the date on which such shares are actually redeemed by the Corporation.

(g) Surrender of Certificates. Upon receipt of the applicable Series B Convertible Preferred Redemption Price by certified check or wire transfer (in the event such price is to be paid in cash), each holder of shares of Series B Convertible Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, duly assigned or endorsed for transfer (or accompanied by duly executed stock powers relating thereto), or, in the event the

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certificate or certificates are lost, stolen or missing, shall deliver an affidavit or agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith (an "Affidavit of Loss") with respect to such certificates at the principal executive office of the Corporation or the office of the transfer agent for the Series B Convertible Preferred Stock or such office or offices in the continental United States of an agent for redemption as may from time to time be designated by notice to the holders of Series B Convertible Preferred Stock, and each surrendered certificate shall be canceled and retired; provided, however, that if the Corporation is prohibited from redeeming any shares of Series B Convertible Preferred Stock as provided in Section B.5(e), a holder whose shares are not so redeemed in full shall not be required to surrender said certificate(s) to the Corporation until said holder has received a new stock certificate for those shares of Series B Convertible Preferred Stock not so redeemed.

6. Conversion. The holders of the Series B Convertible Preferred Stock shall have the following conversion rights:

(a) Conversion Upon Election of Holders. Any holder of shares of Series B Convertible Preferred Stock shall be entitled at any time, without the payment of any additional consideration, to cause all or part of such holder's outstanding shares of Series B Convertible Preferred Stock to be converted into the number of fully paid and nonassessable shares of Common Stock (including any resulting fractional shares) which results from multiplying the number of shares of Series B Convertible Preferred Stock which are being converted by a fraction, the numerator of which is the per share Series B Conversion Value (as defined in this Section B.6(a)) of the Series B Convertible Preferred Stock, and the denominator of which is the per share Series B Conversion Price (as defined in this Section B.6(a)) in effect for the Series B Convertible Preferred Stock at the time of conversion (which fraction shall hereinafter be referred to as the "Series B Common Stock Conversion Rate"), with fractional shares treated proportionally as provided above (the "Series B Conversion Shares"). Upon the filing of this Amended and Restated Certificate of Incorporation with the office of the Secretary of State of the State of Delaware, the "Series B Conversion Price" per share of Series B Convertible Preferred Stock shall be $4.0514, and the per share "Series B Conversion Value" of Series B Convertible Preferred Stock shall be $4.0514. The Series B Conversion Price per share of Series B Convertible Preferred Stock and the Series B Common Stock Conversion Rate (as defined in this Section B.6(a)) shall be subject to adjustment from time to time as provided in Section B.7 hereof. If a holder of shares of Series B Convertible Preferred Stock elects to convert any outstanding shares of Series B Convertible Preferred Stock at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such accumulated but unpaid dividends and other amounts shall be paid in full by the Corporation in connection with such conversion, in cash, or at the election of the Corporation, in additional shares of Common Stock. For purposes of effecting the foregoing, in the event the Corporation elects to pay any accumulated but unpaid

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dividends in the form of additional shares of Common Stock, then with respect to such dividends the holder of such shares of Series B Convertible Preferred Stock shall receive the number of fully paid and nonassessable shares of Common Stock (including any resulting fractional shares) which results from dividing the accumulated but unpaid Series B Convertible Cumulative Dividend, as the numerator, by the Series B Conversion Price, as the denominator, with fractional shares treated proportionately as provided above.

(b) Automatic Conversion. The following provisions of this Section B.6(b) shall terminate and be of no further force and effect after February 2, 2005.

(i) Upon a Qualified Public Offering. Each share of Series B Convertible Preferred Stock shall automatically be converted, without the payment of any additional consideration, into shares of Common Stock as of, and in all cases subject to, the closing of the Corporation's first Qualified Public Offering; provided, that if a closing of a QPO occurs, all outstanding shares of Series B Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior to such closing at the Series B Common Stock Conversion Rate. Any such conversion shall be at the Series B Common Stock Conversion Rate in effect upon the closing of a QPO. If the holders of shares of Series B Convertible Preferred Stock are required to convert the outstanding shares of Series B Convertible Preferred Stock pursuant to this Section B.6(b)(i) at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall not be paid and the rights of a holder to such dividends shall be deemed to have expired in connection with such conversion.

(ii) Upon a Qualified Extraordinary Transaction. Each share of Series B Convertible Preferred Stock shall automatically be converted, without the payment of any additional consideration, into shares of Common Stock as of, and in all cases subject to, the closing of the Corporation's first QET; provided, that if a closing of a QET occurs, all outstanding shares of Series B Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock as provided herein immediately prior to such closing. Any such conversion shall be at the Series B Common Stock Conversion Rate in effect upon the closing of the QET.

If the holders of shares of Series B Convertible Preferred Stock are required to convert their outstanding shares of Series B Convertible Preferred Stock pursuant to this Section B.6(b)(ii) at a time when there are any accumulated but unpaid dividends or other amounts due on or in respect of such shares, such dividends and other amounts shall not be paid and the rights of a holder to such dividends shall be deemed to have expired in connection with such conversion.

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(c) Procedure for Voluntary Conversion. Upon election to convert pursuant to Section B.6(a), a holder of Series B Convertible Preferred Stock shall surrender the certificate or certificates representing its Series B Convertible Preferred Stock being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the Series B Convertible Preferred Stock or such office or offices in the continental United States of an agent for conversion as may from time to time be designated by notice to the holders of the Series B Convertible Preferred Stock by the Corporation, or shall deliver an Affidavit of Loss with respect to such certificates. The issuance by the Corporation of Common Stock upon a conversion of Series B Convertible Preferred Stock pursuant to Section B.6(a) hereof shall be effective as of the surrender of the certificate or certificates for the Series B Convertible Preferred Stock to be converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or as of the delivery of an Affidavit of Loss. Upon surrender of a certificate representing Series B Convertible Preferred Stock for conversion, or delivery of an Affidavit of Loss, the Corporation shall issue and send by hand delivery, by courier or by first class mail (postage prepaid) to the holder thereof or to such holder's designee, at the address designated by such holder, certificates for the number of shares of Common Stock to which such holder shall be entitled upon conversion, plus a cash payment in the amount of any accumulated but unpaid dividends, if applicable, and other amounts as contemplated by Section B.6(a) in respect of the shares of Series B Convertible Preferred Stock. The issuance of certificates for Common Stock upon conversion of Series B Convertible Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such Common Stock. If a conversion of Series B Convertible Preferred Stock upon a Liquidation Event or an Extraordinary Transaction occurs and a holder of Common Stock issued upon such conversion elects to participate, then such holder's outstanding shares of Series B Convertible Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior thereto, provided that the Corporation shall make appropriate provisions for the Common Stock issued upon such conversion to be treated on the same basis as all other Common Stock in such Liquidation Event or Extraordinary Transaction. In the event of an automatic conversion upon a QPO or QET, the provisions of Section B.6(d) shall apply.

(d) Procedure for Automatic Conversion. As of, and in all cases subject to, the closing of a QPO or QET (the "Automatic Conversion Date"), all outstanding shares of Series B Convertible Preferred Stock shall be converted automatically into shares of Common Stock at the Series B Common Stock Conversion Rate and without any further action by the holders of such shares and whether or not the certificates representing such shares of Series B Convertible Preferred Stock are surrendered to the Corporation or its transfer agent; provided, however, that all holders of Series B

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Convertible Preferred Stock shall be given prior written notice of the occurrence of a QPO or QET in accordance with Section B.9 hereof; and provided further, that in the event of a QET, such holders shall be given an opportunity to exercise the rights provided in Section B.5(a)(ii) by giving the Corporation written notice thereof. On the Automatic Conversion Date, all rights with respect to the Series B Convertible Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an Affidavit of Loss thereof to receive certificates for the number of shares of Common Stock into which such Series B Convertible Preferred Stock has been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. Upon surrender of such certificates or Affidavit of Loss the Corporation shall issue and deliver to such holder, promptly (and in any event in such time as is sufficient to enable such holder to participate in such QPO or QET) at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series B Convertible Preferred Stock surrendered are convertible on the Automatic Conversion Date.

(e) Reservation of Stock Issuable Upon Conversion. The 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 Series B Convertible 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 Series B Convertible 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 Series B Convertible Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(f) No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Series B Convertible Preferred Stock in any manner which would interfere with the timely conversion of any shares of Series B Convertible Preferred Stock.

7. Adjustments. The Series B Conversion Price of the Series B Convertible Preferred Stock in effect from time to time shall be subject to adjustment from and after February 2, 2000 and regardless of whether any shares of Series B Convertible Preferred Stock are then issued and outstanding as follows:

(a) Dividends and Stock Splits. If the number of shares of Common Stock (which term for purposes of this Section B.7 shall include all common stock of the

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Corporation) outstanding at any time after the date hereof is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the date such payment is made or such change is effective, the Series B Conversion Price of the Series B Convertible Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Series B Convertible Preferred Stock shall be increased in proportion to such increase of outstanding shares of Common Stock.

(b) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination or reverse split of the outstanding shares of Common Stock, then, on the effective date of such combination or reverse split, the Series B Conversion Price of the Series B Convertible Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of any shares of Series B Convertible Preferred Stock shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

(c) Other Adjustments. In the event the Corporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event lawful and adequate provision shall be made so that the holders of Series B Convertible Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities of the Corporation which they would have received had their Series B Convertible Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this Section B.7 as applied to such distributed securities.

(d) Reorganization, etc. If the Common Stock issuable upon the conversion of the Series B Convertible Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section B.7), then and in each such event the holder of each share of Series B Convertible Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the number of shares of Common Stock into which such shares of Series B Convertible Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

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(e) Mergers and Other Reorganizations. Unless such transaction is an Extraordinary Transaction in which all of the holders of Series B Convertible Preferred Stock elect redemption or otherwise to participate (in which case Section B.5(a)(ii) shall apply and this subsection shall not apply), if at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section B.7) or a merger or consolidation of the Corporation with or into another corporation or the sale of all or substantially all of the Corporation's properties and assets to any other person, then, as part of and as a condition to the effectiveness of such reorganization, merger, consolidation or sale, lawful and adequate provision shall be made so that the holders of the Series B Convertible Preferred Stock shall thereafter be entitled to receive upon conversion of the Series B Convertible Preferred Stock the number of shares of stock or other securities or property of the Corporation or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of Common Stock would have been entitled in connection with such capital reorganization, merger, consolidation, or sale. In any such case, appropriate provisions shall be made with respect to the rights of the holders of the Series B Convertible Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section B.7 (including, without limitation, provisions for adjustment of the applicable Series B Conversion Price and the number of shares purchasable upon conversion of the Series B Convertible Preferred Stock) shall thereafter be applicable, as nearly as may be, with respect to any shares of stock, securities or assets to be deliverable thereafter upon the conversion of the Series B Convertible Preferred Stock.

(f) Sale of Common Stock. In the event the Corporation shall at any time, or from time to time, issue, sell or exchange any shares of Common Stock (including treasury shares held by the Corporation but excluding the Excluded Shares), for a consideration per share less than the Series B Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares, then, and thereafter successively upon each such issuance, sale or exchange, the Series B Conversion Price in effect immediately prior to the issuance, sale or exchange of such shares shall forthwith be reduced to an amount determined by multiplying such Series B Conversion Price by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such additional shares of Common Stock (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than the Series B Convertible Preferred Stock) that are then vested and in the money), plus (B) the number of shares of Common Stock which the net aggregate consideration received by the Corporation for the total number of such additional shares of

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Common Stock so issued would purchase at the Series B Conversion Price (prior to adjustment), and

(ii) the denominator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such additional shares of Common Stock (excluding any unvested shares and any treasury shares held by the Corporation but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series B Convertible Preferred Stock) that are then vested and in the money), plus (B) the number of such additional shares of Voting or Nonvoting Common Stock so issued.

(g) Sale of Options, Rights or Convertible Securities. In the event the Corporation shall at any time or from time to time issue options, warrants or rights to subscribe for shares of Common Stock, or issue any securities convertible into or exchangeable for shares of Common Stock (other than any options or warrants for Excluded Shares), for a consideration per share (determined by dividing the Net Aggregate Consideration (as determined below) by the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible or exchangeable securities were exercised or converted to the fullest extent permitted by their terms) less than the Series B Conversion Price in effect immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities, the Series B Conversion Price in effect immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities shall be reduced to an amount determined by multiplying such Series B Conversion Price by a fraction:

(i) the numerator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities (excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series B Convertible Preferred Stock) that are vested and in the money), plus (B) the number of shares of Common Stock which the total amount of consideration received by the Corporation for the issuance of such options, warrants, rights or convertible or exchangeable securities plus the minimum amount set forth in the terms of such security as payable to the Corporation upon the exercise, conversion or exchange thereof (the "Net Aggregate Consideration") would purchase at the Series B Conversion Price prior to adjustment, and

(ii) the denominator of which shall be (A) the number of shares of Common Stock of all classes outstanding immediately prior to the issuance of such options, warrants, rights or convertible or exchangeable securities

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(excluding any unvested shares and any treasury shares held by the Corporation, but including all shares of Common Stock issuable upon conversion or exercise of any options, warrants, rights or convertible or exchangeable securities (other than Series B Convertible Preferred Stock) that are vested and in the money), plus (B) the aggregate number of shares of Common Stock that would be issued if all such options, warrants, rights or convertible or exchangeable securities were exercised, converted or exchanged.

(h) Expiration or Change in Price. If the consideration per share provided for in any options, warrants or rights to subscribe for shares of Common Stock, or any securities convertible into or exercisable or exchangeable for shares of Common Stock (other than with respect to any Excluded Shares), changes at any time other than as a result of any event described in Section B.7(a) or (b) above, the Series B Conversion Price in effect at the time of such change shall be readjusted to the Series B Conversion Price which would have been in effect at such time had such options, warrants, rights or convertible or exchangeable securities provided for such changed consideration per share (determined as provided in Section B.7(g)), at the time initially granted, issued or sold; provided, that such adjustment of the Series B Conversion Price will be made only as and to the extent that the Series B Conversion Price effective upon such adjustment remains less than or equal to the Series B Conversion Price that would be in effect if such options, warrants, rights or convertible or exchangeable securities had not been issued. No adjustment of the Series B Conversion Price shall be made under this Section B.7 upon the issuance of any additional shares of Common Stock which are issued pursuant to the exercise of any options, warrants or other subscription or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities if an adjustment shall previously have been made upon the issuance of such options, warrants, rights or convertible or exchangeable securities. Any adjustment of the Series B Conversion Price shall be recomputed if, as, and when the rights to acquire shares of Common Stock upon exercise, conversion or exchange of the options, warrants, rights or convertible or exchangeable securities which gave rise to such adjustment expire or are canceled without having been exercised, converted or exchanged, so that the Series B Conversion Price effective immediately upon such cancellation or expiration shall be equal to the Series B Conversion Price in effect immediately before the time of the issuance of the expired or canceled options, warrants, rights or convertible or exchangeable securities, with such additional adjustments as would have been made to that Series B Conversion Price had the expired or canceled options, warrants, rights or convertible or exchangeable securities not been issued.

(i) Calculations. All calculations under this Section B.7 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

(j) Certificate. Upon the occurrence of each adjustment or readjustment pursuant to this Section B.7, the Corporation at its expense shall promptly compute

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such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Convertible Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon written request at any time of any holder of Series B Convertible Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Series B Conversion Prices before and after such adjustment or readjustment, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Series B Convertible Preferred Stock.

8. Covenants. So long as any shares of Series B Convertible Preferred Stock shall be outstanding, the provisions of Section A.8 of this Article IV shall apply to all shares of Series B Convertible Preferred Stock.

9. Notice.

(a) Liquidation Events, Extraordinary Transactions, Etc. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any of the transactions identified in clause (ii) hereof, or (ii) any Liquidation Event, any Extraordinary Transaction, or any QPO, the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Series B Convertible Preferred Stock at least twenty (20) business days prior to such record date specified therein or the expected effective date of any such transaction, whichever is earlier, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event, Extraordinary Transaction, or QPO is expected to become effective, (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event, and (D) in the event of a QET, a description of the rights provided to the holder's of shares of Series B Convertible Preferred Stock to make an election under Section B.5(b)(ii), including the time period within which such election must be made.

(b) Waiver of Notice. The holder or holders of not less than a Two Thirds Interest of the outstanding shares of Series B Convertible Preferred Stock may, at any time upon written notice to the Corporation, waive any notice provisions specified herein for the benefit of such holders, and any such waiver shall be binding upon all holders of such securities.

(c) General. In the event that the Corporation provides any notice, report or statement to any holder of Common Stock the Corporation shall at the same time

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provide a copy of any such notice, report or statement to each holder of outstanding shares of Series B Convertible Preferred Stock.

10. No Reissuance of Series B Convertible Preferred Stock. No share or shares of Series B Convertible Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

11. Contractual Rights of Holders. The various provisions set forth herein for the benefit of the holders of the Series B Convertible Preferred Stock shall be deemed contract rights enforceable by them, including without limitation, one or more actions for specific performance.

C. COMMON STOCK

1. Designation; Ranking. A total of 50,000,000 shares of the Corporation's common stock shall be designated as Common Stock, par value $.01 per share (the "Common Stock").

2. Voting.

(a) Election of Directors. The holders of Common Stock shall be entitled to elect a number of the Directors of the Corporation (other than the Directors who are subject to election by the holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, voting as a separate class) equal to: (i) for so long as any shares of Series A Convertible Preferred Stock or Series B Convertible Preferred Stock remain outstanding, five (5) Directors; and (ii) thereafter, such number as may be designated by the stockholders or Directors in accordance with the applicable provisions of the bylaws of the Corporation and applicable law. Such Directors shall be the candidates receiving the greatest number of affirmative votes entitled to be cast (with each holder entitled to cast one vote for or against each candidate with respect to each share held by such holder), with votes cast against such candidates and votes withheld having no legal effect. The election of such Directors shall occur at the annual meeting of holders of capital stock or at any special meeting called and held in accordance with the bylaws of the Corporation, or by consent in lieu thereof in accordance with this Amended and Restated Certificate of Incorporation. If a person elected in accordance with the foregoing provisions should cease to be a Director for any reason, the vacancy shall only be filled by the vote of the outstanding shares entitled to vote for such Directors, in the manner and on the basis specified above. If at any time fewer than the number of Directors indicated above have been elected, the Board of Directors shall nonetheless be deemed duly constituted.

(b) Other Voting. The holder of each share of Common Stock shall be

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entitled to one vote for each such share as determined on the record date for the vote or consent of stockholders and, for so long as any shares of Series A Convertible Preferred Stock or Series B Convertible Preferred Stock remain outstanding, shall vote together with the holders of the Series A Convertible Preferred Stock and/or Series B Convertible Preferred Stock as a single class upon any items submitted to a vote of stockholders, except as otherwise provided herein.

3. Dividends. Subject to the payment in full of all preferential dividends to which the holders of the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock are entitled hereunder, the holders of Common Stock shall be entitled to receive dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion, with holders of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Common Stock sharing pari passu in such dividends as contemplated by Sections A.3 and B.3.

4. Liquidation. Upon any Liquidation Event, after the payment or provision for payment of all debts and liabilities of the Corporation and all preferential amounts to which the holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock are entitled with respect to the distribution of assets in liquidation, the holders of Common Stock shall be entitled to share ratably in the remaining assets of the Corporation available for distribution.

5. Fractional Shares; Uncertificated Shares. The Corporation may issue fractional shares of Common Stock and Preferred Stock. Fractional shares shall be entitled to dividends (on a pro rata basis), and the holders of fractional shares shall be entitled to all rights as stockholders of the Corporation to the extent provided herein and under applicable law in respect of such fractional shares. Shares of Common Stock and Preferred Stock, or fractions thereof, may, but need not be, represented by share certificates. Such shares, or fractions thereof, not represented by share certificates ("Uncertificated Shares") shall be registered in the stock records book of the Corporation. The Corporation at any time at its sole option may deliver to any registered holder of such shares share certificates to represent Uncertificated Shares previously issued (or deemed issued) to such holder.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws may provide. No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken, except at a duly convened

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meeting or by unanimous written consent of the stockholders entitled to vote thereat with respect to the matters submitted thereto, and the power of stockholders to act by other than unanimous written consent without a meeting, is specifically denied, provided that the foregoing shall not apply (i) with respect to consent, approval or waiver rights of the holders of the Series A Convertible Preferred Stock or Series B Convertible Preferred Stock set forth herein in cases for which less than unanimous consent by the holders of such class of securities is contemplated hereby or (ii) if the holders of not less than Two Thirds Interest of the outstanding shares of Series A Convertible Preferred Stock and/or Series B Convertible Preferred Stock, as applicable, sign such written consent of stockholders, or waive such requirement in advance of the taking of such action. To the extent permitted by law, the books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated in the bylaws of the Corporation or from time to time by its Board of Directors.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal the bylaws of the Corporation.

ARTICLE VIII

To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the General Corporation Law of the State of Delaware is amended after the effective date of this Amended and Restated Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of each past or present Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended. Any repeal or modification of this Article VIII shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE IX

1. Indemnification of Directors and Officers. The Corporation shall indemnify, to the fullest extent permitted by the General Corporation Law of the State of Delaware any person who was or is a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, and whether by or in the right of the Corporation, its stockholders, a third party or otherwise (a "Proceeding"), by reason of the fact that he is or was a Director or officer of the Corporation, or is or was a Director or officer of the

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4. Amendment. The provisions of this Article IX may be amended as provided herein; however, no amendment or repeal of such provisions which adversely affects the rights of a Director or officer under this Article IX with respect to his acts or omissions prior to such amendment or repeal, shall apply to him without his consent.

ARTICLE X

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and 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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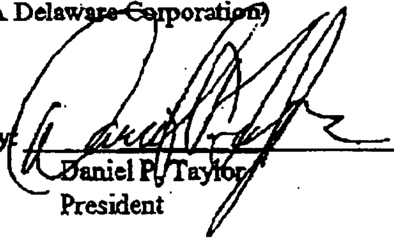
THIS AMENDED AND RESTATED CERTIFICATE OF INCORPORATION is executed as of this 2nd day of February 2000.

THE TAYLOR GROUP
SOLUTIONS INTEGRATOR, INC.
(A Delaware Corporation)



By: ______________________
Daniel P. Taylor
President