

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Star-Cite! Solutions, Inc.		04/28/2000	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	StarCite, Inc.		
<b>Street Address:</b>	1650 Arch Street, 18th Floor		
<b>City:</b>	Philadelphia		
<b>State/Country:</b>	PENNSYLVANIA		
<b>Postal Code:</b>	19103		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	2655285	STARCITE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(202)887-4288		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	202.887.4000		
<b>Email:</b>	lskrypoczka@akingump.com		
<b>Correspondent Name:</b>	Lesia O. Skrypoczka		
<b>Address Line 1:</b>	1333 New Hampshire Avenue, N.W.		
<b>Address Line 4:</b>	Washington, DISTRICT OF COLUMBIA 20036-1564		
<b>ATTORNEY DOCKET NUMBER:</b>	686212.0001		
<b>NAME OF SUBMITTER:</b>	Lesia O. Skrypoczka		
<b>Signature:</b>	/Lesia O. Skrypoczka/		
<b>Date:</b>	09/15/2008		

CH \$40.00 2655285

**Total Attachments: 17**

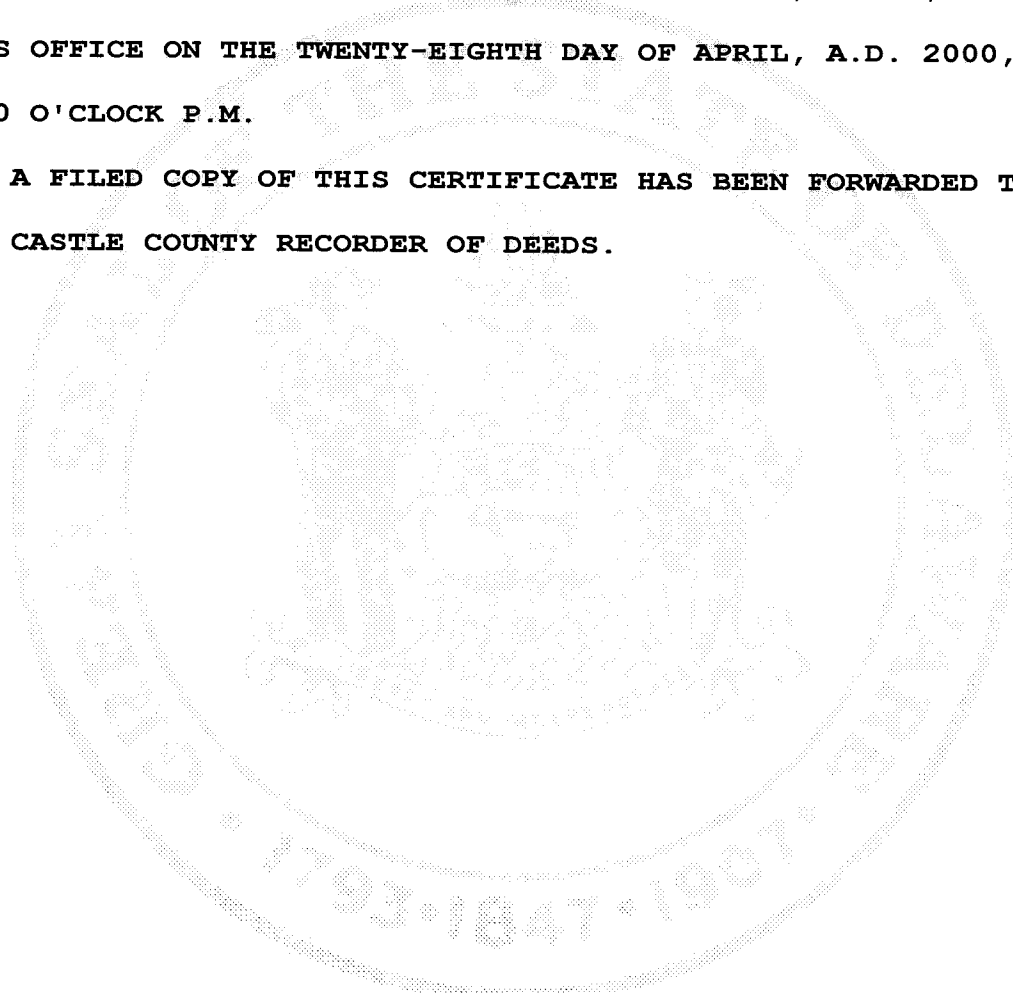
source=StarCite! Solutions to StarCite#page1.tif  
source=StarCite! Solutions to StarCite#page2.tif  
source=StarCite! Solutions to StarCite#page3.tif  
source=StarCite! Solutions to StarCite#page4.tif  
source=StarCite! Solutions to StarCite#page5.tif  
source=StarCite! Solutions to StarCite#page6.tif  
source=StarCite! Solutions to StarCite#page7.tif  
source=StarCite! Solutions to StarCite#page8.tif  
source=StarCite! Solutions to StarCite#page9.tif  
source=StarCite! Solutions to StarCite#page10.tif  
source=StarCite! Solutions to StarCite#page11.tif  
source=StarCite! Solutions to StarCite#page12.tif  
source=StarCite! Solutions to StarCite#page13.tif  
source=StarCite! Solutions to StarCite#page14.tif  
source=StarCite! Solutions to StarCite#page15.tif  
source=StarCite! Solutions to StarCite#page16.tif  
source=StarCite! Solutions to StarCite#page17.tif

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 RESTATED CERTIFICATE OF "STARCITE, INC.", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF APRIL, A.D. 2000, AT 3:30 O'CLOCK P.M.

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



*Edward J. Freel*

Edward J. Freel, Secretary of State

3030464 8100

001218634

AUTHENTICATION: 0409392

DATE: 04-28-00

TRADEMARK  
REEL: 003854 FRAME: 0386

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION OF  
STARCITE, INC.

The undersigned, being the Secretary and Treasurer of StarCite, Inc., (the "Corporation") a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies that:

1. The name under which the Corporation was originally incorporated was Star-Citel Solutions, Inc. and the date of filing of the original Certificate of Incorporation was April 15, 1999.
2. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law of the State of Delaware; and
3. This Amended and Restated Certificate of Incorporation hereby restates the Certificate of Incorporation of the Corporation as follows:

**ARTICLE I**

The name of the corporation is StarCite, Inc.

**ARTICLE II**

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

**ARTICLE III**

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

**ARTICLE IV**

The aggregate number of shares of capital stock which the corporation shall have authority to issue is 40,000,000 shares, divided into 20,000,000 shares of Common Stock, par value \$.001 per share ("Common Stock"), and 20,000,000 shares of Preferred Stock, par value \$.001 per share ("Preferred Stock").

1. ***Title of Series.*** The two series of the Preferred Stock of the Corporation authorized by this Certificate of Incorporation shall be designated and know as the Series A Preferred Stock (the "Series A Preferred Stock") and the Series B Preferred Stock (the "Series B Preferred Stock").

2. **Number of Shares in Series; Par Value.** The number of authorized shares of Series A Preferred Stock shall be four million five hundred ninety seven thousand, thirty-seven (4,597,037) shares, par value \$0.001 per share and the number of authorized shares of Series B Preferred Stock shall be six million eighty-eight thousand, one hundred eighty-four (6,088,184) shares, par value \$.001 per share.

3. **Dividends.** The holders of the Series A Preferred Stock and the Series B Preferred Stock shall be entitled to receive dividends at the rate of \$0.09 per share and \$0.4336 per share, respectively (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, on a pari passu basis, payable out of any assets legally available therefor. Such dividends shall be cumulative, shall accrue automatically each year that shares of the Series A Preferred Stock remain issued and outstanding, and shall be payable only when, as, and if declared by the Board of Directors or as otherwise provided herein. Such dividends shall be payable at the Corporation's option in cash or securities of the corporation, and shall be deemed to be waived in the event of a Qualified Public Offering (as defined below).

No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid or declared on any Common Stock of the Corporation during any fiscal year of the Corporation until dividends in the total amount of \$0.09 per share and \$0.4336 per share, respectively, (as adjusted for any stock dividends, combinations or splits with respect to such shares) on the Series A Preferred and the Series B Preferred Stock shall have been paid or declared and set apart during that fiscal year. After such payment to the Preferred Stock has been paid or declared and set apart, any remaining dividend amounts paid within the same fiscal year shall be paid to the outstanding shares of Common Stock and the Preferred Stock ratably on a per-share basis (in the case of the Preferred Stock based upon the number of shares of Common Stock into which each share of the Preferred Stock is then convertible).

4. **Liquidation Preference.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntarily or involuntarily (a "Liquidation Event"), the holders of the Preferred Stock shall be entitled to receive prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock of the Corporation, an amount equal to \$1.50 per share for each share of Series A Preferred Stock then so held, and an amount equal to \$5.42 per share for each share of Series B Preferred Stock, in each case as adjusted for any stock dividends, combinations or splits with respect to such shares, plus a further amount equal to all accrued but unpaid dividends on such shares.

All of the preferential amounts to be paid to the holders of the Preferred Stock under this Section 4 shall be paid or set apart for payment, on a pari passu basis, and before the payment or setting apart for payment of any amount for, or the distribution of any assets or funds of this Corporation to, or any redemption or other purchase of shares of Common Stock from (other than any such redemption or purchase of shares from an employee of the Company effected in connection with the termination of such employee's employment with the Company), the holders of the Common Stock in connection with such liquidation, dissolution or winding up.

If, upon such liquidation, dissolution or winding up of the Corporation, the assets and funds of the Corporation are insufficient to provide for the payment of the full aforesaid preferential amount to the holders of the Preferred Stock, such assets and funds as are available shall be distributed ratably among the holders of the Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive.

After the payment or the setting apart of payment of the full preferential amounts to the holders of the Preferred Stock, the holders of the Common Stock and the Preferred Stock shall be entitled to receive all remaining assets and funds of the Corporation ratably on a per-share basis (in the case of the Preferred Stock based upon the number of shares of Common Stock into which each share of the Preferred Stock is then convertible) until (i) with respect to the Series A Preferred Stock, the aggregate amount received by the holders of Series A Preferred Stock pursuant to this Section 4 is an amount per share (as adjusted for any stock dividends, combinations or stock splits with respect to such shares) equal to \$7.50 and (ii) with respect to the Series B Preferred Stock, the aggregate amount received by the holders of Series B Preferred Stock pursuant to this Section 4 is an amount per share (as adjusted for any stock dividends, combinations or stock splits with respect to such shares) equal to \$27.10. After the holders of the Preferred Stock receive such aggregate amount, all remaining assets of the corporation available for distribution shall be distributed among the holders of shares of Common Stock pro rata based on the number of shares of Common Stock held by each.

(b) *Deemed Liquidation.* A (i) merger or consolidation of the Corporation which will result in the Corporation's stockholders immediately prior to such transaction not holding (by virtue of such shares or securities issued solely with respect thereto) at least 50% of the voting power of the surviving, continuing or purchasing entity, or (ii) sale of all or substantially all of the assets of the Corporation shall be deemed to be a liquidation, dissolution or winding up within the meaning of this Section 4; provided, however, that the determination of the sale of substantially all the assets shall be determined by the holders of at least a majority of the outstanding Preferred Stock.

(c) *Noncash Distributions.* If any of the assets of the Corporation are to be distributed other than in cash under this Section 4 or for any purpose, then the Board of Directors of the Corporation shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of the Preferred Stock or Common Stock. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of shares of the Preferred Stock or Common Stock of the appraiser's valuation. Notwithstanding the above, any securities to be distributed to the stockholders shall be valued as follows:

(i) If traded on a securities exchange or Nasdaq, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) business days prior to the closing;

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) business days prior to the closing; 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 majority of the outstanding shares of Preferred Stock, provided that if the Corporation and the holders of a majority of the outstanding shares of Preferred Stock are unable to reach agreement, then by independent appraisal by an investment banker hired and paid by the Corporation, but acceptable to the holders of a majority of the outstanding shares of Preferred Stock.

## 5. *Voting Rights.*

(a) *General.* Except as set forth herein or as otherwise required by law, the holder of each share of Series A Preferred shall be entitled to that number of votes allotted by law and this Certificate of Incorporation to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not counted separately as a class. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation.

(b) *Board of Directors.* The authorized number of directors shall be eight (8). The holders of the Series A Preferred, voting together as a single class, shall be entitled to elect three directors. The holders of the Common Stock, voting together as a single class, shall be entitled to elect four directors. The remaining director shall be elected by the vote of the holders of a majority of the Common Stock and the Series A Preferred Stock, voting together as a single class. Any vacancies on the Board of Directors shall be filled by vote of the holders of that class or series of stock originally entitled to elect the director whose absence or resignation created such vacancy.

(c) *Committees.* Each authorized committee of the Board of Directors shall include at least one director nominated and elected by the holders of the Series A Preferred Stock, voting together as a single class.

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

(a) *Right to Convert.* Each share of Series A Preferred Stock and Series B Preferred Stock and any dividends accrued thereon shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.50 and \$5.42 respectively, by the applicable Conversion Price, as hereinafter provided, in effect at the time of the conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred Stock (the "**Series A Conversion Price**") shall initially be \$1.50 per share of Common Stock. The price at which shares of Common Stock shall be deliverable upon conversion of the Series B Preferred Stock (the "**Series B Conversion Price**")

shall initially be \$5.42 per share of Common Stock. The Series A Conversion Price and the Series B Conversion Price are collectively referred to herein as the "Conversion Price." Such initial Conversion Price shall be subject to adjustment as hereinafter provided. Notwithstanding the foregoing, in the event the applicable purchase price per share of any Additional Shares Common Stock reflected in the first sale of Additional Shares of Common Stock (as hereafter defined) sold by the Company after the date of this Amended and Restated Certificate of Incorporation is less than \$5.42 per share, the initial Series B Conversion Price shall, upon the closing of such sale, be lowered to an amount equal to such purchase price and shall thereafter be subject to adjustment as hereinafter provided.

(b) *Automatic Conversion.* Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price upon the earlier to occur of (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of securities for the account of the Corporation to the public at a price per share of Common Stock of not less than \$21.68 per share (subject to proportionate adjustment in the event of a stock split, reverse stock split, reclassification or stock dividend) and an aggregate offering price of not less than Thirty Million Dollars (\$30,000,000) (a "**Qualified Public Offering**") or (ii) the election of holders of at least two-thirds of the then outstanding Preferred Stock, voting as a class, to convert such shares into Common Stock.

(c) *Mechanics of Conversion.* No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective respective Conversion Price. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock and shall give written notice to the Corporation at such office that he elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock, to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) *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 the Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, in addition to such other remedies as shall



be available to the holder of such Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

**7. Adjustments to Conversion Price.**

(a) *Special Definitions.* For purposes of this Section 7, the following definitions shall apply:

(i) *"Options"* shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(ii) *"Original Issue Date"* for each series of Preferred Stock shall mean the date on which the first share of such series of Preferred was issued.

(iii) *"Convertible Securities"* shall mean any evidences of indebtedness, shares (other than the Preferred Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(iv) *"Additional Shares of Common Stock"* shall mean all shares of Common Stock issued (or, pursuant to subsection 7(c), deemed to be issued) by the Corporation after the Original Issue Date, other than:

(A) shares of the Corporation's Common Stock issued upon conversion of the Preferred Stock;

(B) shares of Common Stock issued to officers, directors, employees of and consultants to the Corporation pursuant to stock option plans approved by a majority of the members of the Board of Directors provided, however, that the maximum aggregate number of shares so issued may not exceed 1,918,235 shares (as adjusted for any stock dividends, combinations or splits with respect to the Common Stock);

(C) shares of Common Stock issued as a dividend or distribution on the Preferred Stock or any event for which adjustment is made pursuant to subsection 7(f) or 7(g) hereof; or

(D) shares of Common Stock issued to any bank, equipment or real property lessor or other similar institution if and to the extent that the transaction in which such issuance is to be made is approved by the Corporation's Board of Directors and is for purposes other than equity financing.

(b) *No Adjustment of Conversion Price.* No adjustment in the Conversion Price of the Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price of such series in effect on the date of and immediately prior to such issue.

(c) *Deemed Issue of Additional Shares of Common Stock.* In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number that would result in an adjustment pursuant to clause (ii) below) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to subsection 7(g) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price of any series of Preferred in effect on the date of and immediately prior to such issue, or such record date and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(i) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

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

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

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

(iv) no readjustment pursuant to clause (ii) or (iii) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(v) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the manner provided in clause (iii) above.

(d) *Adjustment of Conversion Price of Preferred Stock Upon Issuance of Additional Shares of Common Stock.* In the event that after the Original Issue Date the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subsection 7(c)) without consideration or for a consideration per share less than the applicable Conversion Price of any series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price of such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price, by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this subsection (d), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and outstanding Convertible Securities or exercise of outstanding Options shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to subsection 7(c), such Additional Shares of Common Stock shall be deemed to be outstanding.

(e) *Determination of Consideration.* For purposes of this Section 7, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) *Cash and Property:* Except as provided in clause (ii) below, such consideration shall:

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

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board; *provided, however*, that no value shall be attributed to any services performed by any employee, officer or director of the Corporation; and

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

(ii) *Options and Convertible Securities.* The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 7(c), relating to Options and Convertible Securities, shall be determined by dividing

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

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) *Adjustments for Stock Dividends, Subdivisions, Combinations or Consolidations of Common Stock.* In the event the outstanding shares of Common Stock shall be subdivided (by stock dividend, stock split, or otherwise), into a greater number of shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(g) *Adjustments for Other Distributions.* In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities or assets of the

Corporation other than shares of Common Stock then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities or assets of the Corporation which they would have received had their 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 or assets receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 7 with respect to the rights of the holders of the Preferred Stock.

(h) *Adjustments for Reclassification, Exchange and Substitution.* Any capital reorganization or reclassification (including a consolidation or merger of the Corporation that does not constitute a liquidation under Section 4(b)) which is effected in such a way that holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) equity interests, stock, securities or assets with respect to or in exchange for Common Stock is referred to herein as an "Organic Change." Prior to the consummation of any Organic Change, the Corporation will make appropriate provision to ensure that each of the holders of Preferred Stock will thereafter have the right to acquire and receive in lieu of or in addition to the shares of Common Stock theretofore acquirable and receivable upon the conversion of such holder's Preferred Stock, such units of stock, securities or assets as would be issued or payable with respect to or in exchange for the number of shares of Common Stock such holder would receive upon conversion of such shares of Preferred Stock immediately prior to such Organic Change, all subject to further adjustment as provided herein. In any such case, the Corporation shall make appropriate provision with respect to such holder's rights and interests to insure that the provisions of this Section 7(h) will thereafter be applicable to the Preferred Stock (including, in the case of any such consolidation or merger in which the successor corporation or purchasing corporation is other than the Corporation, an immediate adjustment of the Conversion Price to the value for the Common Stock reflected by the terms of such consolidation or merger, and a corresponding immediate adjustment in the number of shares of Common Stock acquirable and receivable upon conversion of Preferred Stock, if the value so reflected is less than the Conversion Price in effect for the applicable series of Preferred Stock in effect immediately prior to such consolidation or merger). The Corporation will not effect any such consolidation or merger unless prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from such consolidation or merger assumes by written instrument (in form and substance satisfactory to a majority of the holders of Preferred Stock, acting as a single class) the obligation to deliver to each such holder such units of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.

(i) *No Impairment.* Without the prior written consent of the holders of a majority of the Preferred Stock, voting as a class, the Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of Section 7 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(j) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to Section 7, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, 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 the Preferred Stock.

#### 8. *Redemption.*

(a) Commencing at any time on or after six (6) years from the Original Issue Date, upon receipt by the Corporation of the written request of the holders of two-thirds of the outstanding Preferred Stock, voting together as a class, the Corporation shall, to the extent it may lawfully do so, redeem on a pro rata basis all of such holders' outstanding shares of Preferred Stock on (each payment date being referred to herein as a "**Redemption Date**"), by paying in cash therefor a sum per share equal to the greater of (i) \$1.50 per share of Series A Preferred and \$5.42 per share of Series B Preferred Stock, respectively (each as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all accrued but unpaid dividends on each such share, or (ii) the fair market value of such share, as determined by an independent appraisal, exclusive of liquidity or minority ownership discounts, performed by an independent third party mutually agreeable to the holder and the Corporation (the total amount of such payment is hereafter referred to collectively, as the "**Redemption Price**"). Such amount shall be paid in cash to the extent of three-quarters of the Corporation's available cash flow (EBITDA, as determined in accordance with generally accepted accounting principles) for the four fiscal quarters immediately preceding the fiscal quarter in which such redemption is requested, and the balance shall be paid in the form of a two year promissory note, payable in equal quarterly installments and bearing interest at an annual rate equal to 8%. If the Corporation fails or is unable to honor such redemption demand, and notwithstanding anything in Section 7 hereof to the contrary, the holders of a majority of the then outstanding Preferred Stock shall be entitled to elect a majority of the Board until such redemption is completed, in addition to their other available legal remedies. Written notice must be provided at least sixty (60) days prior to the applicable Redemption Date for the redemption of shares of Preferred Stock in accordance with the subsection immediately hereafter.

(b) At least thirty (30) days prior to each Redemption Date, after notice has been given by a holder initiating a request for redemption, written notice shall be mailed, first class postage prepaid, to such holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, specifying the number of shares to be redeemed from such holder, the applicable Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the price designated, his, her or its certificate or certificates representing the shares to be redeemed (the "**Redemption Notice**"). Except as provided herein, on or after the

applicable Redemption Date, such holder of Preferred Stock to be redeemed at such time shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the price designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event fewer than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after the applicable Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Preferred Stock designated for redemption in the Redemption Notice as holders of Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares at such time, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Preferred Stock to be redeemed on each such date, those funds that are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Preferred Stock. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Preferred Stock, such funds will immediately be used to redeem the balance of the shares that the Corporation has become obligated to redeem on any Redemption Date but that it has not redeemed.

9. **Notices of Record Date.** In the event that the Corporation shall propose at any time:

(a) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(b) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(c) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(d) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up, then, in connection with each such event, the Corporation shall send to the holders of the Series A Preferred:

(i) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the

date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (c) and (d) above; and

(ii) in the case of the matters referred to in (c) and (d) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of the Preferred Stock at the address for each such holder as shown on the books of this Corporation.

#### 10. *Protective Provisions.*

(a) In addition to any other rights provided by law, so long as the Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of Preferred Stock, voting together as a single class:

- (i) amend or repeal any provision of the Corporation's Certificate of Incorporation or Bylaws;
- (ii) alter or change the rights, preferences, or privileges of the Preferred Stock;
- (iii) authorize or issue shares of any class of stock having any preference or priority as to dividends or assets superior to, or on a parity with, either series of Preferred Stock;
- (iv) sell, convey, liquidate, or otherwise dispose of or encumber all or a substantial portion of its property or business, or merge with or into or consolidate with any other corporation (other than a wholly owned subsidiary corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of;
- (v) increase the authorized number of shares of either series of Preferred Stock or the Preferred Stock generally;
- (vi) change the nature of the Corporation's business; or
- (vii) authorize any amounts of indebtedness or guarantees which in the aggregate exceed \$500,000.

(b) In addition to the provisions of clause (a) above, the Corporation shall not, without first obtaining the affirmative note or written consent of the holders of not less than a majority of the Series A Preferred Stock, take the actions set forth in (1) clause (ii) above,



if such action would have an adverse effect on the holders of the Series A Preferred Stock or (2) clause (iii) or (v) above.

(c) In addition to the provisions of clause (a) above, the Corporation shall not, without first obtaining the affirmative note or written consent of the holders of not less than a majority of the Series B Preferred Stock, take the actions set forth in (1) clause (ii) above, if such action would have an adverse effect on the holders of the Series B Preferred Stock or (2) clause (iii) or (v) above.

#### **11. *Limitations on Reissuance.***

No share or shares of 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.

### **ARTICLE V**

The Board of Directors may authorize the issuance from time to time of shares of Preferred Stock in one or more classes or series and with designations, voting rights, preferences, and special rights, if any, as the Board of Directors may fix by resolution.

### **ARTICLE VI**

Shareholders of the corporation shall not have the right to cumulate their votes for the election of directors of the corporation

### **ARTICLE VII**

Elections of directors need not be by written ballot.

### **ARTICLE VIII**

The Board of Directors shall have the power, in addition to the stockholders, to make, alter, or repeal the bylaws of the corporation.

### **ARTICLE IX**

A director of the corporation shall not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. All references in this paragraph to a director shall also be deemed to refer to such other person or persons, if any, who, pursuant to any provision of this Certificate of Incorporation in accordance with subsection (a) of Section 141 of Title 8 of the Delaware Code, exercise or perform any of the powers or

duties otherwise conferred or imposed upon the board of directors by Title 8 of the Delaware Code.

#### **ARTICLE X**

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

I, THE UNDERSIGNED, being a duly authorized officer of the Corporation, do hereby make this certificate, hereby declaring and certifying that this is my act and deed and that the facts herein stated are true, and accordingly have hereunto set my hand this 28th day of April, 2000.

A handwritten signature in black ink, appearing to read 'John Pino', written over a horizontal line.

John Pino  
Secretary and Treasurer