

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Builders Information Group, Inc.		12/31/2007	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	BidClerk, Inc.		
Street Address:	28 North Clark Street, Suite 450		
City:	Chicago		
State/Country:	ILLINOIS		
Postal Code:	60602		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3228332	BIDCLERK	
CORRESPONDENCE DATA			
Fax Number:	6127661600		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	6127667901		
Email:	tmmpis@FaegreBD.com		
Correspondent Name:	Faegre Baker Daniels LLP		
Address Line 1:	90 S. Seventh Street		
Address Line 2:	2200 Wells Fargo Center		
Address Line 4:	Minneapolis, MINNESOTA 55402-3901		
ATTORNEY DOCKET NUMBER:	480522.NEW		
NAME OF SUBMITTER:	Dianna L. Gould, Paralegal		
Signature:	/dlg/		

OP \$40.00 3228332

Date:

05/29/2013

Total Attachments: 15

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Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "BUILDERS INFORMATION GROUP, INC.", CHANGING ITS NAME FROM "BUILDERS INFORMATION GROUP, INC." TO "BIDCLERK, INC.", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2007, AT 6:42 O'CLOCK P.M.

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

3501089 8100

071379211

You may verify this certificate online
at corp.delaware.gov/authver.shtml



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6280123

DATE: 01-03-08

TRADEMARK
REEL: 005037 FRAME: 0064

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:40 PM 12/31/2007
FILED 06:42 PM 12/31/2007
SRV 071379211 - 3501089 FILE

**THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BUILDERS INFORMATION GROUP, INC.,
a Delaware Corporation**

The undersigned does hereby certify on behalf of Builders Information Group, Inc. (the "**Corporation**"), a corporation organized and existing under the Delaware General Corporation Law, as follows:

FIRST: That the undersigned is the duly elected and acting Chief Executive Officer of the Corporation.

SECOND: That the Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware on March 13, 2002 under the name "Builders Information Group, Inc."

THIRD: That pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, the Certificate of Incorporation of the Corporation, as amended to the date of the filing of this certificate, is hereby amended and restated in its entirety as set forth in Exhibit A hereto.

FOURTH: That the Third Amended and Restated Certificate of Incorporation of this Corporation as set forth in Exhibit A hereto has been duly adopted and approved by the Board of Directors and stockholders of this Corporation in accordance with the applicable provisions of Sections 141, 228, 242 and 245 of the Delaware General Corporation Law.

The undersigned hereby further declares and certifies under penalty of perjury that the facts set forth in the foregoing certificate are true and correct to the knowledge of the undersigned, and that this certificate is the act and deed of the undersigned.

Executed in Chicago, Illinois on this 31st day of December, 2007.

By: /s/ Michael G. Gaynor
Michael G. Gaynor
Chief Executive Officer

**THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BUILDERS INFORMATION GROUP, INC.,
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THIRD: That pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, the Certificate of Incorporation of the Corporation, as amended to the date of the filing of this certificate, is hereby amended and restated in its entirety as set forth in Exhibit A hereto.

FOURTH: That the Third Amended and Restated Certificate of Incorporation of this Corporation as set forth in Exhibit A hereto has been duly adopted and approved by the Board of Directors and stockholders of this Corporation in accordance with the applicable provisions of Sections 141, 228, 242 and 245 of the Delaware General Corporation Law.

The undersigned hereby further declares and certifies under penalty of perjury that the facts set forth in the foregoing certificate are true and correct to the knowledge of the undersigned, and that this certificate is the act and deed of the undersigned.

Executed in Chicago, Illinois on this 31st day of December, 2007.



By: _____
Michael G. Gaynor
Chief Executive Officer

EXHIBIT A

ARTICLE I

The name of this Corporation is BidClerk, Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 15 East North Street, City of Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

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

ARTICLE IV

(A) Classes of Capital Stock

This Corporation is authorized to issue 84,300,000 shares of capital stock in the aggregate. The capital stock of this Corporation shall be divided into two classes, designated "*Common Stock*" and "*Preferred Stock*." The number of shares of Common Stock the Corporation is authorized to issue is 47,000,000. The number of shares of Preferred Stock the Corporation is authorized to issue is 37,300,000, 4,200,000 of which shall be designated as Series A Preferred Stock ("*Series A Preferred*") and 33,100,000 of which shall be designated as Series B Preferred Stock ("*Series B Preferred*"). The Common Stock and Preferred Stock shall each have a par value of \$0.001 per share. The Corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock.

(B) Rights, Preferences, Privileges and Restrictions of Preferred Stock

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

1. Dividends

(a) The holders of Series A Preferred and Series B Preferred shall be entitled to receive dividends at the rate of \$0.024 and \$0.000968 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, respectively, payable out of funds legally available therefor. Such dividends shall be payable when, as, and if declared by the Board of Directors, acting in its sole discretion. The right to receive dividends shall not be cumulative, and no right shall accrue to holders of any shares by reason of the fact that dividends on such shares are not declared and paid in any prior year. No dividend shall be paid or declared and set aside in any period with respect to any series of Preferred Stock unless and until a dividend has been paid or declared and set aside for payment in such year with respect to each other series of Preferred Stock, ratably in proportion to the stated annual dividend rates for such series of Preferred Stock.

(b) No dividend shall be paid or declared and set aside in any period with respect to the Common Stock unless and until dividends have been paid or declared and set aside for payment in such year with respect to every outstanding series of Preferred Stock in an amount for each such series of Preferred Stock equal to the annual dividend rates stated above. After payment of dividends at the annual rates set forth above, any additional dividends declared shall be distributed among all holders of Preferred Stock and Common Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted into Common Stock pursuant to Section 3 hereof.

2. Liquidation

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred and Series B Preferred 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 the Common Stock, the amount of \$0.30 and \$0.0121 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), respectively, plus all accrued or declared but unpaid dividends on such shares. If the assets and funds available for distribution to the holders of the Preferred Stock shall be insufficient to pay the stated preferential amounts in full, then the entire assets and funds of the Corporation legally available for distribution shall be distributed to the holders of the Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive. After payment in full of the preferential amounts has been made to the holders of the Preferred Stock, all remaining assets of the Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock and the Preferred Stock in proportion to the number of Shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted into Common Stock pursuant to Section 3 hereof, provided, however, that the total amount that may be distributed to the holders of Series A Preferred Stock pursuant to this Section 2 shall not exceed \$0.90 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) and the total amount that may be distributed to the holders of Series B Preferred Stock pursuant to this Section 2 shall not exceed \$0.0363 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued but unpaid dividends thereon.

(b) After payment in full of the preferential amounts has been made to the holders of the Preferred Stock and the Common Stock as set forth above, all remaining assets of the Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock.

(c) For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to include (i) the Corporation's sale of all or substantially all of its assets, and (ii) the acquisition of the Corporation by another entity (other than a reincorporation for the purpose of changing the Corporation's domicile) by means of merger or other form of corporate reorganization in which the outstanding shares of this Corporation are exchanged for securities or other consideration issued by or on behalf of the acquiring corporation as a result of which the stockholders of the Corporation immediately prior to such transaction hold less than fifty percent of the voting power of the surviving or resulting corporation.

(d) The value of any securities to be delivered to the stockholders pursuant to this Section 2 shall be determined as follows:

(i) If listed on a national securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the ten day period ending two 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 ten day period ending two days prior to the closing; and

(iii) If there is no active public market, the value shall be the fair market value thereof as determined in good faith by the Corporation's board of directors.

(e) Notwithstanding Section 1 above and this Section 2, the Corporation may at any time, out of funds legally available for such purpose, repurchase shares of Common Stock issued to or held by officers, directors, employees or other service providers upon termination of their employment or services pursuant to agreements providing the Corporation such a right of repurchase, whether or not all declared or accrued dividends have been paid or set aside for payment and whether or not all Preferred Stock required to be redeemed by the Corporation has been redeemed or funds set aside for such purpose.

3. Conversion

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price for that series of Preferred Stock by the then effective Conversion Price for that series of Preferred Stock (such result, the "*Conversion Rate*"). The Series A Original Issue Price and the Series B Original Issue

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate for such series (i) with the approval, by affirmative vote, written consent, or agreement, of the holders of more than a majority of the outstanding Preferred Stock, voting together as one class, or (ii) upon the effectiveness of a registration statement filed by the Corporation under the Securities Act of 1933, as amended, covering the initial offer and sale of Common Stock for the account of the Corporation to the public at a price per share (prior to underwriter commissions and offering expenses) of not less than \$1.50 per share (appropriately adjusted for any stock dividends, combinations and splits) and an aggregate offering price to the public of not less than \$10,000,000 (prior to deduction of underwriter commissions and offering expenses) (a "*Qualified IPO*").

(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 Conversion Price for such series of Preferred Stock. Conversion of Preferred Stock at the option of the holder thereof shall be effected by delivery, to the office of the Corporation or to any transfer agent for such shares, of duly endorsed certificates for the shares being converted and of written notice to the Corporation that the holder elects to convert such shares. Conversion shall be deemed to occur immediately prior to the close of business on the date the shares and notice are delivered. Automatic conversion of the Preferred Stock pursuant to this section shall be effective without any further action on the part of the holders of such shares and shall be effective whether or not the certificates for such shares are surrendered to the Corporation or its transfer agent. Holders entitled to receive Common Stock upon conversion of Preferred Stock shall be treated for all purposes as the record holders of such shares of Common Stock on the date conversion is deemed

to occur. The Corporation shall not be obligated to issue certificates evidencing shares of Common Stock issuable upon conversion of Preferred Stock unless either (i) the certificates evidencing such shares being converted are delivered to the Corporation or its transfer agent as provided above, or (ii) the holder (A) notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and (B) executes an agreement, and at the Corporation's election provides a surety bond or other security, satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after the delivery of such certificates, or the agreement to indemnify in the case of a lost certificate, issue and deliver at such office to the holder of the shares of Preferred Stock being converted, a certificate or certificates for the number of shares of Common Stock to which the holder is entitled and a check payable to the holder for any cash due with respect to fractional shares.

(d) **Adjustments of Conversion Price, for Certain Diluting Issuances, Splits and Combinations.** The applicable Conversion Price for each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock below the Conversion Price.** If the Corporation issues Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(i)(D)) without consideration or for a consideration per share less than the Conversion Price for any series of Preferred Stock in effect immediately prior to such issue, then and in such event, such Conversion Price for such series shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) as set forth herein, unless otherwise provided in this Section 3.

(A) **Adjustment Formula.** Whenever the Conversion Price for a given series of Preferred Stock is adjusted pursuant to this Section 3(d)(i), the new Conversion Price for such series shall be determined by multiplying the Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (the "*Common Stock Outstanding*") 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 the Conversion Price in effect immediately prior to such issue, 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. For the purpose of this paragraph, the number of shares of Common Stock Outstanding shall be deemed to include the Common Stock issuable upon conversion of all outstanding Preferred Stock, upon conversion of all other outstanding Convertible Securities and upon exercise of all outstanding Options (and assuming conversion of Convertible Securities issuable upon exercise of Options).

(B) **Special Definitions.** For purposes of this Section 3, the following definitions shall apply:

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

(2) "*Original Issue Date*" shall mean with respect to a series of Preferred Stock the date on which the first share of such series of Preferred Stock was issued.

(3) "*Convertible Securities*" shall mean instruments of indebtedness or securities convertible into or exchangeable for Common Stock.

(4) ***“Additional Shares of Common Stock”*** for any series of Preferred Stock shall mean all shares of Common Stock issued (or, pursuant to Section 3(d)(i)(D), deemed to be issued) by the Corporation after the Original Issue Date for such series, other than as follows:

(I) upon conversion of shares of Preferred Stock;

(II) capital stock, or options or warrants to purchase capital stock issued to officers, directors, employees of and service providers to the Corporation pursuant to plans and arrangements approved by the Board of Directors, including without limitation non-plan options exercisable for Series B Preferred approved by the Board of Directors on or about the date the Second Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware;

(III) as a dividend or other distribution on the Preferred Stock or any event for which adjustment is made pursuant to Section 3(d)(i), (e) or (f);

(IV) upon the exercise or conversion of outstanding options or warrants;

(V) capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with bona fide commercial credit arrangements, equipment financings, real property leases, or similar transactions, the terms of which have been approved by the Board of Directors of the Corporation;

(VI) capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with strategic collaborations, development agreements or licensing transactions, the terms of which have been approved by the Board of Directors of the Corporation;

(VII) capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation;

(VIII) shares of capital stock issued or issuable in a public offering;

(IX) by way of dividend or other distributions on securities referred to in subsections (I) through (VIII) above; and

(X) shares of Series B Preferred sold and issued by the Corporation on or about the date the Second Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware.

(C) **No Adjustment of Conversion Price.** No adjustment in the Conversion Price for a series of 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 Conversion Price in effect for such series immediately prior to such issue. Notwithstanding the foregoing, any adjustment of the Conversion Price for any series of Preferred Stock pursuant to this Section 3(d)(i) may be waived in writing either prospectively or retroactively, and either generally or in a particular instance, by any holder thereof. Any waiver hereunder shall be binding on all future holders of the shares of Preferred Stock with

respect to which adjustments hereunder have been waived. In the event that a waiver hereunder results in multiple Conversion Prices for a given series of Preferred Stock, the Secretary of the Corporation shall maintain a written ledger identifying the Conversion Price for the shares of Preferred Stock held by each stockholder. For the purpose of determining future adjustments to the Conversion Price, the Conversion Price of shares of a particular series of Preferred Stock with respect to which adjustments hereunder have been waived shall be the lowest Conversion Price in effect with respect to any share of that series of Preferred Stock.

(D) Deemed Issue of Additional Shares of Common Stock. If the Corporation at any time after the Original Issue Date for a series of Preferred Stock shall issue any Options or Convertible Securities or shall fix a record date for the determination of any 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) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities or for Preferred Stock, the conversion or exchange of such Convertible Securities or Preferred Stock, 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 in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustment in the Conversion Price for any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities, or shares of Preferred Stock or Common Stock issued upon the exercise of such Options or conversion or exchange of such Convertible Securities or Preferred Stock;

(2) 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 for each affected series of Preferred Stock 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;

(3) 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 for each affected series of Preferred Stock 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:

(i) 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

(II) in the case of Options for Convertible Securities or Preferred Stock, only the Convertible Securities or Preferred Stock, 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;

(4) no readjustment pursuant to subsections (2) or (3) above shall have the effect of increasing the Conversion Price for any series of Preferred Stock to an amount which exceeds the lower of (x) the Conversion Price for such series of Preferred Stock, on the original adjustment date, or (y) the Conversion Price for such series of Preferred Stock that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date, and no readjustment shall affect Common Stock issued on conversion of Preferred Stock prior to such readjustment; and

(5) in the case of any Options which expire by their terms not more than 90 days after the date of issue thereof, no adjustment of the Conversion Price for any series of Preferred Stock shall be made until the expiration or exercise of all such Options.

(E) **Determination of Consideration.** For purposes of this Section 3(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

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

(I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation prior to amounts paid or payable for accrued interest or accrued dividends and prior to any commissions or expenses paid by the Corporation;

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

(III) if 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, computed as provided in subsections (I) and (II) above, as determined in good faith by the Board of Directors.

(2) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(d)(i)(D), relating to Options and Convertible Securities, shall be determined by dividing:

(I) 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 Option 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

(II) 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.

(II) **Adjustments for Stock Dividends, Combinations or Splits.** If the outstanding shares of Common Stock are subdivided, by stock split or otherwise, into a greater number of shares of Common Stock, or if the Corporation shall declare or pay any dividend on the Common Stock payable in shares of Common Stock, then the Conversion Prices in effect prior to such event shall be proportionately decreased upon the occurrence of such event. If the outstanding shares of Common Stock are combined or consolidated, by reclassification, reverse stock split or otherwise, into a lesser number of shares of Common Stock, then the Conversion Prices in effect prior to such event shall be proportionately increased upon the occurrence of such event.

(e) **Adjustments for Other Distributions.** If the Corporation fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities of the Corporation other than shares of Common Stock (excluding any distribution in which the Preferred Stock participates on an as-converted basis, and any distribution for which adjustment is otherwise made pursuant to this Section 3), then in each such case provision shall be made so that the holders of Preferred Stock receive upon conversion, in addition to the Common Stock issuable upon conversion of their shares, the property or other securities of the Corporation which they would have received had their shares of Preferred Stock been converted into Common Stock immediately prior to such event and had they thereafter retained such securities, subject to all other adjustments called for during such period under this Section 3.

(f) **Adjustments for Reclassification, Exchange and Substitution.** If the Common Stock is changed into the same or a different number of shares of any other class or series of stock, whether by capital reorganization, reclassification or otherwise (other than an event treated under Section 2 as a liquidation, dissolution or winding up, and events for which adjustment is made pursuant to Section 3(d)(ii) or 3(e) above), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be adjusted such that the Preferred Stock shall be convertible into, in lieu of the Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or series of stock equivalent to the number of shares of Common Stock that the holders would have been entitled to receive upon conversion of their Preferred Stock immediately prior to such reclassification or capital reorganization.

(g) **No Impairment.** The Corporation will not without first obtaining the consent of the holders of a majority of the outstanding shares of each affected series of Preferred stock avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 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.

(h) **Certificate as to Adjustments.** The Corporation shall promptly compute each Conversion Price adjustment and provide each holder of Preferred Stock a certificate describing such adjustment and showing in detail the facts upon which such adjustment is based. If requested in writing by any holder of Preferred Stock, the Corporation shall provide such holder a certificate describing any Conversion Price adjustments, the current Conversion Price and the amount of Common Stock or other property issuable upon conversion of the particular series of Preferred Stock.

(i) **Notices of Record Date.** If the Corporation shall propose at any time:

(A) to declare any dividend or distribution upon its Common Stock other than a distribution payable solely in Common Stock;

(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; 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 Preferred Stock:

(1) at least 10 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

(2) in the case of the matters referred to in (C) and (D) above, at least 10 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 Preferred Stock at the addresses for such stockholders as shown on the books of this Corporation.

4. **Voting**

Except as expressly provided by this Certificate of Incorporation or as required by law, the holders of Preferred Stock shall have the same voting rights as the holders of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and the holders of Common Stock and the Preferred Stock shall vote together as a single class on all matters. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held, and each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could then be converted. Fractional votes shall not be permitted. Any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

For so long as shares of Preferred Stock remain outstanding (as adjusted for stock dividends, combinations and splits), the holders thereof, voting together as a single class on an as-converted basis, shall be entitled to elect two members of the Board of Directors. The holders of Common Stock (excluding shares of Preferred Stock that have not been converted into Common Stock), voting separately as a single class, shall be entitled to elect two members of the Board of Directors. The remaining member(s) of the Board of Directors shall be elected by the holders of the Common Stock, voting separately as a single class, and the holders of the Preferred Stock, voting separately as a single class.

5. Protective Provisions

(a) For so long as shares of Preferred Stock remain outstanding (as adjusted for stock dividends, combinations and splits), this Corporation shall not, without the approval of the holders of at least a majority of the Preferred Stock voting together as a single class on an as-converted basis take any action that:

(i) alters or changes the rights, preferences or privileges of the Preferred Stock;

(ii) increases or decreases the number of authorized shares of Preferred Stock;

(iii) creates (by reclassification or otherwise) any new class or series of securities having rights, preferences or privileges senior to or on a parity with the Preferred Stock;

(iv) amends or waives any provision of the Corporation's certificate of incorporation or bylaws;

(v) redeems or repurchases shares (excluding repurchases of Common Stock upon termination of an officer, employee, director or consultant pursuant to an option agreement or restricted stock purchase agreement);

(vi) authorizes or obligates the Corporation to pay any dividend or make any other distribution in respect of the Corporation's capital stock (other than a dividend payable solely in shares of Common Stock);

(vii) increases or decreases the authorized size of the Corporation's Board of Directors; and

(viii) effects a liquidation, dissolution or winding up of the Corporation or any of the events contemplated by Section 2(a) and (c) hereof.

(b) For so long as shares of Series A Preferred remain outstanding (as adjusted for stock dividends, combinations and splits), this Corporation shall not, without the approval of the holders of at least a majority of the Series A Preferred voting as a separate class take any action that amends or

6. Status of Converted Shares

In the event any shares of Preferred Stock shall be converted pursuant to Section 3 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) Rights, Preferences, Privileges and Restrictions of Common Stock

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock or the holders thereof are as follows:

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

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

3. **Redemption.** The Common Stock is not redeemable other than at cost in connection with the termination of service.

4. **Voting.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

(C) Neither any amendment nor repeal of this Article V, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article V, shall eliminate or reduce the effect of this Article V in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article V, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE VI

Subject to Section 4 of Division (B) of Article IV, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation, but the stockholders may make additional Bylaws and may alter or repeal any Bylaw whether adopted by them or otherwise.

ARTICLE VII

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VIII

The Corporation is to have perpetual existence.

ARTICLE IX

The number of directors which will constitute the whole Board of Directors shall be designated in the Bylaws of the Corporation.

ARTICLE X

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any statutory provision) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors in the Bylaws of the Corporation.

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