

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM336218

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	MERGER AND CHANGE OF NAME
<b>EFFECTIVE DATE:</b>	09/19/2001

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Express Messenger Systems, Inc.		09/19/2001	CORPORATION: MINNESOTA

**NEWLY MERGED ENTITY DATA**

Name	Execution Date	Entity Type
EMS Corp.	09/19/2001	CORPORATION: DELAWARE

**MERGED ENTITY'S NEW NAME (RECEIVING PARTY)**

<b>Name:</b>	Express Messenger Systems, Inc.
<b>Street Address:</b>	2501 S. Price Road
<b>Internal Address:</b>	Suite 201
<b>City:</b>	Chandler
<b>State/Country:</b>	ARIZONA
<b>Postal Code:</b>	85286
<b>Entity Type:</b>	CORPORATION: DELAWARE

**PROPERTY NUMBERS Total: 8**

Property Type	Number	Word Mark
<b>Registration Number:</b>	2149223	SELECTMAIL
<b>Registration Number:</b>	2092245	EMI
<b>Registration Number:</b>	2161258	EXPRESS MESSENGER INTERNATIONAL
<b>Registration Number:</b>	2183866	EMI EXPRESS MESSENGER INTERNATIONAL
<b>Registration Number:</b>	2578112	CALIFORNIA OVERNIGHT
<b>Registration Number:</b>	2591082	CALIFORNIA OVERNIGHT
<b>Registration Number:</b>	1455687	EXPRESS MESSENGER
<b>Registration Number:</b>	1458648	EM

**CORRESPONDENCE DATA**

Fax Number: 4153584770

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.*

OP \$215.00 2149223

**Phone:** (415) 956-2600  
**Email:** frank@schwartz-cera.com  
**Correspondent Name:** Frank J. Gilbert  
**Address Line 1:** 201 California Street  
**Address Line 2:** Suite 450  
**Address Line 4:** San Francisco, CALIFORNIA 94111

**NAME OF SUBMITTER:** Frank J. Gilbert

**SIGNATURE:** /frank.j.gilbert/

**DATE SIGNED:** 03/25/2015

**Total Attachments: 18**

source=Filed Certificate of Merger - EXP#page1.tif  
source=Filed Certificate of Merger - EXP#page2.tif  
source=Filed Certificate of Merger - EXP#page3.tif  
source=Filed Certificate of Merger - EXP#page4.tif  
source=Filed Certificate of Merger - EXP#page5.tif  
source=Filed Certificate of Merger - EXP#page6.tif  
source=Filed Certificate of Merger - EXP#page7.tif  
source=Filed Certificate of Merger - EXP#page8.tif  
source=Filed Certificate of Merger - EXP#page9.tif  
source=Filed Certificate of Merger - EXP#page10.tif  
source=Filed Amendment to Cert of Incorporation - EXP#page1.tif  
source=Filed Amendment to Cert of Incorporation - EXP#page2.tif  
source=Filed Amendment to Cert of Incorporation - EXP#page3.tif  
source=Filed Amendment to Cert of Incorporation - EXP#page4.tif  
source=Filed Amendment to Cert of Incorporation - EXP#page5.tif  
source=Filed Amendment to Cert of Incorporation - EXP#page6.tif  
source=Filed Amendment to Cert of Incorporation - EXP#page7.tif  
source=Filed Amendment to Cert of Incorporation - EXP#page8.tif

*State of Delaware*  
*Office of the Secretary of State* PAGE 1

---

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 OWNERSHIP, WHICH MERGES:

"EXPRESS MESSENGER SYSTEMS, INC.", A MINNESOTA CORPORATION, WITH AND INTO "EMS CORP." UNDER THE NAME OF "EMS CORP.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINETEENTH DAY OF SEPTEMBER, A.D. 2001, AT 5 O'CLOCK P.M.

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



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

2034717 8100M

AUTHENTICATION: 1349556

010464611

DATE: 09-19-01

**TRADEMARK**  
**REEL: 005485 FRAME: 0621**

**CERTIFICATE OF OWNERSHIP AND MERGER**  
**MERGING**  
**EXPRESS MESSENGER SYSTEMS, INC.**  
**a Minnesota corporation,**  
**INTO**  
**EMS CORP.,**  
**a Delaware corporation**

EMS Corp., a corporation organized and existing under the laws of the State of Delaware ("Parent Corporation"), **DOES HEREBY CERTIFY:**

**FIRST:** That this corporation was incorporated on the 7<sup>th</sup> day of May, 1984, pursuant to the Delaware General Corporation Law.

**SECOND:** That this corporation owns all of the issued and outstanding shares of the capital stock of Express Messenger Systems, Inc., a corporation incorporated on the 28<sup>th</sup> day of August, 1980, pursuant to the Minnesota Business Corporation Act ("Subsidiary Corporation").

**THIRD:** That the laws of the State under which the foreign Subsidiary Corporation is incorporated permit such merger.

**FOURTH:** That this corporation, by the resolutions of its Board of Directors, duly adopted by the unanimous written consent of its members, dated as of September 19, 2001, filed with the Minutes of the Board and attached hereto as Exhibit A, determined to merge into itself said Subsidiary Corporation.

**FIFTH:** Anything herein or elsewhere to the contrary notwithstanding, this merger may be amended or terminated and abandoned by the Board of Directors of Parent Corporation at any time prior to the time that this merger being filed with the Offices of the Secretary of State of the States of Minnesota and Delaware becomes effective.

**IN WITNESS WHEREOF,** said EMS Corp. has caused this Certificate to be signed by L. David Callaway III, its President, this 19<sup>th</sup> day of September, 2001.

EMS CORP

By: L. David Callaway III  
Name: L. David Callaway, III  
Title: PRESIDENT

**EXHIBIT A****RESOLUTIONS ADOPTED BY THE  
BOARD OF DIRECTORS OF  
EMS CORP.  
BY UNANIMOUS WRITTEN CONSENT****LIQUIDATION OF EXPRESS MESSENGER SYSTEMS, INC. BY MERGER INTO EMS  
CORP.**

**RESOLVED**, that the Board of Directors of EMS Corp., a Delaware corporation (the "Company"), deems it advisable and in the best interest of the Company that Express Messenger Systems, Inc., a Minnesota corporation and a wholly-owned subsidiary of the Company ("Express") be liquidated by merger (the "Merger") into the Company upon the terms and conditions set forth in the Plan of Merger and Complete Liquidation (the "Plan of Merger") with regard to the Company and Express attached hereto as Exhibit 1.

**RESOLVED**, that the Board of Directors of the Company deems it advisable and in the best interest of the Company that as of the Effective Time as defined in the Plan of Merger, the Company assume sponsorship of the Express Messenger Systems, Inc. 1997 Stock Option Plan (the "Option Plan") and further that after the Recapitalization (as that term is defined in the Securities Transfer, Recapitalization and Holders Agreement by and among the Company, Citicorp Venture Capital, Ltd., a New York corporation, and Citicorp Mezzanine III, L.P., a Delaware limited partnership) has been completed, the Option Plan be amended and restated in the form attached hereto as Exhibit 2.

**RESOLVED**, that the form, terms and provisions of the Plan of Merger providing for (i) the Merger; (ii) the transfer to and the vesting in the Company of all of the property, rights, interests and other assets of Express; (iii) the assumption of all outstanding stock options granted under the provisions of the Option Plan and (iv) the assumption by the Company of the liabilities and obligations of Express be, and hereby are, approved and adopted; and that the proper officers of the Company be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Company, and under its corporate seal or otherwise, to execute, deliver and perform the Plan of Merger in substantially the form and substance attached hereto as Exhibit 3, with such changes therein and modifications thereto as such officers shall, in their sole discretion, deem necessary or advisable, such execution, delivery and performance to be conclusive evidence of such approval on behalf of the Company.

**RESOLVED**, that the proper officers of the Company be, and each of them hereby is, authorized, empowered and directed to execute and file with the Offices of the Secretary of State of the States of Delaware and Minnesota a Certificate of Ownership and Merger and Articles of Merger, respectively, effecting the Merger.

**RESOLVED**, that the proper officers of the Company be, and each of them hereby is, in the name and on behalf of the Company, and under its corporate seal or otherwise, authorized

empowered and directed to take, or cause to be taken, all such further actions in connection with the transactions contemplated by the foregoing resolutions, and to execute, deliver and perform, or cause to be executed, delivered and performed, all such documents, as they shall deem necessary or advisable to perform the Plan of Merger and otherwise to effectuate the intent and purposes of the foregoing resolutions and the transactions contemplated thereby.

**EXHIBIT 1****PLAN OF MERGER AND COMPLETE LIQUIDATION  
UNDER SECTION 332 OF THE INTERNAL REVENUE CODE**

This is a Plan of Merger and Complete Liquidation under Section 332 of the Internal Revenue Code of 1986, as amended (this "Plan") with regard to Express Messenger Systems, Inc., a Minnesota Corporation ("Express"), and EMS Corp., a Delaware Corporation and the owner of all of the issued and outstanding capital stock of Express ("EMS"). Express and EMS are sometimes collectively referred to herein as the "Constituent Corporations."

**RECITALS**

WHEREAS, Express is a corporation duly organized and existing under the laws of the State of Minnesota with authorized capital stock consisting of 3,000 shares of Common Stock, no par value per share (the "Express Stock"), of which 1,772 shares are issued and outstanding, all of which are owned by EMS;

WHEREAS, EMS is a corporation duly organized and existing under the laws of the State of Delaware, with authorized capital stock of 411,244 shares consisting of (1) 135,300 shares of preferred stock, par value \$ .10 per share, none of which are issued and outstanding, and (2) 275,944 shares of common stock, par value \$.01 per share, of which 163,503 shares are issued and outstanding (the "EMS Stock").

WHEREAS, the board of directors of EMS has determined that it is advisable and in the best interests of the Constituent Corporations that Express be liquidated by merger into

EMS on the terms and conditions set forth in this Plan and the board of directors of EMS has approved such liquidation by merger on the terms and conditions set forth in this Plan in accordance with the applicable provisions of the laws of the States of Minnesota and Delaware;

NOW, THEREFORE, in accordance with the applicable statutes of the States of Minnesota and Delaware, Express shall be and hereby is, as of the Effective Time (as hereinafter defined in Article V), merged into EMS (which corporation shall be the "Surviving Corporation") and that the terms and conditions of such merger (the "Merger"), the mode of carrying it into effect and the manner of conversion of shares of each Constituent Corporation shall be as follows:

#### ARTICLE I

#### MERGER

As of the Effective Time, Express shall be merged with and into EMS, the separate existence of Express shall cease, EMS shall continue in existence and the Merger shall in all respects have the effect provided for in Sections 302A.621, 302A.641 and 302A.651 of the Minnesota Business Corporation Act and Sections 253 and 259 of the Delaware General Corporation Law.

Prior to and from and after the Effective Time, the Constituent Corporations shall take all such actions as shall be necessary or appropriate in order to effectuate the Merger. In case at any time after the Effective Time the Surviving Corporation shall consider or be advised that any further assignments, conveyances or assurances in law are necessary or desirable to carry out the provisions hereof, the proper officers and directors of the Constituent Corporations



shall execute and deliver any and all proper deeds, assignments and assurances in law and do all things necessary or proper to carry out the provisions hereof.

## ARTICLE II

### CONVERSION OF SHARES

As of the Effective Time and by virtue thereof without any further action on the part of the respective boards of directors or stockholders of the Constituent Corporations, each share of Express Stock issued and outstanding immediately prior to the Merger (excluding any shares held in the treasury of Express, which such treasury shares shall cease to exist and shall be deemed cancelled and retired) shall be cancelled. No shares or other securities or other obligations of EMS or any other corporation shall be issued for the cancelled shares of Express. Each share of EMS Stock issued and outstanding will remain outstanding and be the only outstanding stock of the Surviving Corporation.

At the Effective Time, all rights with respect to Express Stock under each stock option (each such option an "Express Option") duly granted by Express pursuant to the Express Messenger Systems, Inc. 1997 Stock Option Plan (the "Option Plan") and then outstanding shall be converted into and become rights with respect to EMS voting common stock, par value \$.01 per share ("EMS Common Stock"), EMS shall assume the Option Plan and EMS shall assume each such Express Option in accordance with the terms of the Option Plan and the stock option agreement by which it is evidenced. From and after the Effective Time, (i) each Express Option assumed by EMS may be exercised solely for shares of EMS Common Stock, (ii) the number of shares of EMS Common Stock subject to each such Express Option shall be equal to the number

of shares of Express Stock subject to such Express Option immediately prior to the Effective Time multiplied by 29.03736 (the "Exchange Ratio") rounded up to the nearest hundredth, (iii) the per share exercise price under each such Express Option shall be adjusted by dividing the per share exercise price under such Express Option by the Exchange Ratio and (iv) any restriction on the exercise of any such Express Option shall continue in full force and effect and the term, exercisability, vesting schedule and other provisions of such Express Option shall otherwise remain unchanged; provided, that with respect to any Express Option that is an "incentive stock option" within the meaning of Section 422 of the Internal Revenue Code of 1986 as amended (the "Code"), the foregoing conversion shall be carried out in a manner satisfying the requirements of Section 424(a) of the Code. EMS will deliver to each holder of an outstanding Express Option a notice describing the assumption of the Express Option.

### ARTICLE III

#### CERTIFICATE OF INCORPORATION AND BYLAWS

From and after the Effective Time until amended as provided by law, the Certificate of Incorporation and Bylaws of EMS as in effect immediately prior to the Merger shall be and continue to be the Certificate of Incorporation and Bylaws, respectively, of the Surviving Corporation.

**ARTICLE IV****DIRECTORS AND OFFICERS**

The persons who are directors of EMS immediately prior to the Merger shall remain the directors of the Surviving Corporation and shall hold office as provided in the Certificate of Incorporation and Bylaws of the Surviving Corporation. The persons who are officers of Express immediately prior to the Merger shall remain the officers of the Surviving Corporation and shall hold office as provided in the Bylaws of the Surviving Corporation.

**ARTICLE V****TAX STATUS OF MERGER**

The Merger is a complete liquidation of Express, as defined in Section 332 of the Internal Revenue Code of 1986, as amended.

**ARTICLE VI****EFFECTIVENESS OF MERGER**

This Plan shall be executed, filed and recorded in accordance with the respective laws of the States of Minnesota and Delaware. The Merger shall become effective immediately upon the last to occur of such filings with the States of Minnesota and Delaware (the "Effective Time").

ARTICLE VII

TERMINATION

At any time prior to the filing of this Plan with the respective Secretaries of State of Minnesota and Delaware and notwithstanding favorable action on the Merger by the board of directors of EMS, the board of directors of EMS may terminate and abandon this Plan.

ARTICLE VIII

MISCELLANEOUS

Prior to the Effective Time, this Plan may be amended, modified or supplemented as determined by the board of directors of EMS. EMS, as the sole shareholder of Express, hereby waives the mailing to it of this Plan.

State of Delaware  
Office of the Secretary of State

---

PAGE 1

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 "EMS CORP.", CHANGING ITS NAME FROM "EMS CORP." TO "EXPRESS MESSENGER SYSTEMS, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF SEPTEMBER, A.D. 2001, AT 5:10 O'CLOCK P.M.

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



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

2034717 8100

AUTHENTICATION: 1351070

010464723

DATE: 09-20-01

TRADEMARK  
REEL: 005485 FRAME: 0631

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
EMS CORP.**

EMS Corp., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

**FIRST:** The name of the Corporation is hereby changed to Express Messenger Systems, Inc. The former name of the Corporation is BGD Corp., and BGD Corp. is the name under which the Corporation was originally incorporated; and the date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware is May 7, 1984.

**SECOND:** That by written consent of the board of directors of the Corporation dated September 19, 2001, a resolution was duly adopted setting forth a proposed amendment and restatement of the Certificate of Incorporation of the Corporation, declaring said amendment and restatement to be advisable and calling for consideration of said proposed amendment and restatement by the stockholders of the Corporation. The resolution setting forth the amendment and restatement is as follows:

RESOLVED, that the amendment and restatement of the Corporation's Certificate of Incorporation in the form attached hereto as Exhibit A is hereby declared advisable and approved and adopted and that it is hereby directed that such amendment and restatement be submitted for approval and adoption by the stockholders of the Corporation.

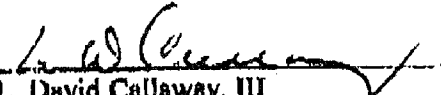
**THIRD:** That thereafter, pursuant to the resolution of the board of directors of the Corporation, the proposed amendment and restatement was approved by written consent, dated September 19, 2001, of the holders of a majority of the outstanding stock entitled to vote thereon.

**FOURTH:** That said amendment and restatement was duly adopted in accordance with the provisions of Section 242, 245 and 228 of the General Corporation Law of the State of Delaware.

SEP 19 2001 18:09 FR DECHERT  
FROM : CALLAWAY

215 994 2222 TO 913026555049 P.03/08  
FAX NO. : 310 071-7070 SEP. 19 2001 10:30:11 PM

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be executed by  
L. David Callaway, III, its President, this 17<sup>th</sup> day of September, 2001.

By:   
L. David Callaway, III  
President

**Exhibit A**

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
EXPRESS MESSENGER SYSTEMS, INC.

1. **Name.** The name of the Corporation is Express Messenger Systems, Inc.
2. **Registered Office and Agent.** The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801. The name of the Corporation's registered agent at such address is The Corporation Trust Company.
3. **Purpose.** The purposes for which the Corporation is formed are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware ("DGCL") and to possess and exercise all of the powers and privileges granted by such law and any other law of Delaware.
4. **Authorized Capital.** The aggregate number of shares of stock which the Corporation shall have authority to issue is 200,000 shares, divided into two (2) classes consisting of 100,000 shares of Class A Common Stock, par value \$.01 per share ("Class A Common Stock") and 100,000 shares of Class B Common Stock, par value \$.01 per share ("Class B Common Stock"). Class A Common Stock and Class B Common Stock are hereinafter sometimes collectively referred to as "Common Stock". Upon this Amended and Restated Certificate of Incorporation becoming effective pursuant to Delaware Law (the "Effective Time"), and except as otherwise provided in the Securities Transfer, Recapitalization and Holders Agreement, each share of common stock, par value \$.01 per share, of the Corporation outstanding immediately prior to the Effective Time (collectively, the "Existing Common Stock") shall without further action by the Corporation or the holder thereof be automatically reclassified and converted into one share of Class A Common Stock. Upon receipt of a share certificate representing any shares of Existing Common Stock, the secretary of the Corporation shall cancel such certificate and issue to the stockholder in whose name such certificate appears a certificate representing the same number of shares of Class A Common Stock, except as otherwise provided in the Securities Transfer, Recapitalization and Holders Agreement.

The following is a statement of the designations, preferences, qualifications, limitations, restrictions and the special or relative rights granted to or imposed upon the shares of each class of Common Stock. Except as otherwise provided herein or as otherwise required by applicable law, all shares of Class A Common Stock and Class B Common Stock shall be identical and shall entitle the holders thereof to the same rights, preferences and privileges.



(1) Voting Rights. The holders of Class A Common Stock shall be entitled to one vote per share on all matters to be voted on by stockholders of the Corporation, except as required by applicable law or as otherwise provided herein. Each holder of Class A Common Stock shall be entitled at all elections of directors to as many votes as shall equal the number of votes which such holder would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected, and such holder may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them as such holder may see fit, and to one vote for each share upon all other matters. Except as otherwise required by applicable law or as otherwise provided herein, the holders of Class B Common Stock shall have no right to vote on any matters to be voted on by stockholders of the Corporation.

(2) Dividends. Holders of Common Stock shall be entitled to receive ratably on a per share basis such dividends as may be declared or paid by the Board of Directors with respect to shares of Common Stock, whether in cash, property or securities of the Corporation; provided that if dividends are declared which are payable in shares of Class A Common Stock or Class B Common Stock, dividends shall be declared which are payable at the same rate on each class of Common Stock, and the dividends payable in shares of Class A Common Stock shall be payable to holders of Class A Common Stock and the dividends payable in shares of Class B Common Stock shall be payable to holders of Class B Common Stock.

(3) Conversion.

(a) Each record holder of Class B Common Stock shall be entitled to convert any or all of such holder's Class B Common Stock into the same number of shares of Class A Common Stock and each record holder of Class A Common Stock shall be entitled to convert any or all of such holder's Class A Common Stock into the same number of shares of Class B Common Stock; provided, however, that at the time of conversion of shares of Class B Common Stock into shares of Class A Common Stock such holder would be permitted, pursuant to applicable law, to hold the total number of shares of Class A Common Stock which it would hold after giving effect to such conversion; provided, further, that the determination of a holder of Common Stock that it is permitted under applicable law to convert shares of Class B Common Stock into shares of Class A Common Stock pursuant to this Article 4(3) shall be final and binding on the Corporation.

(b) Each conversion of shares of one class of Common Stock into shares of another class of Common Stock shall be effected by the surrender of the certificate or certificates representing the shares to be converted at the principal office of the Corporation at any time during normal business hours, together with a written notice by the holder of such shares stating the number of shares represented by such certificate or certificates that any such holder desires to convert into the other class of Common Stock. Such conversion shall be deemed to have been effected as of the close of business on the date on which such certificate or certificates have been surrendered and such notice has been received by the Corporation, and at such time the rights of any such holder with respect to the converted class of

Common Stock shall cease and the person or persons in whose name or names the certificate or certificates for shares of the other class of Common Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of such other class of Common Stock represented thereby.

(c) Promptly after such surrender and the receipt by the Corporation of the written notice from the holder hereinbefore referred to, the Corporation shall issue and deliver in accordance with the surrendering holder's instructions the certificate or certificates for the other class of Common Stock issuable upon such conversion and a certificate representing any shares of Common Stock which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted. The issuance of certificates for Class A Common Stock upon conversion of Class B Common Stock and for Class B Common Stock upon conversion of Class A Common Stock shall be made without charge to the holder or holders of such shares for any issuance tax (except stock transfer taxes) in respect thereof or other cost incurred by the Corporation in connection with such conversion.

(4) Transfers. The Corporation shall not close its books against the transfer of any share of Common Stock, or of any share of Common Stock issued or issuable upon conversion of shares of the other class of Common Stock, in any manner that would interfere with the timely conversion of such shares of Common Stock.

(5) Subdivision and Combinations of Shares. If the Corporation in any manner subdivides or combines the outstanding shares of one class of Common Stock, the outstanding shares of the other class of Common Stock shall be proportionately subdivided or combined.

(6) Reservation of Shares for Conversion. So long as any shares of any class of Common Stock are outstanding, the Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock and Class B Common Stock (or any shares of Class A Common Stock or Class B Common Stock which are held as treasury shares), solely for the purpose of issuance upon the conversion of the Class B Common Stock and Class A Common Stock, respectively, the number of shares sufficient for issuance upon conversion of the outstanding shares of Common Stock.

(7) Distribution of Assets. In the event of the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, holders of Common Stock shall be entitled to receive a pro rata portion, at the same rate per share of each class of Common Stock, of all of the remaining assets of the Corporation available for distribution to its stockholders based on the number of shares of Class A Common Stock and Class B Common Stock outstanding, after all amounts, if any, to which the holders of Preferred Stock are entitled have been paid or set aside in cash for payment.

(8) Merger, etc. In connection with any merger, consolidation, or recapitalization in which holders of Class A Common Stock generally receive, or are given the

opportunity to receive, consideration for their shares, all holders of Class B Common Stock shall receive or be given the opportunity to receive, as the case may be, the same form of consideration for their shares in the same amount per share as is received by holders of Class A Common Stock.

(9) Registration of Transfer. The Corporation shall keep at its principal office (or such other place as the Corporation reasonably designates) a register for the registration of shares of Common Stock. Upon the surrender of any certificate representing shares of any class of Common Stock at such place, the Corporation shall, at the request of the registered holder of such certificate (subject to compliance with applicable laws), execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Corporation forthwith shall cancel such surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares of such class as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate. The issuance of new certificates shall be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such issuance.

(10) Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of any class of Common Stock, and in the case of any such loss, theft, or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own agreement to indemnify the Company shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

(11) Notices. All notices referred to herein shall be in writing, shall be delivered personally or by first class mail, postage prepaid, and shall be deemed to have been given when so delivered or mailed to the Corporation at its principal executive offices and to any stockholder at such holder's address as it appears in the stock records of the Corporation (unless otherwise specified in a written notice to the Corporation by such holder).

(12) Definitions. The following terms, when used herein, shall have the meanings set forth below:

(a) "corporation" shall mean a corporation, partnership, business trust, unincorporated organization, association or joint stock company.

(b) "person" shall mean an individual, a corporation, partnership, trust, organization, joint venture, association, government or any department or agency thereof, or any other individual or entity.

(c) "Securities Transfer, Recapitalization and Holders Agreement" means the Securities Transfer, Recapitalization and Holders Agreement dated September 19, 2001 among the Corporation, Citicorp Venture Capital, Ltd., Citicorp Mezzanine III, L.P. and the other investors named therein.

5. Bylaws. In furtherance and not in limitation of the powers conferred by law, the Board of Directors of the Corporation is authorized to adopt, amend or repeal the bylaws of the Corporation, except as otherwise specifically provided therein, subject to the powers of the stockholders of the Corporation to amend or repeal any bylaws adopted by the Board of Directors.

6. Elections of Directors. Elections of directors need not be by written ballot unless and except to the extent the bylaws of the Corporation shall so provide.

7. Business Combinations with Interested Stockholders. The Corporation elects not to be governed by section 203 of the DGCL immediately upon filing of this certificate pursuant to DGCL section 203(b)(3).

8. Right to Amend. The Corporation reserves the right to amend or repeal any provision contained in this Amended and Restated Certificate of Incorporation as the same may from time to time be in effect in the manner now or hereafter prescribed by law, and all rights, preferences and privileges conferred on stockholders, directors or others hereunder are subject to such reservation.

9. Limitation on Liability. The directors of the Corporation shall be entitled to the benefits of all limitations on the liability of directors generally that are now or hereafter become available under the DGCL. Without limiting the generality of the foregoing, to the fullest extent permitted by the DGCL, as it exists on the date hereof or as it may hereafter be amended, no director of the Corporation shall be personally 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 DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Section 9 or any adoption of any provision of this Certificate of Incorporation inconsistent with this Section 9 shall be prospective only, and shall not affect, to the detriment of any director, any limitation on the personal liability of a director of the Corporation existing at the time of such repeal, modification or adoption.