

01-29-2001

FORM PTO-1594

REC

1.18-01



U.S. Department of Commerce  
Patent and Trademark Office  
Attorney Docket No. 06857.0012

To the Honorable Commissioner of Patents and Trademarks

101595942

Original documents or copy thereof.

1. Name(s) of conveying party(ies):  
Goodvest Corporation

Individual(s)  
 Association  
 Limited Partnership  
 Corporation  
 General Partnership  
 Other:

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

3. Nature of conveyance:

Assignment  
 Merger  
 Security Agreement  
 Change of Name  
 Other:

Execution Date: March 10, 1999

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

Name: e-Vend.net Corporation

Address: 500 N. Walnut Street, Suite 100  
Kennett Square, Pennsylvania 19348

Individual(s) [Identify Country of citizenship]  
 Association [Identify country/state]  
 General Partnership [Identify country/state]  
 Limited Partnership [Identify country/state]  
 Corporation of Delaware  
 Other: [Identify type of entity and country/state]

If assignee is not domiciled in the United States, a domestic representative is attached:  Yes  No

(Designation must be a separate document from Assignment)

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

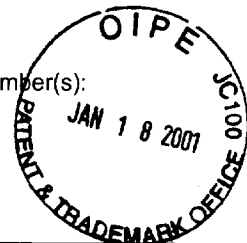
4. Application number(s) or registration number(s):

A. Trademark Application Number(s):  
75/635788

Additional numbers attached?  Yes  No

B. Trademark Registration Number(s):

Yes  No



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

Name: Lynn M. Jordan

Address: FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.  
1300 I Street, N.W.  
Washington, D.C. 20005-3515

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$40.00

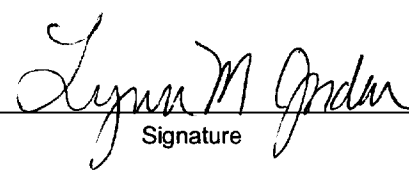
Enclosed  
 Authorized to be charged to deposit account  
 Authorized to be charged to deposit account only if fee is deficient

8. Deposit Account No.: 06-0916

DO NOT USE THIS SPACE

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Lynn M. Jordan  January 18, 2001

\_\_\_\_\_  
Name of person signing Signature Date

01/29/2001 DBYRNE 00000190 75635788  
01 FC:481 40.00 OP

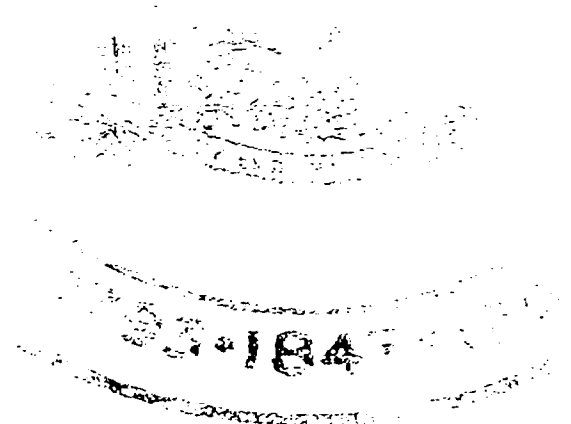
Total number of pages including cover sheet, attachments and documents: 20

State of Delaware

Office of the Secretary of State PAGE 1

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 "GOODVEST CORPORATION", CHANGING ITS NAME FROM "GOODVEST CORPORATION" TO "E-VEND.NET CORPORATION", FILED IN THIS OFFICE ON THE TENTH DAY OF MARCH, A.D. 1999, AT 9 O'CLOCK A.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

2598913 8100

991093392

AUTHENTICATION:

9620326

DATE:

03-10-99

Mar 10 09 01:29P e-Vend.net Corporation

STATE OF DELAWARE  
 610 925 SECRETARY OF STATE -02  
 DIVISION OF CORPORATIONS  
 FILED 09:00 AM 03/10/1999  
 991093392 - 2598913

**AMENDED AND RESTATED CERTIFICATE  
 OF INCORPORATION OF  
 GOODYEST CORPORATION**

a Delaware corporation, hereby certifies as follows:

1. The name of the corporation is Goodvest Corporation. The date of filing of its original Certificate of Incorporation with the Secretary of State was February 29, 1996.
2. This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Certificate of Incorporation of said corporation and has been duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law of the State of Delaware by written consent of the holders of all of the outstanding stock entitled to vote thereon in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.
3. The text of the Certificate of Incorporation is hereby amended and restated to read herein as set forth in full:

**FIRST.** The name of the Corporation is "e-Vend.net Corporation".

**SECOND.** The address of the Corporation's registered office is c/o RL&F Service Corp., One Rodney Square, 10th Floor, 10th & King Streets, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is RL&F Service Corp.

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

**FOURTH.** The Corporation shall be authorized to issue 12,000,000 shares of Common Stock, with a par value of \$.01 per share (the "Common Stock") and 3,000,000 shares of Preferred Stock, with a par value of \$.01 per share (the "Preferred Stock").

The following is a statement of the designations, preferences, voting powers, qualifications, special or relative rights and privileges in respect of the authorized capital stock of the Corporation.

**I. PREFERRED STOCK**

**A. Description of Undesignated Preferred Stock**

The Preferred Stock may be issued from time to time in one or more classes or series. The Board of Directors of the Corporation shall have authority to the fullest extent permitted

0022/0856

under the General Corporation Law of Delaware to adopt by resolution from time to time one or more Certificates of Designation providing for the designation of one or more classes or series of Preferred Stock and the voting powers, whether full or limited or no voting powers, and such designations, preferences and relative participating, optional, or other special rights and qualifications, limitations or restrictions thereof, and to fix or alter the number of shares comprising any such class or series, subject to any requirements of the Delaware Corporation Law and this Restated Certificate of Incorporation, as amended from time to time.

The authority of the Board of Directors with respect to each such class or series shall include, without limitation of the foregoing, the right to determine and fix the following preferences and powers, which may vary as between different classes or series of Preferred Stock:

- (a) the distinctive designation of such class or series and the number of shares to constitute such class or series;
- (b) the rate at which dividends on the shares of such class or series shall be declared and paid, or set aside for payment, whether dividends at the rate so determined shall be cumulative or accruing, and whether the shares of such class or series shall be entitled to any participating or other dividends in addition to dividends at the rate so determined, and if so, on what terms;
- (c) the right or obligation, if any, of the Corporation to redeem shares of the particular class or series of Preferred Stock and, if redeemable, the price, terms and manner of such redemption;
- (d) the special and relative rights and preferences, if any, and the amount or amounts per share, which the shares of such class or series of Preferred Stock shall be entitled to receive upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation;
- (e) the terms and conditions, if any, upon which shares of such class or series shall be convertible into, or exchangeable for, shares of capital stock of any other class or series, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;
- (f) the obligation, if any, of the Corporation to retire, redeem or purchase shares of such class or series pursuant to a sinking fund or fund of a similar nature or otherwise, and the terms and conditions of such obligation;
- (g) voting rights, if any, including special voting rights with respect to the election of directors and matters adversely affecting any class or series of Preferred Stock;
- (h) limitations, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Preferred Stock; and

(i) such other preferences, powers, qualifications, special or relative rights and privileges thereof as the Board of Directors of the Corporation, by the vote of the members of the Board of Directors then in office acting in accordance with this Certificate of Incorporation, or any Preferred Stock, may deem advisable and are not inconsistent with law, the provisions of this Certificate of Incorporation or the provisions of any such Certificate of Designation.

B. Description and Designation of Series A Preferred Stock

1. Designation. A total of 5,000,000 shares of the Corporation's Preferred Stock shall be designated the "Series A Preferred Stock." As used herein, the term "Preferred Stock" used without reference to the Series A Preferred Stock means the shares of Preferred Stock, without distinction as to series, except as otherwise expressly provided for herein, or as the context otherwise requires.

2. Dividends.

2.1 Annual Stock Dividends.

2.1.1 The holders of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation, out of assets of the Corporation legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock, cumulative dividends payable by issuing additional fully paid and non-assessable shares of Series A Preferred Stock (or fractions thereof) at an annual rate of .07 of a share of Series A Preferred Stock on each share of Series A Preferred Stock then outstanding. In the case of shares of Series A Preferred Stock outstanding for less than a full year, dividends shall be pro rated based on the portion of each year during which such shares are outstanding. All dividends on the Series A Preferred Stock shall compound annually (regardless of whether dividends are actually declared or issued) and shall accrue from the date such Series A Preferred Stock is originally issued (the "Series A Original Issue Date"). Dividends shall be payable (except as provided in Sections 2.1.3 and 2.1.4) beginning on the third anniversary of the date on which the first share of Series A Preferred Stock was issued, and on each anniversary date of such issuance thereafter (each, along with the date the Series A Preferred Stock is converted, a "Series A Dividend Payment Date"), to holders of record at the close of business on the date specified by the Board of Directors at the time such dividend is declared.

2.1.2 Accrued but unpaid dividends for any past dividend periods may be declared by the Board of Directors and paid on any date fixed by the Board of Directors, whether or not a regular Series A Dividend Payment Date, to holders of record on the books of the Corporation on such record date as may be fixed by the Board of Directors, which record date shall be no more than 60 days prior to the payment date thereof.

2.1.3 Dividends on shares of Series A Preferred Stock issued as dividends pursuant hereto shall compound annually on the Series A Dividend Payment Date in

respect of which such shares were first issuable as a dividend (whether or not declared or issued) or, in the case of dividends other than regularly scheduled dividends, on the date such shares were issued.

2.1.4 Upon any conversion of Series A Preferred Stock, all declared but unpaid dividends on the Series A Preferred Stock shall be paid immediately prior to such shares being surrendered for conversion.

2.1.5 Each fractional share of Series A Preferred Stock outstanding shall be entitled to a ratably proportionate amount of all dividends accruing with respect to each outstanding share of Series A Preferred Stock, and all such dividends with respect to such outstanding fractional shares shall compound (whether or not declared or issued), and shall be payable in the same manner and at such times as provided for in Subsection 2.1.1 with respect to dividends on each outstanding share of Series A Preferred Stock. Each fractional of Series A Preferred Stock outstanding shall also be entitled to a ratably proportionate amount of any other distributions made with respect to each outstanding share of Series A Preferred Stock, and all such distributions shall be payable in the same manner and at the same time as distributions on each outstanding share of Series A Preferred Stock.

2.1.6 In the event the Corporation shall at any time have an insufficient number of shares of Series A Preferred Stock available for payment of dividends, the Corporation shall use its best efforts to cause a sufficient number of additional shares of Series A Preferred Stock to be authorized for that purpose.

## 2.2 Restrictions on Distributions.

2.2.1 Except to the extent in any instance approval is provided in writing by the holders of a majority of the outstanding shares of Series A Preferred Stock (voting as a separate class), so long as any shares of Series A Preferred Stock remains outstanding, the Corporation shall not declare or pay any dividends (other than those dividends provided for in Section 2.1.1 hereof), or purchase, redeem, retire, or otherwise acquire for value any shares of its capital stock (or rights, options or warrants to purchase such shares) now or hereafter outstanding, return any capital to its stockholders as such, or make any distribution of assets to its stockholders as such, or permit any Subsidiary to do any of the foregoing. "Subsidiary" or "Subsidiaries" means any corporation, partnership or joint venture of which the Company and/or any of its other Subsidiaries (as herein defined) directly or indirectly owns at the time at least fifty percent (50%) of the outstanding voting shares or similar interests other than directors' qualifying shares.

2.2.2 Whenever dividends on the Series A Preferred Stock are in arrears, the Corporation shall not declare, pay or set apart for payment dividends on or make any other distribution in respect of any other capital stock ranking on a parity with the Series A Preferred Stock as to dividends and on which are payable in arrears, unless simultaneously therewith dividends are paid pro rata on the Series A Preferred Stock.

2.23 Notwithstanding the foregoing, Subsidiaries may declare and make payment of cash and stock dividends, return capital and make distributions of assets to the Corporation, and nothing contained in the foregoing shall prevent the Corporation from: (i) effecting a stock split or declaring or paying any dividend consisting of shares of any class of capital stock paid to the holders of shares of such class of capital stock; (ii) complying with any specific provision of the terms of any subsequently designated series of Preferred Stock in accordance with its terms; (iii) declaring and paying all accrued dividends on the Series A Preferred Stock; (iv) redeeming or repurchasing any stock of a deceased stockholder out of proceeds of insurance held by the Corporation on that stockholder's life; or (v) redeeming or repurchasing any stock or other securities of any director, officer, employee, consultant or other person or entity, pursuant to a stock repurchase agreement or stock restriction agreement under which the Corporation has the right or obligation to repurchase such securities in the event of death, termination of employment or of the consulting arrangement, or other similar discontinuation of a business relationship.

2.3 Participating Dividends. In the event that the Board of Directors of the Corporation shall declare a dividend payable upon the then outstanding shares of Common Stock (other than a stock dividend on the Common Stock distributed solely in the form of additional shares of Common Stock), the holders of the Series A Preferred Stock shall be entitled to the amount of dividends per share of Series A Preferred Stock as would be declared payable on the largest number of whole and fractional shares of Common Stock into which each share of Series A Preferred Stock held by each holder thereof could be converted pursuant to the provisions of Section 5 hereof (assuming issuance and conversion of all accrued dividends), such number determined as of the record date for the determination of holders of Common Stock entitled to receive such dividend and without regard to any restrictions on issuance of or payment of dividends on fractional shares.

### 3. Liquidation, Dissolution or Winding Up.

#### 3.1 Treatment at Liquidation, Dissolution or Winding Up.

3.1.1 In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or in the event of its insolvency, before any distribution or payment is made to any holders of Common Stock or any other class or series of capital stock of the Corporation designated to be junior to the Series A Preferred Stock in liquidation preference, and subject to the liquidation rights and preferences of any class or series of Preferred Stock designated in the future to be senior to, or on a parity with, the Series A Preferred Stock with respect to liquidation preference, the holders of Series A Preferred Stock shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock of all classes, whether such assets are capital, surplus or earnings ("Available Assets"), the greater of (i) an amount equal to the aggregate price paid to the Corporation for all outstanding shares of Series A Preferred Stock (the "Original Series A Investment Amount") plus 7% of the Original Series A Investment Amount, compounded

annually from the Series A Original Issue Date, and all declared but unpaid dividends on each such share, divided among the holders of Series A Preferred Stock pro rata based on the number of shares of Series A Preferred Stock held by each holder or (ii) such amount per share of Series A Preferred Stock as would have been payable had each share of Series A Preferred Stock which is convertible into Common Stock been so converted immediately prior to such liquidation, dissolution or winding up, and, in either case, no more.

If, upon liquidation, dissolution or winding up of the Corporation, the Available Assets shall be insufficient to pay the holders of shares of Series A Preferred Stock and of any other series of Preferred Stock on parity with the Series A Preferred Stock with respect to the liquidation preference the full amounts to which they otherwise would be entitled, the holders of Series A Preferred Stock and such other series of Preferred Stock shall share ratably in any distribution of Available Assets pro rata in proportion to the respective liquidation preference amounts which would otherwise be payable upon liquidation with respect to the outstanding shares of the Series A Preferred Stock and such other series of Preferred Stock if all liquidation preference dollar amounts with respect to such shares were paid in full.

3.1.2 After payment of all liquidation preferences to all holders of the Series A Preferred Stock, the entire remaining available assets, if any, shall be distributed among the holders of Common Stock in proportion to the shares of Common Stock then held by them.

3.2 Treatment of Reorganization, Consolidation, Merger, or Sale of Assets. Any merger, consolidation or other corporate reorganization or combination to which the Corporation is a non-surviving party, and any sale of all or substantially all of the assets of the Corporation, may be regarded as a liquidation, dissolution or winding up of the affairs of the Corporation for purposes of this Section 3 upon the election of the holders of at least two thirds of the outstanding shares of Series A Preferred Stock (voting together as a single class); provided, however that, in the case of any such transaction to which the provisions of Section 5.6 also apply, the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock (voting together as a single class) shall have the right to elect the benefits of the provisions of Section 5.6 hereof for all of the Series A Preferred Stock in lieu of receiving payment in liquidation, dissolution or winding up of the Corporation pursuant to this Section 3.

The provisions of this Section 3.2 shall not apply to (i) any reorganization, merger or consolidation involving only a change in the state of incorporation of the Corporation, (ii) a merger of the Corporation with or into a wholly-owned Subsidiary of the Corporation that is incorporated in the United States of America, or (iii) a merger, reorganization, consolidation or other combination in which the Corporation is the surviving corporation and the holders of the Corporation's voting stock outstanding immediately prior to the transaction constitute a majority of the holders of voting stock outstanding immediately following the transaction.



**3.3 Distributions Other than Cash.** Whenever the distribution provided for in this Section 3 shall be payable in whole or in part in property other than cash, the value of any property distributed shall be the fair market value of such property as reasonably determined in good faith by the Board of Directors of the Corporation. All distributions of property other than cash made hereunder shall be made, to the maximum extent possible, *pro rata* with respect to each series and class of Preferred Stock and Common Stock in accordance with the liquidation amounts payable with respect to each such series and class.

**4. Voting Power.**

**4.1 General.** Except as otherwise expressly provided elsewhere in this Certificate of Incorporation, or in any Certificate of Designation heretofore or hereafter filed with respect to any other series of Preferred Stock, or as otherwise required by law, (i) each holder of Series A Preferred Stock shall be entitled to vote on all matters submitted to a vote of the stockholders of the Corporation (including election of directors to the extent not otherwise expressly provided for) and shall be entitled to that number of votes equal to the largest number of whole shares of Common Stock into which such holder's shares of Series A Preferred Stock could be converted, pursuant to the provisions of Section 5 hereof, at the record date for the determination of 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, and (ii) the holders of shares of Series A Preferred Stock and Common Stock shall vote together (or render written consents in lieu of a vote) as a single class on all matters submitted to the stockholders of the Corporation (including election of directors to the extent not otherwise expressly provided for).

**4.2 Director Election Rights; Number of Directors; Meetings of Board of Directors; Committees.** So long as Pennsylvania Early Stage Partners, L.P. ("PA-ESP") or its affiliates hold at least 300,000 shares of Series A Preferred Stock and so long as there has not been a Qualified Public Offering (as defined in that Stockholder Rights Agreement dated as of the 10th day of March, 1999, by and among the Corporation, PA-ESP and David H. Goodman), PA-ESP shall have the right to elect two directors of the Corporation (the "Series A Director"). Unless otherwise agreed to by the holders of a majority of the outstanding shares of Series A Preferred Stock: (i) the Board of Directors of the Corporation shall consist of five directors; (ii) the Corporation shall hold meetings of the Board of Directors at least quarterly; and (iii) each committee of the Board will include at least one Founder Director and one Independent Director (as such terms are defined in the Stockholder Rights Agreement).

**5. Conversion Rights.** The holders of the Series A Preferred Stock shall have the following rights and be subject to the following obligations with respect to the conversion of such shares into shares of Common Stock:

**5.1 Voluntary Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of the Series A Preferred Stock may, at the option of the holder thereof, be converted at any time and from time to time into fully-paid and non-convertible shares

of Common Stock. The number of shares of Common Stock which a holder of Series A Preferred Stock shall be entitled to receive upon conversion shall be the product obtained by multiplying (i) the number of shares of Series A Preferred Stock being converted at any time, by (ii) the rate (the "Series A Conversion Rate") equal to the quotient obtained by dividing \$0.6667 by the "Series A Conversion Value." The initial Series A Conversion Value, subject to adjustment in accordance with this Section 5, shall be \$0.6667.

## 5.2 Automatic Conversion.

**5.2.1 Events Causing Conversion.** Immediately (A) prior to the closing of an underwritten public offering on a firm commitment basis pursuant to an effective registration statement (other than on Form S-4 or S-8 or any successor forms thereto) filed pursuant to the Securities Act of 1933, as amended (the "Act"), covering the offer and sale of Common Stock for the account of the Corporation in which the Corporation actually receives gross proceeds equal to or greater than \$30,000,000 (calculated before deducting underwriters' discounts and commissions and other offering expenses), and in which the public offering price per share of Common Stock (calculated before deducting underwriters' discounts and commissions) equals or exceeds eight times the Series A Conversion Value in effect immediately prior to the closing of such public offering, but subject to the closing of such public offering, (B) prior to a Rights Offering (as defined below), or (C) upon the approval, set forth in a written notice to the Corporation, of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, of an election to convert all outstanding shares of Series A Preferred Stock to Common Stock, all outstanding shares of Series A Preferred Stock shall be converted automatically into the number of fully paid, non-assessable shares of Common Stock into which such shares of Series A Preferred Stock are convertible pursuant to this Section 5 as of the closing and consummation of such underwritten public offering or the date of such approval, without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent.

For purposes of this Certificate of Incorporation, a "Rights Offering" shall be defined as an initial public offering of the Common Stock of the Corporation, at such time as the total market value of the Company is determined in good faith to be at least \$50 million, pursuant to a registration statement under which the holders of the common stock of Safeguard Scientifics, Inc. a Pennsylvania corporation ("Safeguard"), are granted the right to purchase from the Corporation such number of shares of Common Stock of the Corporation as determined by Safeguard up to a maximum of 40% of the sum of (i) all outstanding shares of Common Stock of the Corporation, and (ii) all shares of Common Stock of the Corporation reserved for issuance upon conversion of all outstanding shares of Series A Preferred Stock of the Corporation, as of the effective date of the registration statement.

**5.2.2 Surrender of Certificates Upon Mandatory Conversion.** Upon the occurrence of the conversion event specified in the preceding paragraph 5.2.1, the holders of the Series A Preferred Stock shall, upon notice from the Corporation, surrender the certificates representing such shares at the office of the Corporation or its transfer agent for the Common

Stock. Thereupon, there shall be issued and delivered to such holder a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock so surrendered were convertible on the date on which the conversion occurred. The Corporation shall not be obligated to issue such certificates unless certificates evidencing such shares of Series A Preferred Stock being converted are either delivered to the Corporation or any such transfer agent, or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith.

### 5.3 Anti-Dilution Adjustments.

**5.3.1 Upon Dilutive Issuances.** If the Corporation shall, while there are any shares of Series A Preferred Stock outstanding, issue or sell shares of its Common Stock or "Common Stock Equivalents" (as defined in Section 5.3.2.1 below) without consideration or at a price per share or "Net Consideration Per Share" (as defined in Section 5.3.3 below) less than the Series A Conversion Value in effect immediately prior to such issuance or sale, then in each such case the Series A Conversion Value, except as hereinafter provided, shall be lowered so as to be equal to an amount determined by multiplying such Series A Conversion Value by the following fraction:

$$\frac{N_0 + N_1}{N_0 + N_2}$$

Where:

$N_0$  = the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock or Common Stock Equivalents (calculated on a fully-diluted basis assuming the exercise or conversion of all then exercisable or convertible options, warrants, purchase rights and convertible securities).

$N_1$  = the number of shares of Common Stock which the aggregate consideration, if any, (including the Net Consideration Per Share with respect to the issuance of Common Stock Equivalents) received or receivable by the Corporation for the total number of such additional shares of Common Stock so issued or deemed to be issued would purchase at the Series A Series A Conversion Value in effect immediately prior to such issuance.

$N_2$  = the number of such additional shares of Common Stock so issued or deemed to be issued.

The provisions of this Section 5.3.1 may be waived as to all shares of Series A Preferred Stock in any instance (without the necessity of convening any meeting of stockholders of the Corporation) upon the written agreement of the holders of at least two-thirds of the

outstanding shares of Series A Preferred Stock.

### 5.3.2 Common Stock Equivalents.

**5.3.2.1 General.** For the purposes of this Section 5.3, the issuance of any warrants, options, subscription or purchase rights with respect to shares of Common Stock and the issuance of any securities convertible into or exchangeable for shares of Common Stock and the issuance of any warrants, options, subscription or purchase rights with respect to such convertible or exchangeable securities (collectively, "Common Stock Equivalents"), shall be deemed an issuance of Common Stock. Any obligation, agreement or undertaking to issue Common Stock Equivalents at any time in the future shall be deemed to be an issuance at the time such obligation, agreement or undertaking is made or arises. No adjustment of the Series A Conversion Value shall be made under this Section 5.3 upon the issuance of any shares of Common Stock which are issued pursuant to the exercise, conversion or exchange of any Common Stock Equivalents.

**5.3.2.2 Adjustments for Adjustment, Cancellation or Expiration of Common Stock Equivalents.** Should the Net Consideration Per Share of any such Common Stock Equivalents be decreased from time to time other than as a result of the application of anti-dilution provisions substantially similar to the provisions of this Section 5.3, then, upon the effectiveness of each such change, the Series A Conversion Value will be that which would have been obtained (1) had the adjustments made pursuant to Section 5.3.2.1 upon the issuance of such Common Stock Equivalents been made upon the basis of the new Net Consideration Per Share of such securities, and (2) had the adjustments made to the Series A Conversion Value since the date of issuance of such Common Stock Equivalents been made to such Series A Conversion Value as adjusted pursuant to clause (1) above. Any adjustment of the Series A Conversion Value which relates to any Common Stock Equivalent shall be disregarded if, as, and when such Common Stock Equivalent expires or is canceled without being exercised, or is repurchased by the Company at a price per share at or less than the original purchase price, so that the Series A Conversion Value effective immediately upon such cancellation or expiration shall be equal to the Series A Conversion Value that would have been in effect (1) had the expired or canceled Common Stock Equivalent not been issued, and (2) had the adjustments made to the Series A Conversion Value since the date of issuance of such Common Stock Equivalents been made to the Series A Conversion Value which would have been in effect had the expired or canceled Common Stock Equivalent not been issued.

**5.3.3 Net Consideration Per Share.** For purposes of this Section 5.3, the "Net Consideration Per Share" which shall be receivable by the Corporation for any Common Stock issued upon the exercise or conversion of any Common Stock Equivalents shall be determined as follows:

**5.3.3.1** The "Net Consideration Per Share" shall mean the amount equal to the total amount of consideration, if any, received by the Corporation for the issuance of such Common Stock Equivalents, plus the minimum amount of consideration, if any, payable to

the Corporation upon exercise, or conversion or exchange thereof, divided by the aggregate number of shares of Common Stock that would be issued if all such Common Stock Equivalents were exercised, exchanged or converted.

5.3.3.2 The "Net Consideration Per Share" which shall be receivable by the Corporation shall be determined in each instance as of the date of issuance of Common Stock Equivalents without giving effect to any possible future upward price adjustments or rate adjustments which may be applicable with respect to such Common Stock Equivalents.

5.3.4 Stock Dividends for Holders of Capital Stock Other Than Common Stock. In the event that the Corporation shall make or issue (otherwise than to holders of Common Stock), or shall fix a record date for the determination of holders of any capital stock of the Corporation other than holders of Common Stock entitled to receive, a dividend or other distribution payable in Common Stock or securities of the Corporation convertible into or otherwise exchangeable for shares of Common Stock of the Corporation, then such Common Stock or other securities issued in payment of such dividend shall be deemed to have been issued for a consideration of \$0.01, except for dividends payable to the holders of Series A Preferred Stock pursuant to Section 2.

5.3.5 Consideration Other than Cash. For purposes of this Section 5.3, if a part or all of the consideration received by the Corporation in connection with the issuance of shares of the Common Stock or the issuance of any of the securities described in this Section 5.3 consists of property other than cash, such consideration shall be deemed to have a fair market value as is reasonably determined in good faith by the Board of Directors of the Corporation.

5.3.6 Exceptions to Anti-dilution Adjustments: Basket for Reserved Employee Shares. This Section 5.3 shall not apply (A) under any of the circumstances which would constitute an Extraordinary Common Stock Event (as described below), or (B) to any issuance or sale of shares of Common Stock and/or Common Stock Equivalents in an underwritten public offering not requiring conversion of the Preferred Stock. Further, this Section 5.3 shall not apply with respect to the issuance or grant of options or restricted stock issued under equity compensation plans up to 1,000,000 shares of Common Stock.

5.4 Adjustment Upon Extraordinary Common Stock Event. Upon the happening of an Extraordinary Common Stock Event (as hereinafter defined), the Series A Conversion Value shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the Series A Conversion Value by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock Event, and the product so obtained shall thereafter be the Series A Conversion Value, which, as so adjusted, shall be readjusted in the same manner upon the happening of any

successive Extraordinary Common Stock Event or Events.

An "Extraordinary Common Stock Event" shall mean (i) the issue of additional shares of Common Stock as a dividend or other distribution on outstanding shares of Common Stock, (ii) a subdivision of outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination or reverse stock split of outstanding shares of Common Stock into a smaller number of shares of the Common Stock.

**5.5 Adjustment Upon Certain Dividends.** In the event the Corporation shall make or issue, or shall fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution (other than a distribution in liquidation or other distribution otherwise provided for herein) with respect to the Common Stock payable in (i) securities of the Corporation other than shares of Common Stock, or (ii) other assets (excluding cash dividends or distributions), then and in each such event provision shall be made so that the holders of the Series A Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities or such other assets of the Corporation which they would have received had their Series A 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 Series A Conversion Date (as defined below), retained such securities or such other assets receivable by them, giving application to all other adjustments called for during such period under this Section 5.

**5.6 Adjustment Upon Capital Reorganization or Reclassification.** If the Common Stock shall be changed into the same or different number of shares of any other class or classes of capital stock, whether by capital reorganization, recapitalization, reclassification or otherwise (other than an Extraordinary Common Stock Event), then and in each such event the holder of each share of Series A Preferred Stock shall have the right thereafter to convert such share into, in lieu of the number of shares of Common Stock which the holder would otherwise have been entitled to receive, the kind and amount of shares of capital stock and other securities and property receivable upon such reorganization, recapitalization, reclassification or other change by the holders of the number of shares of Common Stock into which such shares of Series A Preferred Stock could have been converted immediately prior to such reorganization, recapitalization, reclassification or change, all subject to further adjustment as provided herein. The provision for such conversion right shall be a condition precedent to the consummation by the Corporation of any such transaction unless the election described below is made.

In the case of a transaction to which both this Section 5.6 and Section 3.2 apply, the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock shall have the option of electing treatment for the Series A Preferred Stock under either this Section 5.6, notice of which election shall be submitted in writing to the Corporation at its principal office no later than five (5) business days before the effective date of such event. If no such election shall be made, the provisions of Section 3.2, and not this Section 5.6, shall apply.

**5.7 Certificate as to Adjustments; Notice by Corporation.** In each case of

an adjustment or readjustment of the Series A Conversion Rate, the Corporation at its expense will furnish each holder of Series A Preferred Stock so affected with a certificate prepared by the Treasurer or Chief Financial Officer of the Corporation, showing such adjustment or readjustment, and stating in detail the facts upon which such adjustment or readjustment is based.

**5.8 Exercise of Conversion Privilege.** To exercise its conversion privilege, a holder of Series A Preferred Stock shall surrender the certificate or certificates representing the shares being converted to the Corporation at its principal office, and shall give written notice to the Corporation at that office that such holder elects to convert such shares. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series A Preferred Stock surrendered for conversion shall be accompanied by proper assignment thereof to the Corporation or in blank. The date when such written notice is received by the Corporation, together with the certificate or certificates representing the shares of Series A Preferred Stock being converted, shall be the "Series A Conversion Date". As promptly as practicable after the Series A Conversion Date, the Corporation shall issue and deliver to the holder of the shares of Series A Preferred Stock being converted, or on its written order, such certificate or certificates as it may request for the number of whole shares of Common Stock issuable upon the conversion of such shares of Series A Preferred Stock in accordance with the provisions of this Section 5, and cash, as provided in Section 5.9, in respect of any fraction of a share of Common Stock issuable upon such conversion. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date, and at such time the rights of the holder as holder of the converted shares of Series A Preferred Stock shall cease and the person(s) in whose name(s) any certificate(s) for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

**5.9 Cash in Lieu of Fractional Shares.** No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon the conversion of shares of Series A Preferred Stock. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of Series A Preferred Stock, the Corporation shall pay to the holder of the shares of Series A Preferred Stock which were converted a cash adjustment in respect of such fractional shares in an amount equal to the same fraction of the market price per share of the Common Stock (as determined in a reasonable manner prescribed by the Board of Directors) at the close of business on the Conversion Date. The determination as to whether or not any fractional shares are issuable shall be based upon the aggregate number of shares or fractional shares of Series A Preferred Stock being converted at any one time by any holder thereof, not upon each share or fractional share of Preferred Stock being converted.

**5.10 Partial Conversion.** In the event some but not all of the shares of Preferred Stock represented by a certificate(s) surrendered by a holder are converted, the Series A Corporation shall execute and deliver to or on the order of the holder, at the expense of the Corporation, a new certificate representing the number of shares of Series A Preferred Stock

which were not converted.

**5.11 Reservation of Common Stock.** 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 Series A 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 (including any shares of Series A Preferred Stock represented by any warrants, options, subscription or purchase rights for Series A 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 Series A Preferred Stock (including any shares of Series A Preferred Stock represented by any warrants, options, subscriptions or purchase rights for such Series A Preferred Stock), the Corporation shall take such action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

**6. Restrictions and Limitations on Corporate Action.**

The Corporation shall not take any corporate action or amend its Certificate of Incorporation or by-laws without the approval by vote or written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting as a single class, each share of Series A Preferred Stock to be entitled to one vote in each instance, if such corporate action or amendment would adversely change any of the rights, preferences, privileges or limitations provided for herein for the benefit of holders of shares of Series A Preferred Stock. Without limiting the generality of the preceding sentence, the Corporation will not take any other corporate action so long as there are at least 300,000 shares of Series A Preferred Stock outstanding (as adjusted) without the approval by the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting as a single class, if such amendment or corporate action would:

(a) cause or authorize the Corporation to redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose), any share or shares of equity securities of the Corporation other than as provided for in Section 2 hereof; or

(b) authorize, create or issue, or obligate the Corporation to authorize, create or issue, additional shares of Series A Preferred Stock or of any class of stock ranking senior to or on a parity with the Series A Preferred Stock with respect to liquidation preferences, dividend rights or containing redemption rights; or

(c) reduce the amount payable to the holders of Series A Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; or

(d) adversely affect the liquidation preferences, dividend rights or voting



rights of the holders of Series A Preferred Stock; or

(c) cancel or modify the conversion rights of the holders of Series A Preferred Stock provided for in Section 5 herein; or

(f) provide for the voluntary liquidation, dissolution, recapitalization, reorganization or winding up of the Corporation; or

(g) authorize, approve or cause any merger, consolidation, sale of all or substantially all of the assets of the Corporation, corporate reorganization, recapitalization or other business combinations which could be deemed to be a liquidation, dissolution or winding up of the Corporation pursuant to Section 3.2 hereof.

7. No Dilution or Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of capital stock or 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 of the Series A Preferred Stock set forth herein, but will at all times in good faith assist in the carrying out of all such terms. Without limiting the generality of the foregoing, the Corporation (a) will not increase the par value of any shares of stock receivable on the conversion of the Series A Preferred Stock above the amount payable therefor on such conversion, and (b) will take such action as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and nonassessable shares of stock on the conversion of all Series A Preferred Stock from time to time outstanding.

8. Notices of Record Date. In the event of

(a) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividends or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of capital stock of any class or any other securities or property, or to receive any other right, or

(b) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation, or any transfer of all or substantially all of the assets of the Corporation to any other corporation, or any other entity or person, or

(c) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation,

then and in each such event the Corporation shall mail or cause to be mailed to each holder of Series A Preferred Stock a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend,

distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (iii) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up. Such notice shall be mailed by first class mail, postage prepaid, at least ten (10) days prior to the date specified in such notice on which action is being taken.

9. Status of Converted or Repurchased Series A Preferred Stock. Any share or shares of Series A Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be returned to the status of authorized but unissued shares of undesignated Preferred Stock. Upon the cancellation of all outstanding shares of Series A Preferred Stock, the provisions of this Chapter B regarding the Description and Designation of Series A Preferred Stock shall terminate and have no further force and effect.

## II. COMMON STOCK

1. Priority. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations or restrictions of the Common Stock are expressly made subject to and subordinate to those that may be fixed with respect to the Preferred Stock to the extent provided for herein.

2. Voting Right. Each holder of record of Common Stock shall be entitled to one vote for each share of Common Stock standing in his name on the books of the Corporation. Except as otherwise required by law, or as otherwise expressly provided in this Certificate of Incorporation and any Certificate of Designation heretofore or hereafter filed with respect to any Preferred Stock, the holders of Common Stock shall vote together as a single class on all matters submitted to stockholders for a vote.

3. Dividends. Subject to provisions of law, this Amended and Restated Certificate of Incorporation and any Certificate of Designation with respect to any Preferred Stock, the holders of Common Stock shall be entitled to receive dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion.

4. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after the payment or provision for payment of all debts and liabilities of the Corporation and all preferential amounts to which the holders of the Preferred Stock are entitled with respect to the distribution of assets in liquidation, the holders of Common Stock shall be entitled to share ratably in the remaining assets of the Corporation available for distribution.

FIFTH. The Board of Directors of the Corporation is expressly authorized to adopt,

amend or repeal by-laws of the Corporation with the vote at a duly held meeting of two-thirds of the members of the Board of Directors or with the written consent of all of the members of the Board of Directors in lieu of a meeting, subject to any rights of holders of Preferred Stock.

SIXTH. The number of directors of the Corporation shall be fixed from time to time by the Board of Directors as provided in the by-laws of the Corporation. Elections of directors need not be by written ballot except and to the extent provided in the by-laws of the Corporation.

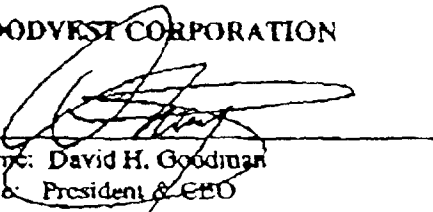
SEVENTH. The Corporation shall, to the maximum extent permitted from time to time under the laws of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was or has agreed to be a director or officer of the Corporation or while a director or officer is or was serving at the request of or as the agent of the Corporation as a director, officer or the agent of any other corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against any and all expenses (including attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement or incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require the Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding, claim or counterclaim initiated by or on behalf of such person. Such rights arising under any by-law, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any repeal or modification of the foregoing provisions of this Article SEVENTH shall not adversely affect any right or protection of a director or officer of this Corporation existing at the time of such repeal or modification.

EIGHTH. 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 to the extent that such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Law as currently in effect or as the same may hereafter be amended. No amendment, modification or repeal of this Article EIGHTH shall adversely affect any right or protection of a director that exists at the time of such amendment, modification or repeal.

NINTH. The Corporation is to have perpetual existence.

IN WITNESS WHEREOF, Goodvest Corporation has caused this certificate to be signed by its President & CEO on the 10th day of March, 1999.

GOODYEST CORPORATION

By:   
Name: David H. Goodman  
Title: President & CEO