

**THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
ARGYLE SOLUTIONS, INC.**

ARGYLE Solutions, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware DOES HEREBY CERTIFY:

FIRST: The original Certificate of Incorporation was filed on September 3, 2003 under the name of RPM Solutions, Inc., the First Amended and Restated Certificates of Incorporation, the Amendment No. 1 to the First Amended and Restated Certificate of Incorporation, the Amendment No. 2 to the First Amended and Restated Certificate of Incorporation and the Second Amended and Restated Certificate of Incorporation were filed with the Secretary of State of the State of Delaware on October 21, 2003, December 18, 2003, February 25, 2004 and July 29, 2005, respectively.

SECOND: The Third Amended and Restated Certificate of Incorporation of this corporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 228, 242, and 245 of the General Corporation Law of the State of Delaware by the directors and stockholders of this corporation.

THIRD: The Third Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A and is incorporated herein by this reference.

IN WITNESS WHEREOF, this corporation has caused this Third Amended and Restated Certificate of Incorporation to be signed by its President thereunto duly authorized on July 27, 2006.

/s/ Jerry Morrison
Jerry Morrison, President

EXHIBIT A
THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
ARGYLE SOLUTIONS, INC.

ARTICLE ONE

The name of the corporation is **ARGYLE SOLUTIONS, INC.** (the "Company").

ARTICLE TWO

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

ARTICLE THREE

The address of the registered office of the Company in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the city of Wilmington, County of New Castle, Delaware 19801. The name of its initial registered agent at such address is The Corporation Trust Company.

ARTICLE FOUR

(A) **Classes of Stock.** The Company is authorized to issue two classes of stock to be designated, respectively, common stock and preferred stock. The total number of shares which the Company is authorized to issue is Fifty Million (50,000,000) shares, of which Twenty-Eight Million (28,000,000) shares shall be common stock, \$.001 par value ("Common Stock"), and Twenty-Two Million (22,000,000) shares shall be preferred stock, \$.001 par value ("Preferred Stock"). Fourteen Million (14,000,000) shares of Preferred Stock shall be designated Series A Preferred Stock, and Seven Million (7,000,000) shares of Preferred Stock shall be designated as Series B Preferred Stock (the "Series B Preferred Stock"). The Series A Preferred Stock shall be designated in three series. The first series shall be designated "Series A-1 Preferred Stock," which shall consist of Eight Million (8,000,000) shares. The second series shall be designated "Series A-2 Preferred Stock," which shall consist of One Million (1,000,000) shares. The third series shall be designated "Series A-3 Preferred Stock," which shall consist of Five Million Shares (5,000,000) shares. Except as specifically set forth in Article Four (B), the rights, preferences, privileges and restrictions granted to and imposed on Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and Series B Preferred Stock shall be pari passu. The Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series A-3 Preferred Stock are referred to collectively herein as the "Series A Preferred Stock." The rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock and Series B Preferred Stock (collectively, the "Series A and B Stock" or the "Series A or B Stock", as the case may be) are as set forth below in Article Four (B). The remaining One Million (1,000,000) shares of Preferred Stock shall be undesignated Preferred Stock which may be issued from time to time in one or more series and entitled to such preferences to the Common Stock as to dividends and distribution of assets of the Company on dissolution and shall have such distinctive designations as determined by the Board of Directors, with full power and authority to fix the number of shares constituting such series and to fix the relative rights and preferences of the shares of the series so established to the full extent allowable by law, with respect to dividends, redemptions, payment on liquidation, sinking fund provisions, conversion privileges and voting rights.

(B) **Rights, Preferences and Restrictions of Series A and B Stock.** The rights, preferences, privileges, and restrictions granted to and imposed on the Series A and B Stock are as set forth below in this Article Four (B).

1. Dividend Provisions.

(a) The holders of shares of Series A and B Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock) on the Common Stock of the Company, at the rate of 10% of the (i) Original Series A Issue Price (as defined below in subsection 2(a)), in the case of the Series A Preferred Stock, and (ii) Original Series B Issue Price (as defined below in subsection 2(a)), in the case of the Series B Preferred Stock, per share per annum (the "Series A and B Dividend Rate"), payable when, as and if declared by the Board of Directors. Such dividends shall accrue on a daily basis, whether or not earned or declared, from and after the date of issuance of such shares of Series A and B Stock. Such dividends shall be cumulative so that if at any time the entire amount of such dividends shall not have been paid the deficiency shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Common Stock. Accrued but unpaid dividends shall be paid with respect to a share of Series A and B Stock upon conversion of such share to Common Stock, upon redemption of such share, upon the exchange or reclassification of such share or upon a liquidation as set forth in Section 2.

(b) No cash dividend or other distribution shall be paid, or declared and set apart for payment, on any share of Common Stock unless, subject to Section 1(d) below, a pro rata cash dividend or other distribution (separate from and in addition to the dividend set forth in Section 1(a)) is paid with respect to all outstanding shares of Series A and B Stock based on the number of shares of Common Stock into which such shares of Series A and B Stock are convertible pursuant to Section 4 hereof as of the record date for determination of the holders of capital stock of the Company entitled to such dividend or distribution.

(c) If at any time the Company pays a dividend or distribution on the Series A and B Stock in an amount less than the total amount of dividends then accrued and payable with respect to all shares of Series A and B Stock, such payment will be distributed ratably among the holders of such shares of Series A and B Stock pro rata in proportion to the aggregate accrued but unpaid dividends on the shares of Series A and B Stock held by each such holder.

(d) All accrued and unpaid dividends payable on the Series A and B Stock pursuant to Section 1(a) or 1(b) shall be paid, at the option of each holder of shares of Series A and B Stock, either (A) in cash (to the extent assets are legally available therefor and any amounts for which assets are not legally available shall be paid promptly as assets become legally available therefor; any partial payment will be made pro rata among the holders of such shares), or (B) by issuance of additional shares of Series A-1 Preferred Stock, in the case of dividends payable on the Series A-1 Preferred Stock and Series A-2 Preferred Stock, Series A-3 Preferred Stock, in the case of dividends payable on the Series A-3 Preferred Stock and Series B Preferred Stock, in the case of dividends payable on the Series B Preferred Stock (a "PIK Dividend"). The number of shares of Series A-1 Preferred Stock, Series A-3 Preferred Stock or Series B Preferred Stock, as the case may be, to be issued in connection with a PIK Dividend shall equal the aggregate dollar amount of the applicable accrued and unpaid dividends then owed to such holder of Series A and B Stock, divided by (i) the Original Series A Issue Price (as defined below), in the case of Series A Preferred Stock, and (ii) the Original Series B Issue Price (as defined below),

in the case of Series B Preferred Stock. All shares of Series A-1 Preferred Stock, Series A-3 Preferred Stock or Series B Preferred Stock, as the case may be, issued pursuant to a PIK Dividend will thereupon be duly authorized, validly issued, fully paid and non-assessable. Each such PIK Dividend shall be made pro rata with respect to the outstanding shares of Series A and B Stock with respect to which PIK Dividends are being paid in accordance with the respective dividends then due and payable thereon. Dividends with respect to such additional shares of Series A-1 Preferred Stock, Series A-3 Preferred Stock or Series B Preferred Stock, as the case may be, issued as a PIK Dividend shall accrue at the rates and be due and payable on the terms set forth in this Section 1. Notwithstanding the foregoing provisions of this subsection (d), in the event of an automatic conversion of shares of Series A and B Stock pursuant to Section 4(b) hereof, all accrued and unpaid dividends on such shares of Series A and B Stock shall be paid by the issuance of PIK Dividends, in which case the amount of such PIK Dividends shall be taken into account in determining the number of shares of Common Stock into which such shares of Series A and B Stock are convertible pursuant to Section 4 hereof.

2. Liquidation Preference.

(a)

(i) In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary, the holders of Series A and B Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Company to the holders of Common Stock and holders of any other series of Preferred Stock by reason of their ownership thereof, an amount per share (or with respect to a transaction described in Section 2(c)(i) or (ii), receive in such transaction securities or other property having a value per share) equal to the sum of (1) (A) \$1.00 per share (adjusted to reflect subsequent stock dividends, stock splits or recapitalizations) of Series A Preferred Stock (the "Original Series A Issue Price"), in the case of Series A Preferred Stock, and (B) the price paid per share (adjusted to reflect subsequent stock dividends, stock splits or recapitalizations) of Series B Preferred Stock (which shall be \$1.50 for all shares of Series B Preferred Stock other than the shares of Series B Preferred Stock purchased pursuant to the Cargill Warrant (as defined in Section 4(d)(ii) (I)) which shall have an Original Series B Issue Price equal to \$0.01 per share) (the "Original Series B Issue Price"), in the case of Series B Preferred Stock and (2) an amount equal to the accrued but unpaid dividends on such share, less the aggregate amount of distributions paid to the holders of the Series A and B Stock pursuant to Section 4(e) (such amount payable with respect to one share of Series A and B Stock being sometimes referred to as the "Preferred Liquidation Payment" and with respect to all shares of Series A and B Stock being sometimes referred to as the "Preferred Liquidation Payments").

(ii) If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A and B Stock pursuant to Section 2(a)(i) above shall be insufficient to permit the payment to such holders of the full Preferred Liquidation Payments, then the entire assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of the Series A and B Stock in proportion to the respective amounts which would otherwise be payable to them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) Upon the completion of the distribution required by subsection (a) of this Section 2, the remaining assets of the Company available for distribution to stockholders shall be distributed among the holders of Series A and B Stock and Common Stock pro rata based on

the number of shares of Common Stock held by each (assuming conversion of all such Series A and B Stock).

(c)

(i) For purposes of this Section 2, a liquidation, dissolution or winding up of the Company shall be deemed to be occasioned by, or to include, (A) the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger, share exchange or consolidation but, excluding any merger effected exclusively for the purpose of changing the domicile of the Company); or (B) a sale of all or substantially all of the assets of the Company. For purposes of Section 2(a)(ii), if more than one such event shall occur in succession, the date of such event shall be the date of the first event to occur.

(ii) In any of such events, if the consideration received by the Company or to be received by its stockholders is other than cash or securities (which shall be valued as set forth below), the Company shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of shares of Series A and B Stock. The Company shall, upon receipt of such appraiser's valuation, give prompt written notice of the appraiser's valuation to each holder of shares of Series A and B Stock. Notwithstanding the foregoing, any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the fifteen (15) trading day period ending three (3) trading days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the fifteen (15) trading day period ending three (3) trading days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by an independent competent appraiser engaged by the Company.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by an independent competent appraiser engaged by the Company.

(iii) In the event the requirements of this subsection 2(c) are not complied with, the Company shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A and B Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(c)(iv) hereof.

(iv) The Company shall give each holder of record of Series A and B Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or thirty (30) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Company shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Company has given the first notice provided for herein or sooner than fifteen (15) days after the Company has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of at least a majority of all then outstanding shares of Series A and B Stock voting together as a single class (the "Requisite Majority").

3. Redemption.

(a) Series A and B Stock.

(i) The Series A and B Stock may be required to be redeemed by the Company at the option of the holders of at least a majority of all then outstanding shares of Series A and B Stock, voting together as a single class, on or after the earlier to occur of (i) the fifth anniversary of the first date upon which any shares of Series B Preferred Stock are first issued (the "Series B Purchase Date"), or (ii) an Event of Default (as defined below) (an "Optional Redemption"). For purposes herein, an "Event of Default" shall mean (i) the filing of any petition, whether voluntary or involuntary, seeking the reorganization or liquidation of the Company under any provision of the federal bankruptcy code or any other federal or state reorganization, insolvency or debtor relief law, (ii) the appointment of any receiver, liquidator or trustee for the Company or any of its properties by a court order and which appointment is not vacated within thirty (30) days, (iii) the Company is adjudicated insolvent, or the Company shall make an assignment for the benefit of any of its creditors, admit in writing an inability to pay debts when they become due in the ordinary course of its business, or consent to the appointment of a receiver, trustee or liquidator for the Company or all or any part of the property of the Company, (iv) the Company or any executive officer of the Company shall be convicted of, or enter a plea of guilty or nolo contendere to, any felony involving moral turpitude or relating to the business of the Company, (v) the Company breaches a material provision of the (A) Series A-1 Preferred Stock Purchase Agreement dated as of October 21, 2003 (the "Series A-1 and 2 Purchase Date") by and between the Company and certain investors listed in Schedule I thereto (the "Series A-1 Purchase Agreement"), (B) the Contribution Agreement dated as of the Series A-1 and 2 Purchase Date by and between the Company and AP Investors, LLC (the "Contribution Agreement"), (C) Series A-3 Preferred

Stock Purchase Agreement dated as of July 29, 2005 (the "Series A-3 Purchase Date") by and between the Company and certain investors listed in Schedule I thereto (the "Series A-3 Purchase Agreement"), or (D) Series B Preferred Stock Purchase Agreement dated as of the Series B Purchase Date by and between the Company and certain investors listed in Schedule I thereto (the "Series B Purchase Agreement"), or any of the agreements attached as exhibits thereto and executed in connection therewith, and such breach is not cured within thirty (30) days of notice thereof.

(ii) Upon each receipt of a written notice of an Optional Redemption (the "Redemption Notice") specifying a date not less than one hundred and twenty (120) days from the date of such notice on which the outstanding Series A and/or B Stock requested to be redeemed shall be redeemed (the "Optional Redemption Date"), the Company shall promptly notify the remaining holders of the Series A and B Stock of such Optional Redemption. The remaining holders of Series A and B Stock will have the right to participate in such redemption if they so elect by giving the Company written notice to such effect within fifteen (15) days of having received such notice. The Company shall redeem on the Optional Redemption Date each share of Series A and B Stock being redeemed by paying in cash therefor, an amount equal to the greater of (i) (A) the Original Series A Issue Price, in the case of the Series A Preferred Stock, and (B) the Original Series B Issue Price, in the case of the Series B Preferred Stock, plus all accrued but unpaid dividends on such share and (ii) the Fair Value (as determined below) of each such share of Series A Preferred Stock and/or Series B Preferred Stock, as the case may be, plus all accrued but unpaid dividends on such share (the "Redemption Price"); provided, however, that the Company may elect to redeem one-third (1/3) of the shares requested to be redeemed by such holder(s) under this Section 3(a) on the Optional Redemption Date, one-third (1/3) of such shares on the anniversary of the Optional Redemption Date and the final one-third (1/3) of such shares on the second anniversary of the Optional Redemption Date.

(b) The Fair Value shall be determined by an independent competent appraiser mutually agreed to by the Company and the holders of at least a majority of the shares of Series A and/or B Stock requesting redemption. In the event the Company and the holders of at least a majority of the shares of Series A and/or B Stock requesting redemption cannot mutually agree upon an independent appraiser within fifteen (15) days of receipt by the Company of a Redemption Notice, the Company and the holders of at least a majority of the shares of Series A and/or B Stock requesting redemption will each select an independent competent appraiser of national reputation to determine the Fair Value of the Series A and/or B Stock. The respective appraisals will be provided to the Company and the holders of the Series A and/or B Stock requesting redemption promptly upon completion. If the Fair Value of the greater appraisal does not exceed 1.1 times the Fair Value of the lesser appraisal of the Series A Preferred Stock, the Fair Value shall be the average of the two appraisals. In the event the Fair Value of the greater appraisal exceeds 1.1 times the Fair Value of the lesser appraisal, the two appraisers chosen by the Company and holders of Series A and/or B Stock requesting redemption, respectively, shall choose a third independent competent appraiser of national reputation and the third appraiser shall conduct an appraisal to determine the Fair Value of the Series A and/or B Stock (the "Third Appraisal"). Upon completion, the Third Appraisal shall be promptly delivered to the Company and the holders of Series A and/or B Stock requesting redemption. The Third Appraisal valuation shall be averaged with the prior appraisal that is closer in value to the Third Appraisal. The average of these two appraisals shall be the Fair Value of the Series A and/or B Stock and binding on the Company and the holders of the Series A and/or B Stock. All appraisals required herein shall be paid for by the Company. In determining the Fair Value, each of the appraisers shall evaluate the Company as a whole, on a going concern and

controlling interest basis, without application of any discount whatsoever, including any discount for a minority ownership interest and/or lack of marketability of such interest.

(c) If the funds of the Company legally available for redemption of shares of Series A and/or B Stock on any Optional Redemption Date are insufficient to redeem the total number of shares of Series A and/or B Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon the respective amounts which would otherwise be payable in respect of the shares to be redeemed if legally available funds were sufficient to redeem all such shares. The shares of Series A and B Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Series A and B Stock, such funds will immediately be used to redeem the balance of the shares which the Company has become obliged to redeem on such Optional Redemption Date but which it has not redeemed.

(d) In the event the Company fails to timely pay the full amounts owed pursuant to this Section 3 on the applicable Optional Redemption Date, as of the date immediately following the due date of the outstanding balance under the applicable Redemption Price, (i) the holders of Series A and B Stock shall have the rights set forth in Section 5(d) below and (ii) the Series A and B Dividend Rate shall be increased to twenty percent (20%) of (i) the Original Series A Issuance Price, in the case of Series A Preferred Stock, and (ii) the Original Series B Issuance Price, in the case of Series B Preferred Stock (the "Default Rate"). Should the amount then due and outstanding pursuant to this Section 3 be considered a debt obligation of the Company under applicable law and the Series A and B Dividend Rate shall cease to be applicable, the outstanding redemption amount owed to the holders of the Series A and B Stock shall accrue interest at the lesser of (a) the Default Rate and (b) the then applicable maximum rate allowed by law.

4. **Conversion.** The holders of the Series A and B Stock shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Series A and B Stock (including those shares of Series A and B Stock issued or issuable pursuant to the PIK Dividend, whether or not declared) shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i)(A) \$1.00 per share, in the case of the Series A Preferred Stock, and (B) \$1.50 per share, in the case of the Series B Preferred Stock, by (i) the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for shares of Series A Preferred Stock shall be \$1.00, and the initial Conversion Price per share for shares of Series B Preferred Stock shall be \$1.50; provided, however, that the Conversion Price for the Series A and B Stock shall be subject to adjustment as set forth in subsection 4(d).

(b) **Automatic Conversion.** Subject to the conditions set forth below, each share of Series A and B Stock (including those shares of Series A and B Stock issued or issuable pursuant to the PIK Dividend, whether or not declared) shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such Series A and B Stock immediately upon the Company's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of

1933, as amended (the "Securities Act"), covering the offer and sale of Common Stock for the account of the Company in which the gross proceeds to the Company are equal to or greater than twenty-five million dollars (\$25,000,000), and in which the price to the public per share of Common Stock equals or exceeds five (5) times the Original Series A Issue Price (a "Qualified Public Offering").

(c) **Mechanics of Conversion.** Before any holder of Series A and B Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed in blank or accompanied by proper instruments of transfer (or, in the event a certificate has been lost, stolen or destroyed, an affidavit as to that fact), at the principal corporate office of the Company or of any transfer agent for the Series A and B Stock, and shall give written notice to the Company at such office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Company shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A and B Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A and B Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Series A and B Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A and B Stock shall not be deemed to have converted such Series A and B Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Series A and B Stock shall be subject to adjustment from time to time as follows:

(i)

(A) If the Company shall issue, after the Series B Purchase Date, any Additional Stock (as defined below) for a consideration per share less than the Series A Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Series A Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price equal to the price paid per share for such Additional Stock. If the Company shall issue, after the Series B Purchase Date, any Additional Stock (as defined below) for a consideration per share less than the Series B Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Series B Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price equal to the price paid per share for such Additional Stock.

(B) No adjustment of the Conversion Price for the Series A and B Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall

be either taken into account in any subsequent adjustment made prior to 3 years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of 3 years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors, subject to the reasonable approval by the Requisite Majority, irrespective of any accounting treatment.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and 4(d)(i)(D)), if any, received by the Company upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Company for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Company (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Company upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of the Series A and B Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A and/or B Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by the Company after the Series B Purchase Date other than:

(A) securities issued pursuant to a transaction described in subsection 4(d)(iii) hereof,

(B) securities offered to the public in an underwritten offering before or in connection with which all outstanding shares of Series A and B Stock will be converted to Common Stock;

(C) up to 2,027,732 shares of Common Stock, including options therefor (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization) issued to employees, directors or consultants of the Company or any subsidiary of the Company pursuant to any stock option, stock purchase, restricted stock or other form of equity compensation or incentive plan approved by the Board of Directors of the Company (including the Series A and B Directors), provided the issuance of such securities is approved by the Board of Directors or a duly-appointed committee thereof;

(D) securities issued in connection with a bona fide business acquisition by the Company approved by the Board of Directors and the Requisite Majority, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise;

(E) securities that are deemed to be excluded from the definition of Additional Stock by written consent of (i) holders of a majority of the then outstanding shares of Series A Preferred Stock and (ii) holders of a majority of the then outstanding shares of Series B Preferred Stock, each voting separately as a class;

(F) securities issued in connection with any debt financing entered into by the Company, provided such issuance is approved by the Requisite Majority and the aggregate amount of securities issued pursuant to this subsection (F) shall not exceed ten percent (10%) of the outstanding capital stock of the Company;

(G) the warrant to purchase 282,156 shares (as such number may be adjusted pursuant to the Collateral Plus Warrant) of Common Stock issued to Collateral Plus, LLC (the "Collateral Plus Warrant"), and the shares of Common Stock receivable upon exercise of the Collateral Plus Warrant;

(H) not more than 100,000 shares of Series A Preferred Stock issued to the Company's Chief Financial Officer;

(I) shares of Series A Preferred Stock issuable to Paula Boyer pursuant to that Amended and Restated Retention Bonus and Non-Competition Agreement;

(J) securities issuable upon conversion of the Series A and B Stock (including Series A-1 Preferred Stock, Series A-3 Preferred Stock and Series B Preferred Stock issued in connection with a PIK Dividend), or upon payment of the PIK Dividend; or

(K) the warrant to purchase shares of Series B Preferred Stock issued pursuant to that certain joint venture agreement between the Company and CFSC Capital Corp. LXIV (the "Cargill Warrant"), and the shares of Series B Preferred Stock receivable upon exercise of the Cargill Warrant.

(iii) In the event the Company should at any time or from time to time after the Series B Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A and B Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Series B Purchase Date is decreased by a combination of the outstanding shares of Common

~~Stock, then, following the record date of such combination, the Conversion Price for the Series A and B Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.~~

(e) **Other Distributions.** In the event the Company shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Company or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case the distribution shall be allocated among the stockholders of the Company in accordance with the priorities set forth in Section 2.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A and B Stock shall thereafter be entitled to receive upon conversion of the Series A and B Stock the number of shares of stock or other securities or property of the Company or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A and B Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A and B Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) **No Impairment.** The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 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 Series A and B Stock against impairment.

(h) **No Fractional Shares.** No fractional shares shall be issued upon the conversion of any share or shares of the Series A and B Stock, and the number of shares of Common Stock to be issued shall be rounded up to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A and B Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(i) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A and/or B Stock pursuant to this Section 4, the Company, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A and B Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of any holder of Series A and B Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A and B Stock.

(j) **Notices of Record Date.** In the event of any taking by the Company 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 dividend (other than a cash dividend) or other distribution, the Company shall mail to each holder of Series A and B Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution and the amount and character of such dividend or distribution.

(k) **Reservation of Stock.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of (i) Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A and B Stock (including those shares of Series A and B Stock issued pursuant to the PIK Dividend), 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 Series A and B Stock (including shares of Common Stock that may be issued pursuant to Section 4(b)), and (ii) Series A and B Stock, solely for the purpose of effecting the payment of the PIK Dividend, such number of its shares of Series A and B Stock as shall from time to time be sufficient to effect the payment of the PIK Dividend; and if at any time the number of authorized but unissued shares of Common Stock or Series A and B Stock, as applicable, shall not be sufficient to effect the conversion of all then outstanding shares of the Series A and B Stock or the payment of the PIK Dividend, as applicable, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock and Series A and B Stock, as applicable, to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation.

(l) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A and B Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Company.

5. Voting Rights; Board Composition.

(a) **General.** The holder of each share of Series A and B Stock shall have the right to one vote for each share of Common Stock into which such shares of Series A and B Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock (except with respect to the election of directors pursuant to Section 5(c)), and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Company, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A and B Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) **Board Size.** Except as set forth in Section 5(d) below, the Company shall not, without the written consent or affirmative vote of the Requisite Majority, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class,

~~increase the maximum number of directors constituting the Board of Directors of the Company to a number in excess of seven (7) or decrease the number of directors constituting the Board of Directors of the Company to a number below five (5).~~

(c) **Board Seats.** Prior to a Qualified Public Offering, the holders of the Series A and B Stock, voting together as a separate class, shall be entitled to elect four (4) directors of the Company (the "Series A and B Directors"), each of whom shall be designated for nomination by the Requisite Majority unless otherwise set forth in the Stockholders' Agreement by and among the Company and each holder of capital stock of the Company, dated as of the Series A-1 and 2 Purchase Date, as such agreement may be amended from time to time (the "Stockholders' Agreement"). Prior to a Qualified Public Offering, the holders of the Common Stock, voting as a single class, shall be entitled to elect three (3) directors of the Company (the "Common Directors"), each of whom shall be designated for nomination by the holders of a majority of the shares of the Common Stock then outstanding, unless otherwise set forth in the Stockholders' Agreement. From and after the closing of the Company's first Qualified Public Offering, the Board of Directors shall be elected by a plurality of the votes cast at an election.

(d) **Event of Default.**

(i) Notwithstanding anything contained herein to the contrary, upon the occurrence of an Event of Default or upon the failure of the Company to timely make the full redemption payment with respect to the Series A and B Stock which it is required to make under Section 3 hereof on the applicable Optional Redemption Date (a "Redemption Breach"), the number of directors constituting the Company's Board of Directors shall, at the request of the holders of the Requisite Majority, be increased by such number which shall constitute a minimum majority of the Board of Directors, and the holders of Series A and B Stock shall have the special right, voting separately as a single class (with each share being entitled to one vote) and to the exclusion of all other classes of the Company's capital stock, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships. The special right of the holders of Series A and B Stock to elect members of the Board of Directors may be exercised at a special meeting called pursuant this Section 5(d), any annual or other special meeting of the stockholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a stockholders meeting. Such special right shall continue until such time as there is no longer any Event of Default in existence or when the Redemption Breach has been cured, at which time such special right shall terminate subject to revesting upon the occurrence and continuation of any Event of Default or Redemption Breach which gives rise to such special right hereunder.

(ii) At any time when such special right has vested in the holders of Series A and B Stock, a proper officer of the Company shall, upon the written request of the Requisite Majority, addressed to the secretary of the Company, call a special meeting of the holders of Series A and B Stock for the purpose of electing directors pursuant to this subsection. Such meeting shall be held at the earliest legally permissible date at the principal office of the Company, or at such other place designated by the Requisite Majority. If such meeting has not been called by a proper officer of the Company within 10 days after personal service of such written request upon the secretary of the Company or within 20 days after mailing the same to the secretary of the Company at its principal office, then the Requisite Majority may designate in writing a person to call such meeting at the expense of the Company, and such meeting may be called by such person so designated upon notice required for annual meetings of stockholders and shall be held at the Company's principal office, or at such other place designated by the

~~Requisite Majority. Any person so designated shall be given access to the stock record books of the Company for the purpose of causing a meeting of stockholders to be called pursuant to this subsection.~~

(iii) At any meeting (or in a written consent in lieu thereof) at which the holders of Series A and B Stock have the special right to elect directors pursuant to this Section 5(d), the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of Series A and B Stock then outstanding shall be required to constitute a quorum for the election or removal of any director by the holders of the Series A and B Stock exercising such special right. The vote of a majority of the shares of Series A and B Stock then outstanding shall be required to elect or remove any such director.

(iv) Any director so elected pursuant to this Section 5(d) shall continue to serve as a director until the expiration of the lesser of (i) a period of one month following the date on which there is no longer any Event of Default in existence or when the Redemption Breach has been cured or (ii) the remaining period of the full term for which such director has been elected. After the expiration of such period or when the full term for which such director has been elected ceases (provided that the special right to elect directors has terminated), as the case may be, the number of directors constituting the Board of Directors of the Company shall decrease to such number as constituted the whole Board of Directors of the Company immediately prior to the occurrence of the Event of Default or Redemption Breach giving rising to the special right to elect directors.

(c) **Quorum, Vacancies.** At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, (i) the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of the Series A and B Stock then outstanding shall constitute a quorum of the Series A and B Stock for the election of the Series A and B Directors, and (ii) the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of the Common Stock then outstanding in the aggregate shall constitute a quorum for the election of the Common Directors. A vacancy in any Series A and B Director position by resignation, removal or other cause shall be filled, and a Series A and B Director may be removed with or without cause, unless otherwise set forth in Section 8.1 of the Stockholders' Agreement, only by the vote or written consent of the holders of Series A and B Stock as provided in Section 5(c) above. A vacancy in any Common Director position by resignation, removal or other cause shall be filled, and a Common Director may be removed with or without cause, only by the vote or written consent of the holders of the Common Stock as provided in Section 5(c) above.

(f) **Series A and B Protective Provisions.** The Company shall not, without the prior written consent of the holders of not less than the Requisite Majority:

(i) Authorize, issue, obligate itself to issue, or reserve for issuance more than an aggregate of 2,027,732 shares of Common Stock (as adjusted for any stock dividends, combinations, recapitalizations, splits or otherwise) pursuant to any stock option, restricted stock, or other equity compensation or incentive plan for the benefit of employees, directors or consultants (the "Equity Compensation Plan Aggregate Limit");

(ii) Issue, or obligate itself to issue, any equity security, including any other security convertible into or exercisable for any equity security, with rights, privileges or preferences (including, without limitation, the dividend rights, conversion privilege, redemption

~~privilege or the liquidation preference) which are *pari passu* with or senior to the Series A or B Stock, other than (i) not more than 100,000 shares of Series A Preferred Stock issuable to the Company's Chief Financial Officer; (ii) shares of Series A Preferred Stock issuable pursuant to the Amended and Restated Retention Bonus and Non-Compete Agreement between the Company and Paula Boyer, (iii) shares of Series B Preferred Stock issuable pursuant to the Cargill Warrant and (iv) shares of Series A and B Stock issuable pursuant to the PIK Dividend;~~

(iii) Authorize (by reclassification or otherwise) any other equity security, including any other security convertible into or exercisable for any equity security, with rights, privileges or preferences (including, without limitation, the dividend rights, conversion privilege, redemption privilege or the liquidation preference) which are *pari passu* with or senior to the Series A or B Stock;

(iv) Increase or decrease (other than by redemption or conversion authorized herein) the total number of authorized shares of Common Stock or Series A or B Stock;

(v) Amend, restate or repeal the Certificate of Incorporation or Bylaws of the Company in any way which would cancel or adversely change, alter or affect the preferences, privileges or rights (including, without limitation, the dividend rights, conversion privilege, redemption privilege or the liquidation preference) of the Series A and B Stock;

(vi) Effect an exchange, reclassification or cancellation of all or part of the shares of Series A and B Stock;

(vii) Authorize or effect, or permit any subsidiary to authorize or effect, the declaration, payment or setting aside for payment of cash or stock dividends or any other distribution of assets (including cash, securities and intangible assets or other property) on any shares of capital stock of the Company or any subsidiary other than the Series A and B Stock;

(viii) With the exception of the repurchase of securities owned by an employee upon the termination of such employee at a price not greater than the lower of cost or fair market value of such securities, authorize or effect the redemption or repurchase of any shares of capital stock of the Company other than the Series A and B Stock pursuant to Section 3 herein;

(ix) Enter into any merger, share exchange, business combination or consolidation (or permit any entity, which is owned or controlled by the Company, to enter into any such transaction, excluding a transaction between wholly-owned subsidiaries of the Company) with any other company or other entity in which the stockholders of the Company immediately preceding such transaction shall own less than fifty percent (50%) of the voting securities of the surviving company or other entity; sell, lease or otherwise dispose of all or substantially all of its properties or assets; or liquidate, dissolve or wind up the Company's affairs;

(x) Authorize or effect, or permit any subsidiary to authorize or effect, the sale in any manner, directly or indirectly, of a material business unit or going concern of the Company or any subsidiary to any person or entity; or

~~(xi) Take other actions that would materially change the principal nature of the Company's business.~~

(g) **Series B Protective Provisions.** The Company shall not, without the prior written consent of the holders of not less than a majority of the outstanding shares of Series B Preferred Stock, voting together as a single class:

(i) Authorize (by reclassification or otherwise), issue, or obligate itself to issue, any equity security, including any other security convertible into or exercisable for any equity security, with rights, privileges or preferences (including, without limitation, the dividend rights, conversion privilege, redemption privilege or the liquidation preference) which are *pari passu* with or senior to the Series B Preferred Stock, unless such equity security is likewise *pari passu* with or senior to the Series A Preferred Stock, in which case a separate class vote pursuant to this subsection (g) shall not be required;

(ii) Amend, restate or repeal the Certificate of Incorporation or Bylaws of the Company in any way which would cancel or adversely change, alter or affect the preferences, privileges or rights (including, without limitation, the dividend rights, conversion privilege, redemption privilege or the liquidation preference) of the Series B Preferred Stock, unless the preferences, privileges or rights of the Series A Preferred Stock are similarly cancelled or adversely changed, altered or affected, in which case a separate class vote pursuant to this subsection (g) shall not be required; and

(iii) Effect an exchange, reclassification or cancellation of all or part of the shares of Series B Preferred Stock without effecting a similar exchange, reclassification or cancellation of all or part of the shares of Series A Preferred Stock.

6. **Status of Converted or Redeemed Stock.** In the event any shares of Series A and B Stock shall be redeemed or converted pursuant to Section 3 or Section 4 hereof, the shares so converted or redeemed shall be cancelled and shall not be issuable by the Company.

(C) **Common Stock.**

1. **Dividend Rights.** 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 Company legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Company, the assets of the Company shall be distributed as provided in Section 2 (Liquidation Preference) of Article Four (B).

3. **Redemption.** The Common Stock shall not have redemption rights.

4. **Voting Rights.** 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 Company, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE FIVE

The Company is to have perpetual existence.

ARTICLE SIX

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

ARTICLE SEVEN

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the Company may provide. The books of the Company may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Company. Election of directors need not be by written ballot unless the bylaws of the Company so provide.

ARTICLE EIGHT

To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of the Company shall not be liable to the Company or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this ARTICLE EIGHT shall not adversely affect any right or protection of a director of the Company existing at the time of such repeal or modification.

ARTICLE NINE

The Company shall indemnify its officers, directors, employees and agents to the fullest extent permitted by the Delaware General Corporation Law.

ARTICLE TEN

The Company expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

ARTICLE ELEVEN

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