

**PUBLIC**

HCMO Notice of Material Change

Hanger, Inc. /

United Seating and Mobility, L.L.C. dba Numotion

Attachment No. 15

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "HANGER, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE THIRD DAY OF MARCH, A.D. 1988, AT 10 O`CLOCK A.M.

CERTIFICATE OF AGREEMENT OF MERGER, CHANGING ITS NAME FROM "DELAWARE SEQUEL CORPORATION" TO "SEQUEL CORPORATION", FILED THE TWENTY-SECOND DAY OF APRIL, A.D. 1988, AT 10 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE TWELFTH DAY OF MAY, A.D. 1989, AT 10 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "SEQUEL CORPORATION" TO "HANGER ORTHOPEDIC GROUP, INC.", FILED THE ELEVENTH DAY OF AUGUST, A.D. 1989, AT 12:30 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE TWELFTH DAY OF FEBRUARY, A.D. 1990, AT 3 O`CLOCK P.M.

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

2153738 8100H  
SR# 20243784065

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 204484296  
Date: 09-25-24

HNG-00542

# Delaware

The First State

Page 2

*CERTIFICATE OF AMENDMENT, FILED THE EIGHTH DAY OF JUNE, A.D.  
1990, AT 1 O`CLOCK P.M.*

*CERTIFICATE OF DESIGNATION, FILED THE THIRTIETH DAY OF  
APRIL, A.D. 1991, AT 4:30 O`CLOCK P.M.*

*CERTIFICATE OF DESIGNATION, FILED THE EIGHTEENTH DAY OF  
JUNE, A.D. 1999, AT 1:30 O`CLOCK P.M.*

*CERTIFICATE OF DESIGNATION, FILED THE TWENTY-EIGHTH DAY OF  
JUNE, A.D. 1999, AT 10 O`CLOCK A.M.*

*CERTIFICATE OF AMENDMENT, FILED THE SIXTEENTH DAY OF  
SEPTEMBER, A.D. 1999, AT 4:30 O`CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE SIXTEENTH DAY OF MAY,  
A.D. 2000, AT 6 O`CLOCK P.M.*

*CERTIFICATE OF DESIGNATION, FILED THE TWENTY-SIXTH DAY OF  
MAY, A.D. 2006, AT 9:08 O`CLOCK A.M.*

*CERTIFICATE OF OWNERSHIP, FILED THE FIFTEENTH DAY OF  
DECEMBER, A.D. 2006, AT 8:17 O`CLOCK P.M.*

A handwritten signature in black ink, appearing to read "JBullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

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SR# 20243784065

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HNG-00543

# Delaware

The First State

Page 3

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2006.

CERTIFICATE OF OWNERSHIP, FILED THE FIFTEENTH DAY OF DECEMBER, A.D. 2006, AT 10:15 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2006.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-SECOND DAY OF MAY, A.D. 2009, AT 5:37 O`CLOCK P.M.

RESTATED CERTIFICATE, FILED THE THIRTEENTH DAY OF MAY, A.D. 2011, AT 10:28 O`CLOCK A.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE SEVENTH DAY OF SEPTEMBER, A.D. 2011, AT 2:21 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "HANGER ORTHOPEDIC GROUP, INC." TO "HANGER, INC.", FILED THE SEVENTH DAY OF JUNE, A.D. 2012, AT 8:14 O`CLOCK A.M.

A handwritten signature in black ink, reading "J Bullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

2153738 8100H  
SR# 20243784065

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Authentication: 204484296  
Date: 09-25-24

HNG-00544

# Delaware

The First State

Page 4

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF  
THE AFORESAID CERTIFICATE OF AMENDMENT IS THE EIGHTH DAY OF  
JUNE, A.D. 2012 AT 12:01 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE TWENTY-SEVENTH DAY OF  
AUGUST, A.D. 2012, AT 8:04 O'CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-NINTH DAY OF  
FEBRUARY, A.D. 2016, AT 12:39 O'CLOCK P.M.

CERTIFICATE OF OWNERSHIP, FILED THE TWENTY-SECOND DAY OF  
DECEMBER, A.D. 2016, AT 12:55 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF  
THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE THIRTY-FIRST DAY  
OF DECEMBER, A.D. 2016.

CERTIFICATE OF MERGER, FILED THE THIRD DAY OF OCTOBER, A.D.  
2022, AT 8:01 O'CLOCK A.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE TWELFTH  
DAY OF DECEMBER, A.D. 2022, AT 6:18 O'CLOCK P.M.



A handwritten signature in black ink, appearing to read "JBullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

2153738 8100H  
SR# 20243784065

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Authentication: 204484296  
Date: 09-25-24

HNG-00545

# Delaware

The First State

Page 5

*AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID  
CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE  
AFORESAID CORPORATION, "HANGER, INC.".*



2153738 8100H  
SR# 20243784065

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 204484296  
Date: 09-25-24

**HNG-00546**

738063012

FILED

MAR 3 1988

*Handwritten signature*  
SECRETARY OF STATE

**CERTIFICATE OF INCORPORATION  
OF  
DELAWARE SEQUEL CORPORATION**

FIRST: The name of the Corporation is Delaware Sequel Corporation.

SECOND: The address of the registered office of the Corporation in Delaware is 1209 Orange Street, Wilmington, Delaware 19801. The name and address of the registered agent of the Corporation in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, New Castle County, Wilmington, Delaware 19801.

THIRD: The nature of the business to be transacted by the Corporation and the purposes for which it is formed are to transact any and all lawful business for which corporations may be incorporated under the Delaware General Corporation Law.

FOURTH: The authorized capital stock of the Corporation shall consist of ten million (10,000,000) shares of Common Stock, one cent (\$.01) par value per share, and one million (1,000,000) shares of Preferred Stock, one cent (\$.01) par value per share. The Board of Directors shall have the power to issue the Preferred Stock in series, with such designations, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof as shall be stated in the resolution or resolutions of the Board of Directors providing for the issue of such stock.

FIFTH: The Board of Directors is authorized, subject to limitations prescribed by law and the provisions of the Article FOURTH, to provide for the issuance of the shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

(a) The number of shares constituting that series and the distinctive designation of that series;

(b) The dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

HNG-00547

(c) Whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

(d) Whether that series shall have conversion privileges, and, if so, determination of the securities into which such series is convertible and the terms and conditions of such conversion, including provisions for adjustment of the conversion rate in such events as the Board of Directors shall determine;

(e) Whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

(f) Whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;

(g) The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and

(h) Any other relative rights, preferences and limitations of that series.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The name and the mailing address of the incorporator are as follows:

| <u>NAME</u>     | <u>MAILING ADDRESS</u>                                               |
|-----------------|----------------------------------------------------------------------|
| Walter Freedman | 1050 Connecticut Avenue, N.W.<br>Suite 825<br>Washington, D.C. 20036 |

EIGHTH: Shareholders shall have no preemptive right to acquire unissued shares of the Corporation's capital stock, treasury shares or securities convertible into such shares. The Board of Directors of the Corporation shall have the power and authority from time to time to authorize the sale of, and to sell, for cash or otherwise, all or any portion of the unissued and/or treasury stock of the Corporation without such stock, or any portion thereof, being first offered to the shareholders of the Corporation.

NINTH: A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages

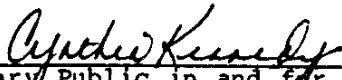
for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, as the same exists or hereafter may be amended, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Delaware General Corporation Law. Any repeal or modification of this paragraph by the shareholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

I, THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto sets my hand this 2<sup>nd</sup> day of March, 1988.

  
Walter Freedman

DISTRICT OF COLUMBIA

I, Cynthia Kennedy, a notary public, do hereby certify that on this 2nd day of March, 1988, personally appeared before me, WALTER FREEDMAN, who being by me first duly sworn, declared that he signed the foregoing document as the incorporator of the Corporation, and that the statements therein contained are true.

  
Notary Public in and for the  
District of Columbia

My Commission expires: March 14, 1992

## EXHIBIT A

APR 22 1988

## Plan and Agreement of Merger

*10AM*  
*[Signature]*  
SECRETARY OF STATE

This Plan and Agreement of Merger dated as of March 10, 1988 is executed and entered into pursuant to the Colorado Corporation Code and the Delaware General Corporation Law, by and between DELAWARE SEQUEL CORPORATION, a Delaware Corporation ("Sequel Delaware") and SEQUEL CORPORATION, a Colorado corporation ("Sequel Colorado"), such corporations being hereinafter sometimes collectively referred to as the "Constituent Corporations."

## WITNESSETH

WHEREAS, Sequel Delaware is a corporation duly organized and existing under the laws of the State of Delaware, having been incorporated on March 3, 1988, and having an authorized capital stock of (i) 10,000,000 shares of common stock, \$.01 par value per share, of which 1,000 shares are issued and outstanding and which 1,000 shares are owned by Sequel Colorado, and (ii) 1,000,000 shares of preferred stock, \$.01 par value per share, none of which are issued; and

WHEREAS, Sequel Colorado is a corporation duly organized and existing under the laws of the State of Colorado, having been originally incorporated on March 11, 1983, and having a current authorized capital stock of 10,000,000 shares of common stock, par value \$.01 per share, of which 2,076,451 shares are issued and outstanding, and 100,000 shares of preferred stock, par value \$.01 per share, of which no shares are issued and outstanding; and

WHEREAS, the respective Boards of Directors of Sequel Delaware and Sequel Colorado deem it advisable and in the best interests of said corporations that Sequel Colorado be merged with and into Sequel Delaware as the surviving corporation as authorized by the statutes of the States of Colorado and Delaware under and pursuant to the terms and conditions hereinafter set forth, and each of such boards has duly approved this form of Plan and Agreement of Merger (the "Plan").

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements herein contained, and for the purpose of setting forth the terms and conditions of said merger, the mode of carrying the same into effect, the manner and basis of converting the shares of each Constituent Corporation into shares of the Surviving Corporation (as hereinafter defined) and such other details and provisions as are deemed necessary or desirable, the parties hereto have agreed and do hereby agree, subject to the approval or

adoption of the Plan by the requisite vote of the shareholders of each Constituent Corporation and to the conditions hereinafter set forth, as follows:

**ARTICLE I  
MERGER AND NAME OF SURVIVING CORPORATION**

At the Effective Time of the merger (as hereinafter defined), Sequel Colorado shall be merged with and into Sequel Delaware, which is hereby designated as the "Surviving Corporation" which shall continue its corporate existence as a Delaware corporation to be governed by the laws of the State of Delaware, the name of which shall be changed to Sequel Corporation and which shall maintain a registered office in the State of Delaware at Corporation Trust Center, 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The registered agent of Sequel Delaware at such address shall be The Corporation Trust Company.

**ARTICLE II  
TERMS AND CONDITIONS OF MERGER**

The terms and conditions of the merger (in addition to those set forth elsewhere in the Plan) are as follows:

(a) Upon and following the Effective Time of the merger:

(1) The Constituent Corporations shall be merged into a single corporation, which shall be Sequel Delaware, the corporation designated herein as the Surviving Corporation.

(2) The separate existence of Sequel Colorado shall cease.

(3) The Surviving Corporation shall thereupon and thereafter possess all the rights, privileges, powers, immunities and franchises, of a public as well as of a private nature, and be subject to all the restrictions, disabilities and duties of each Constituent Corporation; and the rights, privileges, powers and franchises of each Constituent Corporation, and all property, real, personal and mixed, and all debts due to either Constituent Corporation on whatever account, including subscriptions for stock, and all other choses in action and all and every other interest, of or belonging to each Constituent Corporation, shall be taken and deemed to be transferred to and vested in the Surviving Corporation without further act or deed; and all property, rights, privileges, powers and franchises, and all and every

other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the respective Constituent Corporations, and the title to any real estate vested by deed or otherwise in either Constituent Corporation shall not revert or be in any way impaired by reason of the merger; but all rights of creditors and all liens upon any property of either Constituent Corporation shall be preserved unimpaired, and all debts, liabilities and duties of the respective Constituent Corporations shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Specifically, but not by way of limitation, the Surviving Corporation shall be responsible and liable to dissenting shareholders of Sequel Colorado and any action or proceeding whether civil, criminal or administrative, pending by or against either Constituent Corporation shall be prosecuted as if the merger had not taken place, or the Surviving Corporation may be substituted in such action or proceeding.

(4) All corporate acts, plans, policies, contracts, approvals and authorizations of Sequel Colorado and its shareholders, Board of Directors, committees elected or appointed by the Board of Directors, officers and agents, which were valid and effective immediately prior to the Effective Time of the merger shall be taken for all purposes as the acts, plans, policies, contracts, approvals and authorizations of the Surviving Corporation and shall be as effective and binding thereon as the same were with respect to Sequel Colorado. The employees of Sequel Colorado shall become the employees of the Surviving Corporation and continue to be entitled to the same rights and benefits which they enjoyed as employees of Sequel Colorado.

(5) The assets, liabilities, reserves and accounts of each Constituent Corporation shall be recorded on the books of the Surviving Corporation at the amounts at which they, respectively, shall then be carried on the books of such Constituent Corporation subject to such adjustments or eliminations of intercompany items as may be appropriate in giving effect to the merger.

(6) All obligations of Sequel Colorado under any and all employee benefit plans in effect as of the Effective Time of the merger, or with respect to which employee rights or accrued benefits are outstanding as of such time, including the assumption of all outstanding incentive stock options issued under the Incentive Stock Option Plan of Sequel Colorado, and any nonincentive stock options or warrants or unexercised portions thereof issued by Sequel Colorado, shall be assumed by Sequel Delaware as of the Effective Time of the

merger; provided, however, that the common stock of Sequel Delaware shall be substituted for common stock of Sequel Colorado thereunder, without any action on the part of the holder thereof. As of the Effective Time of the merger, Sequel Delaware shall adopt and continue in effect all such employee benefit plans, upon the same terms and conditions as were in effect immediately prior to the merger and Sequel Delaware shall reserve that number of shares of Sequel Delaware common stock which is equal to the number of shares of common stock of Sequel Colorado that is reserved under any and all employee benefit plans of Sequel Colorado as of the Effective Time of the merger.

(b) The Board of Directors, and the members thereof, the committees of the Board of Directors, and the members thereof, and the officers of Sequel Colorado immediately prior to the Effective Time of the merger shall be and constitute the Board of Directors, and the members thereof, the committees of the Board of Directors, and the members thereof, and the officers of the Surviving Corporation, respectively to serve in accordance with the bylaws of the Surviving Corporation until their respective successors shall have been duly elected and qualified.

### **ARTICLE III CAPITALIZATION OF SURVIVING CORPORATION AND MANNER AND BASIS OF CONVERTING SHARES**

The total authorized capital stock of the Surviving Corporation shall be as set forth in the Certificate of Incorporation of the Surviving Corporation, that is 10,000,000 shares of common stock, \$.01 par value per share (the "Common Stock of Surviving Corporation"), and 1,000,000 shares of preferred stock, \$.01 par value per share.

The manner and basis of converting shares of each Constituent Corporation into shares of the Surviving Corporation and the mode of carrying the merger into effect are as follows:

(a) The 1,000 shares of common stock of Sequel Delaware owned and held by Sequel Colorado immediately prior to the Effective Time of the merger shall, at the Effective Time of the merger, be deemed to have been cancelled immediately prior thereto and no stock of the Surviving Corporation shall be issued on account thereof.

(b) At the Effective Time of the merger, each share of the common stock of Sequel Colorado outstanding at the Effective Time of the merger shall be converted into one fully paid and nonassessable share of Common Stock of the Surviving Corporation, without any action on the part of the holder thereof. After the Effective

Time of the merger, each holder of an outstanding certificate which prior thereto represented shares of the common stock of Sequel Colorado shall be entitled, upon surrender thereof to any transfer agent for the common stock of the Surviving Corporation, to receive in exchange therefor a certificate or certificates representing the number of shares of common stock of the Surviving Corporation into which the shares of the common stock of Sequel Colorado so surrendered shall have been converted as aforesaid, of such denominations and registered in such names as such holder may request. Until so surrendered, each such outstanding certificate which, prior to the Effective Time of the merger, represented shares of the common stock of Sequel Colorado shall for all purposes evidence the ownership of the shares of common stock of the Surviving Corporation into which such shares shall have been so converted.

(c) All shares of common stock of the Surviving Corporation into which shares of the common stock of Sequel Colorado shall have been converted pursuant to this Article III shall be issued in full satisfaction of all rights pertaining to such converted shares.

(d) If any certificate of shares of common stock of the Surviving Corporation is to be issued in a name other than that in which the certificate surrendered in exchange therefore is registered, it shall be a condition of the issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and that the person requesting such exchange pay to the Surviving Corporation or any agent designated by it any transfer or other taxes required by reason of the issuance of a certificate for shares of common stock of the Surviving Corporation in any name other than that of the registered holder of the certificate surrendered, or establish to the satisfaction of the Surviving Corporation or any agent designated by it that such tax has been paid or is not payable.

#### **ARTICLE IV CERTIFICATE OF INCORPORATION AND BYLAWS**

(a) The Certificate of Incorporation of Sequel Delaware as existing and constituted immediately prior to the Effective Time of the merger shall, upon the merger's becoming effective, be and constitute the Certificate of Incorporation of the Surviving Corporation until amended in the manner provided by law.

(b) The Bylaws of Sequel Delaware as existing and constituted immediately prior to the Effective Time of the merger shall, upon the merger's becoming effective, be and constitute the Bylaws of the Surviving Corporation until amended in the manner provided by law.

**ARTICLE V**  
**OTHER PROVISIONS WITH RESPECT TO MERGER**

(a) The Plan shall be submitted to the shareholders of each Constituent Corporation as provided by the applicable laws of the States of Delaware and Colorado, respectively. As soon as practicable after the approval or adoption thereof by the shareholders of each Constituent Corporation in accordance with the requirements of the laws of the States of Delaware and Colorado and the obtaining of all necessary regulatory approvals, all required documents shall be executed, filed and recorded and all required acts shall be done in order to accomplish the merger under the provisions of the applicable statutes of the States of Delaware and Colorado.

(b) The Plan may be terminated at any time prior to the Effective Time of the merger, whether before or after action thereon by the shareholders of the Constituent Corporations, (i) by mutual consent of the Constituent Corporations, expressed by action of their respective Boards of Directors, (ii) by consent of Sequel Colorado, expressed by action of its Board of Directors, if the holders of more than 10% of the outstanding shares of common stock of Sequel Colorado elect to exercise the right to dissent under applicable provisions of Colorado law in connection with the merger contemplated hereby, or (iii) by action of the Board of Directors of either of the Constituent Corporations if there shall not have been received an opinion of counsel to the effect that (A) the merger of Sequel Colorado and Sequel Delaware as provided herein will constitute a reorganization under the Internal Revenue Code of 1986, as amended, (B) no gain or loss will be recognized to the shareholders of Sequel Colorado upon the conversion in the merger of their existing stock into stock of Sequel Delaware, (C) the tax basis of the shares of common stock of Sequel Delaware received by the shareholders of Sequel Colorado will be the same as the tax basis of the shares of Sequel Colorado exchanged therefor, (D) the holding period of the shares of capital stock received by the shareholders of Sequel Colorado will include the holding period of the shares of common stock of Sequel Colorado exchanged therefor, provided that such shares of common stock of Sequel Colorado were held as capital assets at the Effective Time of merger, (E) no gain or loss will be recognized by Sequel Delaware or Sequel Colorado as the result of the receipt by Sequel Delaware of all the assets of Sequel Colorado in exchange for shares of common stock of Sequel Delaware and the assumption by Sequel Delaware of all the liabilities of Sequel Colorado and (F) the tax basis of the assets of Sequel Colorado acquired by Sequel Delaware pursuant to the merger will be the same as the tax basis and holding period of those assets in the hands of Sequel Colorado immediately prior to the Effective Time of the merger.

(c) If the merger is consummated, the Surviving Corporation shall bear and pay all costs and expenses incurred by each of the Constituent Corporations. If the merger is not consummated, each Constituent Corporation shall bear and pay all costs and expenses incurred by it or on its behalf.

(d) The Surviving Corporation, from and after the Effective Time of the merger, agrees that it may be sued and served with process in the State of Colorado in any proceeding for the enforcement of the rights of a dissenting stockholder of Sequel Colorado against the Surviving Corporation. The Surviving Corporation irrevocably appoints the Secretary of the State of Colorado as its agent to accept service of process in any such proceeding. The Surviving Corporation will promptly pay to the dissenting stockholders of Sequel Colorado the amounts, if any, to which they shall be entitled under the Colorado Corporation Code with respect to the rights of dissenting stockholders, provided such dissenters act in strict compliance with the provisions of the Colorado Corporation Code governing rights of dissenting stockholders in the case of a merger.

#### **ARTICLE VI APPROVAL AND EFFECTIVE TIME OF THE MERGER**

(a) The merger shall become effective when all the following actions shall have been taken:

(1) The Plan shall be adopted and approved on behalf of each Constituent Corporation in accordance with the General Corporation Law of the State of Delaware and the Colorado Corporation Code,

(2) Articles of Merger setting forth the information required by, and executed and verified in accordance with, the Colorado Corporation Code, shall be filed in the office of the Secretary of the State of Colorado, and

(3) This Plan and Agreement of Merger, when executed and acknowledged in accordance with the Delaware General Corporation Code, shall be filed in the office of the Secretary of State of the State of Delaware (the particular time and date of filing of this Plan and Agreement of Merger with the Secretary of State of the State of Delaware being herein referred to as the "Effective Time").

(b) The Surviving Corporation shall cause duplicate, certified copies of the Plan and Agreement of Merger to be filed in the office of the Secretary of the State of Delaware and with the Secretary of State of the State of Colorado. If at any time the

Surviving Corporation shall consider or be advised that any further assignment or assurance in law or other action is necessary or desirable to vest, perfect or confirm in the Surviving Corporation the title, or record or otherwise, to any property or rights of Sequel Colorado acquired or to be acquired by or as a result of the merger, the proper officers and directors of Sequel Colorado and the Surviving Corporation, respectively, shall be and they hereby are severally and fully authorized to execute and deliver such deeds, assignments and assurances in law and take such other action as may be necessary or proper in the name of Sequel Colorado or the Surviving Corporation to vest, perfect or confirm title to such property or rights in the Surviving Corporation and otherwise carry out the purposes of the Plan.

(c) For the convenience of the parties and to facilitate the filing and recording of the Plan, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

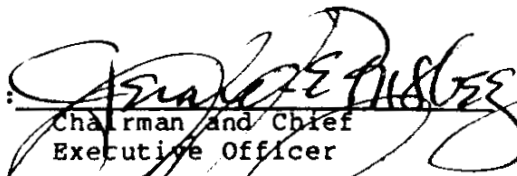
(d) The Plan and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Delaware except insofar as the internal law of the State of Colorado shall mandatorily apply to the merger.

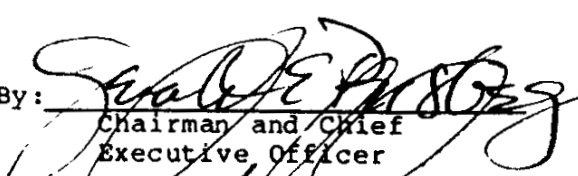
(e) The Plan cannot be altered or amended except pursuant to an instrument in writing signed on behalf of the parties hereto.

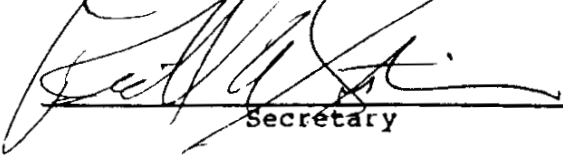
IN WITNESS WHEREOF, Sequel Delaware has caused the Plan to be signed by its President and its Secretary and its corporate seal to be affixed hereto pursuant to authorization contained in a resolution adopted by its Board of Directors approving the Plan, and Sequel Colorado has caused the Plan to be signed by its President and its Secretary and its corporate seal to be affixed hereto pursuant to authorization contained in a resolution adopted by its Board of Directors approving the Plan, all on the date first above written.

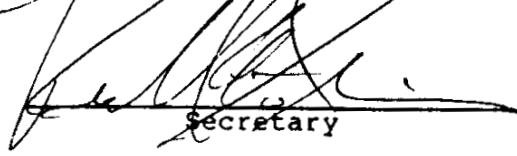
DELAWARE SEQUEL CORPORATION  
a Delaware corporation

SEQUEL CORPORATION  
a Colorado corporation

By:   
Chairman and Chief  
Executive Officer

By:   
Chairman and Chief  
Executive Officer

  
Secretary

  
Secretary

FILE HEADER

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THE CORPORATION TRUST COMPANY



739/32015

DATE SUBMITTED May 12, 1989

Pursuant to counsel's instructions,  
submitted for filing by:

The Corporation Trust Company

FILE DATE May 12, 1989

V. A. Brookens/blc

TIME 10 A.M.

FILER'S NO. 00010

NAME OF COMPANY SEQUEL CORPORATION

FILE NUMBER 21537-38

TYPE OF DOCUMENT Certificate of Designation SECTION NO. 151

CHANGES NAME \_\_\_\_\_

CHANGES AGENT/OFFICE \_\_\_\_\_

STOCK \$ \_\_\_\_\_

TO \$ \_\_\_\_\_

FRANCHISE TAX \$ \_\_\_\_\_

Closed/Invoice

MAY 18 1989

Division of Corporation

RECEIVED

MAY 12 1989

Division of Corporations

Filing Fee Tax \$ 5.00

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TODAY APPROVAL

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739132015

*Michael H. Hinkle* 10:45 AM  
SECRETARY OF STATE

CERTIFICATE OF DESIGNATIONS, PREFERENCES  
AND RIGHTS OF PREFERRED STOCK

OF

SEQUEL CORPORATION

\* \* \*

SEQUEL CORPORATION, a corporation duly organized and validly existing under the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

That, pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation of said corporation, and pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, said Board of Directors, at a meeting duly held on May 11, 1989, adopted a resolution providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of the Preferred Stock of said corporation, which resolution is as follows:

RESOLVED THAT:

Of the 1,000,000 shares of the authorized but unissued Preferred Stock of the Company, 434,800 shares shall be designated Class A Preferred Stock, par value \$.01 per share, and 562,296 shares shall be designated Class B Preferred Stock, par value \$.01 per share.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations and restrictions thereof in respect of the Preferred Stock of the Company.

A. CLASS A PREFERRED STOCK

Certain capitalized terms used herein are defined in subdivision II, part 3.

I. Terms Applicable to the Class A Preferred Stock.

Part 1. Dividends.

1A. General Obligation. When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware, the Company will pay preferential dividends to the holders of the Class A Preferred Stock as provided in this part 1. Dividends on each share of Class A Preferred Stock (a "Share") will accrue cumulatively on a daily basis at the rate of 13% per annum on the sum of (i) the Liquidation Value thereof, plus (ii) all accrued but unpaid dividends, from and including the date of issuance of such Share to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such Share is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. The date on which the Company initially issues any Share will be deemed to be its "date of issuance" regardless of the number of times transfer of such Share is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence such Share. No dividends or other distributions will be paid, declared or set apart with respect to the Common Stock and the Class B Preferred Stock or any other shares of capital stock of the Company ranking on

liquidation junior to the Preferred Stock (together with the Common Stock and the Class B Preferred Stock, "Junior Stock") unless all accrued but unpaid dividends on the Class A Preferred Stock shall have been paid.

1B. Distribution of Partial Dividend Payments. If at any time the Company pays less than the total amount of dividends then accrued with respect to the Class A Preferred Stock, such payment will be distributed ratably among the holders of the Class A Preferred Stock based upon the aggregate accrued but unpaid dividends on the Shares held by each such holder.

## Part 2. Liquidation.

Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a "Liquidation"), the holders of Class A Preferred Stock will be entitled to be paid, before any payment shall be made to the holders of Junior Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all Shares outstanding, and the holders of Class A Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class A Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the entire assets to be distributed will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class A Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated therein, to each record holder of Class A Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 2.

After the payment of all preferential amounts required to be paid to the holders of Class A Preferred Stock and any other class or series of stock of the Company ranking on liquidation on a parity with the Class A Preferred Stock, the holders of Junior Stock then outstanding shall be entitled to receive the remaining assets of the Company available for distribution to its stockholders.

### Part 3. Voting Rights.

The Class A Preferred Stock will have full voting rights and powers, and each Share of Class A Preferred Stock shall be entitled to one right to vote on any matter to be voted on by the stockholders of the Company (including, without limitation, the election or removal of directors), and the Class A Preferred Stock will be aggregated with the Class B Preferred Stock and Common Stock in determining the number of shares voting or entitled to vote on such matters. The holders of Class A Preferred Stock, Class B Preferred Stock and Common Stock shall vote together as a single class, provided that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class A Preferred Stock so as to affect adversely the Class A Preferred Stock without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Class A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, the increase in the number of authorized shares of Class A Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class A Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class A Preferred Stock.

### Part 4. Redemptions.

4A. Scheduled Redemptions. The Company will, subject to the terms of its credit agreements, redeem all outstanding shares of Class A Preferred Stock on August 31, 1997, at a price per Share equal to the Liquidation Value thereof (plus all accrued but unpaid dividends). The Company will mail written notice of a redemption pursuant to this paragraph 4A to each record holder of Class A Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur.

4B. Optional Redemptions. The Company may, subject to the terms of its credit agreements, at any time redeem all or any portion of the Preferred Stock then outstanding at a price per Share equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). The Company will mail written notice of a redemption pursuant to this paragraph 4B to each record holder of Class A Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur. In case fewer than the total number of Shares represented by any certificate are redeemed, a new certificate representing the

number of unredeemed Shares will be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed Shares.

4C. Redemption Price. For each Share which is to be redeemed, the Company will be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Company's principal office of the certificate representing such Share) an amount in immediately available funds equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). If the funds of the Company legally available for redemption of Shares on any Redemption Date are insufficient to redeem the total number of Shares to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of Shares ratably among the holders of the Shares to be redeemed based upon the aggregate Liquidation Value of such Shares (plus all accrued but unpaid dividends thereon) held by each such holder. At any time thereafter when additional funds of the Company are legally available for the redemption of Shares, such funds will immediately be used to redeem the balance of the Shares which the Company has become obligated to redeem on any Redemption Date but which it has not redeemed.

4D. Determination of the Number of Each Holder's Shares to be Redeemed. Except as otherwise provided herein, the number of Shares to be redeemed from each holder thereof in redemptions hereunder will be the number of Shares determined by multiplying the total number of Shares to be redeemed by a fraction, the numerator of which will be the total number of Shares then held by such holder and the denominator of which will be the total number of Shares then outstanding.

4E. Dividends After Redemption Date. No Share is entitled to any dividends accruing after the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such Share is paid. On such date all rights of the holder of such Share will cease, and such Share will not be deemed to be outstanding.

4F. Redeemed or Otherwise Acquired Shares. Any Shares which are redeemed or otherwise acquired by the Company will be cancelled and will not be reissued, sold or transferred.

4G. Other Redemptions or Acquisitions. Neither the Company nor any Subsidiary will redeem or otherwise acquire any Class A Preferred Stock, except as expressly

authorized herein or pursuant to a purchase offer made pro-rata to all holders of Class A Preferred Stock on the basis of the number of Shares owned by each such holder.

## II. Miscellaneous

### Part 1. Registration of Transfer.

The Company will keep at its principal office a register for the registration of Class A Preferred Stock. Upon the surrender of any certificate representing Class A Preferred Stock at such place, the Company will, at the request of the record holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of Shares represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of Shares as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate, and dividends will accrue on the Class A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Class A Preferred Stock represented by the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class A Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

### Part 2. Replacement.

Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is an institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Company will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends will accrue on the Class A Preferred Stock represented by such new certificate

from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

"Liquidation Value" of the Class A Preferred Stock will be \$1.15 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class A Preferred Stock.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Preferred Stock" means, collectively, the Company's Class A Preferred Stock, and the Company's Class B Preferred Stock.

"Redemption Date" as to any Share means the date specified in the notice of any redemption at the Company's option or the applicable date specified herein in the case of any other redemption.

"Subsidiary" means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any determination is being made, owned by the Company either directly or indirectly through Subsidiaries.

Part 4. Amendment and Waiver.

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class A Preferred Stock outstanding at the time such action is taken.

Part 5. Notices.

Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal

executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

## **B. CLASS B PREFERRED STOCK**

### **I. Terms Applicable to Class B Preferred Stock.**

#### **Part 1. Dividend and Other Rights of Preferred Stock.**

(a) Except as specifically otherwise provided herein, all shares of Preferred Stock shall be identical and shall entitle the holders thereof to the same rights and privileges of holders of Common Stock. The Company shall not subdivide or combine any shares of Common Stock, or pay any dividend or retire any share or make any other distribution on any share of Common Stock, or accord any other payment, benefit or preference to any share of Common Stock, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all shares of Class B Preferred Stock. If dividends are declared which are payable in shares of Common Stock, such dividends shall be payable in shares of Common Stock to holders of Common Stock and such dividends shall be payable in shares of Class B Preferred Stock to holders of Class B Preferred Stock.

(b) The holders of Class B Preferred Stock shall be entitled to participate ratably in dividends out of funds legally available therefor, when declared by the Board of Directors in respect of Common Stock. Upon liquidation, dissolution or winding up of the Company, the holders of Class B Preferred Stock shall be entitled to payments in preference to the Common Stock of \$.25 per share, and thereafter shall be entitled to share ratably in the assets of the Company available for distribution to the holders of Common Stock (based upon the number of shares outstanding of the Class B Preferred Stock and Common Stock).

#### **Part 2. Voting Rights of Class B Preferred Stock.**

The holders of Class B Preferred Stock shall have full voting rights and powers, and each share of Class B Preferred Stock shall be entitled to four votes on any matter to be voted on by the stockholders of the Company (including, without limitation, the election or removal of directors), and the Class B Preferred Stock shall be aggregated with the Class A Preferred Stock and the Common Stock in determining the number of shares voting or entitled to vote on such matters. Holders of Class A Preferred Stock, Class B Preferred Stock and Common Stock shall vote together

as a single class, provided that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class B Preferred Stock so as to affect adversely the Class B Preferred Stock without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Class B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class.

**Part 3. Conversion of Class B Preferred Stock.**

**3A. Conversion of Rights.** Subject to and upon compliance with the provisions of this Section, each record holder of Class B Preferred Stock is entitled at any time and from time to time to convert any and all of the shares of Class B Preferred Stock held by it into the same number of shares of Common Stock.

**3B. Conversion Procedure.**

(i) Each conversion of shares of Class B Preferred Stock will be effected by the surrender to the Company of the certificate or certificates representing the shares to be converted, duly endorsed or assigned in blank, with signatures guaranteed if reasonably requested by the Company, at the principal office of the Company (or such other office or agency of the Company as the Company may designate in writing to the holder or holders of the Class B Preferred Stock) at any time during its usual business hours, and by the giving of written notice by the holder of such Class B Preferred Stock stating that such holder desires to convert all or a stated number of the shares of Class B Preferred Stock represented by such certificate or certificates into Common Stock, which notice will also state the name or names (with addresses) and denominations in which the certificate or certificates for the Common Stock will be issued and will include instructions for delivery thereof.

(ii) Promptly after such surrender and the receipt of such written notice and statement, the Company will issue and deliver in accordance with such instructions the certificate or certificates for the Common Stock issuable upon such conversion. In addition, the Company will deliver to the converting holder a certificate representing any portion of the shares of Class B Preferred Stock which had been represented by the certificate or certificates delivered to the Company in connection with such conversion but which were not converted. Such conversion, to the extent

permitted by law, will be deemed to have been effected as of the close of business on the date on which such certificate or certificates have been surrendered and such notice has been received, and at such time the rights of the holder of such Class B Preferred Stock (or specified portion thereof), as such holder will cease and the person or persons in whose name or names the certificate or certificates for shares of Common Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iii) The Company will at all times reserve and keep available out of its authorized but unissued shares of Common Stock or its treasury shares of Common Stock, solely for the purpose of issuance upon the conversion of the Class B Preferred Stock as provided in this part 3, such number of shares of Common Stock as are then issuable upon the conversion of all then outstanding shares of Class B Preferred Stock into shares of Common Stock hereunder. Notwithstanding the foregoing, if, at any time, there shall be an insufficient number of authorized or treasury shares of Common Stock available for issuance upon conversion of Class B Preferred Stock, the Company will take all action necessary to propose and recommend to the stockholders of the Company that its Certificate of Incorporation be amended to authorize additional shares of Common Stock in an amount sufficient to provide adequate reserves of shares for issuance upon such conversion, including the diligent solicitation of votes and proxies to vote in favor of such an amendment. All shares of Common Stock which are issuable upon conversion hereunder will, when issued, be duly and validly issued, fully paid and nonassessable.

(iv) The issuance of certificates for shares of Common Stock upon conversion of shares of Class B Preferred Stock will be made without charge to any original holder of any shares of Class B Preferred Stock for any issuance tax in respect thereof, or other cost incurred by the Company in connection with such conversion and the related issuance of Common Stock; provided that the Company will not be required to pay any such taxes or costs which may be payable in respect of any such conversion by any other person or in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the registered holder of the shares converted. The Company will not close its books against the transfer of any shares of Class B Preferred Stock or Common

Stock in a manner which would interfere with the conversion of Class B Preferred Stock.

## II. Miscellaneous.

### Part 1. Registration of Transfer.

The Company will keep at its principal office (or such other place as the Company reasonably designates) a register for the registration of shares of Class B Preferred Stock. Upon the surrender of any certificate representing shares of any class of Class B Preferred Stock at such place, the Company will, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Company forthwith will cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class B Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

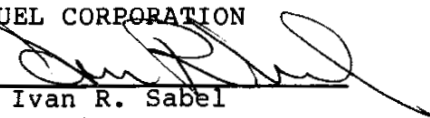
### Part 2. Replacement.

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

IN WITNESS WHEREOF, said corporation has caused this Certificate to be signed by Ivan R. Sabel, its President, and attested by Richard A. Stein, its Secretary, this 11th day of May, 1989.

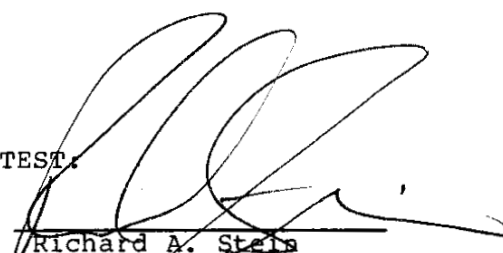
SEQUEL CORPORATION

By

  
Ivan R. Sabel  
President

ATTEST:

By

  
Richard A. Stein  
Secretary

THE CORPORATION TRUST COMPANY



DATE SUBMITTED August 11, 1989

739223025

Pursuant to counsel's instructions,  
submitted for filing by:

The Corporation Trust Company

J. L. Austin/dls

FILE DATE August 11, 1989

TIME 12:30 pm

FILER'S NO. 00010

NAME OF COMPANY SEQUEL CORPORATION  
Changing name to: Hanger Orthopedic Group, Inc.  
RES.NO. 7311542

FILE NUMBER 21537-38

TYPE OF DOCUMENT CERTIFICATE OF AMENDMENT SECTION NO. 242 N

CHANGES NAME \_\_\_\_\_

CHANGES AGENT/OFFICE \_\_\_\_\_

**Closed / Invoiced**

STOCK \$ \_\_\_\_\_

**AUG 15 1989**

TO \$ \_\_\_\_\_

FRANCHISE TAX \$ \_\_\_\_\_

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**AUG 11 1989**

Division of Corporations

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OTHER \_\_\_\_\_ \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

**TODAY APPROVAL**

**FILED**

AUG 11 1989

*Michael H. H.*  
SECRETARY OF STATE  
12:30 PM

739223025

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
SEQUEL CORPORATION

\* \* \* \* \*

Sequel Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of Sequel Corporation resolutions were duly adopted setting forth proposed amendments to the Certificate of Incorporation of said corporation, declaring said amendments to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendments is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation be amended by changing each of Articles First and Fourth thereof so that, as amended, each said Article shall be and read as follows:

"FIRST: The name of the Corporation is Hanger Orthopedic Group, Inc."

"FOURTH: The authorized capital stock of the Corporation shall consist of twenty-five million (25,000,000) shares of Common Stock, one cent (\$.01) par value per share, and one million (1,000,000) shares of Preferred Stock, one cent (\$.01) par value per share. The Board of Directors shall have the power to issue the Preferred Stock in series, with such designations, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof as shall be stated in the resolution or resolutions of the Board of Directors providing for the issue of such stock."

HNG-00573

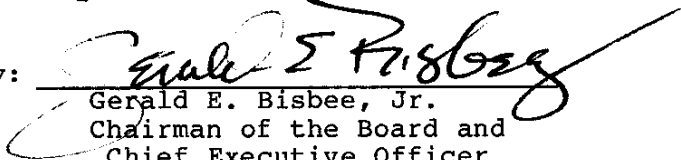
SECOND: That thereafter, pursuant to resolution of its Board of Directors, an Annual Meeting of the Stockholders of the corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, at which meeting the necessary number of shares of the corporation's capital stock as required by statute were voted in favor of each of the aforementioned amendments to the Certificate of Incorporation of the corporation.

THIRD: That each said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

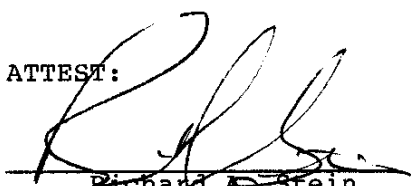
IN WITNESS WHEREOF, Sequel Corporation has caused this certificate to be signed by Gerald E. Bisbee, Jr., its Chairman of the Board and Chief Executive Officer, and attested by Richard A. Stein, its Secretary, this 11th day of August, 1989.

SEQUEL CORPORATION

By:

  
Gerald E. Bisbee, Jr.  
Chairman of the Board and  
Chief Executive Officer

ATTEST:

  
Richard A. Stein  
Secretary

[Seal]

**FILED**

*3 PM*  
**FEB 12 1990**

*[Signature]*  
**SECRETARY OF STATE**

*730043029*

**CERTIFICATE OF DESIGNATIONS, PREFERENCES  
AND RIGHTS OF PREFERRED STOCK**

**OF**

**HANGER ORTHOPEDIC GROUP, INC.**

**\* \* \***

HANGER ORTHOPEDIC GROUP, INC., a corporation duly organized and validly existing under the General Corporation Law of the State of Delaware,

**DOES HEREBY CERTIFY:**

That, pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation of said corporation, and pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, said Board of Directors, at a meeting duly held on February 5, 1990, adopted a resolution providing for the amendment and restatement of the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of the Preferred Stock of said corporation, which resolution is as follows:

**HNG-00575**

**RESOLVED THAT:**

Of the 1,000,000 shares of the authorized but unissued Preferred Stock of the Company, 434,800 shares shall be designated Class A Preferred Stock, par value \$.01 per share, 562,296 shares shall be designated Class B Preferred Stock, par value \$.01 per share, 300 shares shall be designated Class C Preferred Stock, par value \$.01 per share, 100 shares shall be designated Class D Preferred Stock, par value \$.01 per share, and 100 shares shall be designated Class E Preferred Stock, par value \$.01 per share.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations and restrictions thereof in respect of the Preferred Stock of the Company.

**A. CLASS A PREFERRED STOCK**

Certain capitalized terms used in this Section A are defined in subdivision II, part 3 of this Section.

**I. Terms Applicable to the Class A Preferred Stock.****Part 1. Dividends.**

1A. General Obligation. When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware, the Company will pay preferential dividends to the holders of the Class A Preferred Stock as provided in this part 1. Dividends on each share of Class A Preferred Stock will accrue cumulatively on a daily basis at the rate of 13% per annum on the sum of (i) the Liquidation Value thereof plus (ii) all accrued but unpaid dividends, from and including the date of issuance of each such share of Class A Preferred Stock to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of each such share of Class A Preferred Stock is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. The date on which the Company initially issues any share of Class A Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share of Class A Preferred Stock is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence any such share of Class A Preferred Stock. No dividends will be paid, declared or set apart with respect to the Class B Preferred Stock, the Class C Preferred Stock, the Class D Preferred Stock, the Class E Preferred Stock, the Common Stock or any other shares of capital stock of the Company ranking on liquidation junior to the Preferred Stock unless all accrued but unpaid dividends on the

Class A Preferred Stock shall have been paid; provided, however, that the Company may, after February 12, 1992, pay dividends on up to an aggregate of \$300,000.00 worth of Class D Preferred Stock and Class E Preferred Stock, with such worth being based upon their liquidation values, prior to any dividend payments on the Class A Preferred Stock.

1B. Distribution of Partial Dividend Payments. If at any time the Company pays less than the total amount of dividends then accrued with respect to the Class A Preferred Stock, such payment will be distributed ratably among the holders of the Class A Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares of Class A Preferred Stock held by each such holder.

## Part 2. Liquidation.

Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a "Liquidation"), the holders of Class A Preferred Stock will be entitled to be paid, before any payment shall be made to the holders of Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock, Class E Preferred Stock or Common Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all shares of Class A Preferred Stock outstanding, and the holders of Class A Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class A Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the entire amount of assets to be distributed among the holders of the Class A Preferred Stock will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class A Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated therein, to each record holder of Class A Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 2.

After the payment of all preferential amounts required to be paid to the holders of Class A Preferred Stock and any other class or series of stock of the Company ranking on liquidation on a parity with the Class A Preferred Stock, the holders of Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock, Class E Preferred Stock and Common Stock then outstanding shall be entitled to receive, in the priorities and preferences set forth herein, the remaining assets of the Company available for distribution to its stockholders.

### Part 3. Voting Rights.

The Class A Preferred Stock will have full voting rights and powers, and each share of Class A Preferred Stock shall be entitled to one vote on any matter to be voted on by the stockholders of the Company (including, without limitation, the election or removal of directors), and the Class A Preferred Stock will be aggregated with the Class B Preferred Stock, Class D Preferred Stock and Common Stock in determining the number of shares voting or entitled to vote on such matters. The holders of Class A Preferred Stock, Class B Preferred Stock, Class D Preferred Stock and Common Stock shall vote together as a single class, provided that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class A Preferred Stock so as to affect adversely the Class A Preferred Stock without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Class A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, the increase in the number of authorized shares of Class A Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class A Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class A Preferred Stock.

### Part 4. Redemptions.

4A. Scheduled Redemptions. The Company will, subject to the terms of its credit agreements, redeem all outstanding shares of Class A Preferred Stock on August 31, 1997, at a price per share of Class A Preferred Stock equal to the Liquidation Value thereof (plus all accrued but unpaid dividends). The Company will mail written notice of a redemption pursuant to this paragraph 4A to each record holder of Class A Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur.

4B. Optional Redemptions. The Company may, subject to the terms of its credit agreements, at any time redeem all or any portion of the Class A Preferred Stock then outstanding at a price per share equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). The Company will mail written notice of a redemption pursuant to this paragraph 4B to each record holder of Class A Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur. In case fewer than the total number of shares of Class A Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Class A Preferred Stock will be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed shares of Class A Preferred Stock.

**4C. Redemption Price.** For each share of Class A Preferred Stock which is to be redeemed, the Company will be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Company's principal office of the certificate representing such share of Class A Preferred Stock) an amount in immediately available funds equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). If the funds of the Company legally available for redemption of shares of Class A Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Class A Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of shares of Class A Preferred Stock ratably among the holders of the shares of Class A Preferred Stock to be redeemed based upon the aggregate Liquidation Value of such shares of Class A Preferred Stock (plus all accrued but unpaid dividends thereon) held by each such holder. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Class A Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Class A Preferred Stock which the Company has become obligated to redeem on any Redemption Date but which it has not redeemed.

**4D. Determination of the Number of Each Holder's Shares to be Redeemed.** Except as otherwise provided herein, the number of shares of Class A Preferred Stock to be redeemed from each holder thereof in redemptions hereunder will be the number of shares of Class A Preferred Stock determined by multiplying the total number of shares of Class A Preferred Stock to be redeemed by a fraction, the numerator of which will be the total number of shares of Class A Preferred Stock then held by such holder and the denominator of which will be the total number of shares of Class A Preferred Stock then outstanding.

**4E. Dividends After Redemption Date.** No share of Class A Preferred Stock is entitled to any dividends accruing after the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such share is paid. On such date all rights of the holder of such share of Class A Preferred Stock will cease, and such share of Class A Preferred Stock will not be deemed to be outstanding.

**4F. Redeemed or Otherwise Acquired Shares.** Any shares of Class A Preferred Stock which are redeemed or otherwise acquired by the Company will be cancelled and will not be reissued, sold or transferred.

**4G. Other Redemptions or Acquisitions.** Neither the Company nor any Subsidiary will redeem or otherwise acquire any Class A Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro-rata to all holders of Class A Preferred Stock on the basis of the number of shares of

Class A Preferred Stock owned by each such holder.

## II. Miscellaneous

### Part 1. Registration of Transfer.

The Company will keep at its principal office a register for the registration of Class A Preferred Stock. Upon the surrender of any certificate representing Class A Preferred Stock at such place, the Company will, at the request of the record holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of Class A Preferred Stock represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of Class A Preferred Stock as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate, and dividends will accrue on the Class A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Class A Preferred Stock represented by the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class A Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

### Part 2. Replacement.

Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Class A Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is an institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Company will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Class A Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such loss, stolen, destroyed or mutilated certificate, and dividends will accrue on the Class A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

### Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

**"Liquidation Value"** of the Class A Preferred Stock will be \$1.15 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class A Preferred Stock.

**"Person"** means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

**"Preferred Stock"** means, collectively, the Company's Class A Preferred Stock, Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock and Class E Preferred Stock.

**"Redemption Date"** as to any share of Class A Preferred Stock means the date specified in the notice of any redemption at the Company's option or the applicable date specified herein in the case of any other redemption.

**"Subsidiary"** means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any determination is being made, owned by the Company either directly or indirectly through Subsidiaries.

#### Part 4. Amendment and Waiver.

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class A Preferred Stock outstanding at the time such action is taken.

#### Part 5. Notices.

Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

### B. CLASS B PREFERRED STOCK

#### I. Terms Applicable to Class B Preferred Stock.

##### Part 1. Dividend and Other Rights of Preferred Stock.

(a) Except as specifically otherwise provided herein, all shares of Preferred Stock shall be identical and shall enti-

the holders thereof to the same rights and privileges of holders of Common Stock. The Company shall not subdivide or combine any shares of Common Stock, or pay any dividend or retire any share or make any other distribution on any share of Common Stock, or accord any other payment, benefit or preference to any share of Common Stock, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all shares of Class B Preferred Stock. If dividends are declared which are payable in shares of Common Stock, such dividends shall be payable in shares of Common Stock to holders of Common Stock and such dividends shall be payable in shares of Class B Preferred Stock to holders of Class B Preferred Stock.

(b) The holders of Class B Preferred Stock shall be entitled to participate ratably in dividends out of funds legally available therefor, when declared by the Board of Directors in respect of Common Stock. No dividends will be paid, declared or set apart with respect to the Class B Preferred Stock unless all accrued but unpaid dividends on Class A Preferred Stock, Class C Preferred Stock, Class D Preferred Stock and Class E Preferred Stock shall have been paid. Upon liquidation, dissolution or winding up of the Company, the holders of Class B Preferred Stock shall be entitled to payments, after all payments shall have been made to the holders of Class A Preferred Stock, Class C Preferred Stock, Class D Preferred Stock and Class E Preferred Stock, of \$.25 per share, and thereafter shall be entitled to share ratably in the assets of the Company available for distribution to the holders of Common Stock (based upon the number of shares outstanding of the Class B Preferred Stock and Common Stock).

#### Part 2. Voting Rights of Class B Preferred Stock.

The holders of Class B Preferred Stock shall have full voting rights and powers, and each share of Class B Preferred Stock shall be entitled to four votes on any matter to be voted on by the stockholders of the Company (including, without limitation, the election or removal of directors), and the Class B Preferred Stock shall be aggregated with the Class A Preferred Stock, Class D Preferred Stock and the Common Stock in determining the number of shares voting or entitled to vote on such matters. Holders of Class A Preferred Stock, Class B Preferred Stock, Class D Preferred Stock and Common Stock shall vote together as a single class, provided that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class B Preferred Stock so as to affect adversely the Class B Preferred Stock without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Class B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, the increase in the number of author-

ized shares of Class B Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class B Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class B Preferred Stock.

**Part 3. Conversion of Class B Preferred Stock.**

**3A. Conversion of Rights.** Subject to and upon compliance with the provisions of this Section, each record holder of Class B Preferred Stock is entitled at any time and from time to time to convert any and all of the shares of Class B Preferred Stock held by it into the same number of shares of Common Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Common Stock.

**3B. Conversion Procedure.**

(i) Each conversion of shares of Class B Preferred Stock will be effected by the surrender to the Company of the certificate or certificates representing the shares to be converted, duly endorsed or assigned in blank, with signatures guaranteed if reasonably requested by the Company, at the principal office of the Company (or such other office or agency of the Company as the Company may designate in writing to the holder or holders of the Class B Preferred Stock) at any time during its usual business hours, and by the giving of written notice by the holder of such Class B Preferred Stock stating that such holder desires to convert all or a stated number of the shares of Class B Preferred Stock represented by such certificate or certificates into Common Stock, which notice will also state the name or names (with addresses) and denominations in which the certificate or certificates for the Common Stock will be issued and will include instructions for delivery thereof.

(ii) Promptly after such surrender and the receipt of such written notice and statement, the Company will issue and deliver in accordance with such instructions the certificate or certificates for the Common Stock issuable upon such conversion. In addition, the Company will deliver to the converting holder a certificate representing any portion of the shares of Class B Preferred Stock which had been represented by the certificate or certificates delivered to the Company in connection with such conversion but which were not converted. Such conversion, to the ex-

tent permitted by law, will be deemed to have been effected as of the close of business on the date on which such certificate or certificates have been surrendered and such notice has been received, and at such time the rights of the holder of such Class B Preferred Stock (or specified portion thereof), as such holder will cease and the person or persons in whose name or names the certificate or certificates for shares of Common Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iii) The Company will at all times reserve and keep available out of its authorized but unissued shares of Common Stock or its treasury shares of Common Stock, solely for the purpose of issuance upon the conversion of the Class B Preferred Stock as provided in this part 3, such number of shares of Common Stock as are then issuable upon the conversion of all then outstanding shares of Class B Preferred Stock into shares of Common Stock hereunder. Notwithstanding the foregoing, if, at any time, there shall be an insufficient number of authorized or treasury shares of Common Stock available for issuance upon conversion of Class B Preferred Stock, the Company will take all action necessary to propose and recommend to the stockholders of the Company that its Certificate of Incorporation be amended to authorize additional shares of Common Stock in an amount sufficient to provide adequate reserves of shares for issuance upon such conversion, including the diligent solicitation of votes and proxies to vote in favor of such an amendment. All shares of Common Stock which are issuable upon conversion hereunder will, when issued, be duly and validly issued, fully paid and nonassessable.

(iv) The issuance of certificates for shares of Common Stock upon conversion of shares of Class B Preferred Stock will be made without charge to any original holder of any shares of Class B Preferred Stock for any issuance tax in respect thereof, or other cost incurred by the Company in connection with such conversion and the related issuance of Common Stock; provided that the Company will not be required to pay any such taxes or costs which may be payable in respect of any such conversion by any other person or in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the registered holder of the shares converted.

The Company will not close its books against the transfer of any shares of Class B Preferred Stock or Common Stock in a manner which would interfere with the conversion of Class B Preferred Stock.

## II. Miscellaneous.

### Part 1. Registration of Transfer.

The Company will keep at its principal office (or such other place as the Company reasonably designates) a register for the registration of shares of Class B Preferred Stock. Upon the surrender of any certificate representing shares of any class of Class B Preferred Stock at such place, the Company will, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Company forthwith will cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class B Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

### Part 2. Replacement.

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

## C. CLASS C PREFERRED STOCK

Certain capitalized terms used in this Section C are de-

fined in subdivision II, part 3 of this Section.

I. Terms Applicable to the Class C Preferred Stock.

Part 1. Dividends.

1A. General Obligation. When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware, the Company will pay preferential dividends to the holders of the Class C Preferred Stock as provided in this part 1. Dividends on each share of Class C Preferred Stock will accrue cumulatively on a daily basis at the rate of 9% per annum on the sum of (i) the Liquidation Value thereof plus (ii) all accrued but unpaid dividends, from and including the date of issuance of each such share of Class C Preferred Stock to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of each such share of Class C Preferred Stock is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. The date on which the Company initially issues any share of Class C Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share of Class C Preferred Stock is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence any such share of Class C Preferred Stock. No dividends will be paid, declared or set apart with respect to the Class C Preferred Stock unless all accrued but unpaid dividends on the Class A Preferred Stock, Class D Preferred Stock and Class E Preferred Stock shall have been paid. No dividends will be paid, declared or set apart with respect to the Common Stock unless all accrued but unpaid dividends on the Class C Preferred Stock shall have been paid.

1B. Distribution of Partial Dividend Payments. If at any time the Company pays less than the total amount of dividends then accrued with respect to the Class C Preferred Stock, such payment will be distributed ratably among the holders of the Class C Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares of Class C Preferred Stock held by each such holder.

Part 2. Liquidation.

Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a "Liquidation"), the holders of Class C Preferred Stock will be entitled to be paid, after all payments shall have been made to the holders of Class A Preferred Stock, Class

D Preferred Stock and Class E Preferred Stock, but before any payment shall be made to the holders of Class B Preferred Stock and Common Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all shares of Class C Preferred Stock outstanding, and the holders of Class C Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class C Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the assets of the Company to be distributed among the holders of the Class C Preferred Stock will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class C Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated therein, to each record holder of Class C Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 2.

After the payment of all preferential amounts required to be paid to the holders of Class C Preferred Stock and any other class or series of stock of the Company ranking on liquidation on a parity with the Class C Preferred Stock, the holders of Class B Preferred Stock and Common Stock then outstanding shall be entitled to receive the remaining assets of the Company available for distribution to its stockholders.

### Part 3. Voting Rights.

The Class C Preferred Stock will have no voting rights or powers; provided, however, that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class C Preferred Stock so as to affect adversely the Class C Preferred Stock without the written consent of the holders of a majority of the then outstanding shares of Class C Preferred Stock, consenting as a class. For this purpose, the increase in the number of authorized shares of Class C Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class C Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class C Preferred Stock.

### Part 4. Redemptions.

4A. Scheduled Redemptions. The Company will, subject

to the terms of its credit agreements, redeem all outstanding shares of Class C Preferred Stock on February 1, 2000, at a price per share of Class C Preferred Stock equal to the Liquidation Value thereof (plus all accrued but unpaid dividends). The Company will mail written notice of a redemption pursuant to this paragraph 4A to each record holder of Class C Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur.

4B. Optional Redemptions. The Company may, subject to the terms of its credit agreements, at any time redeem all or any portion of the Class C Preferred Stock then outstanding at a price per share equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). The Company will mail written notice of a redemption pursuant to this paragraph 4B to each record holder of Class C Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur. In case fewer than the total number of shares of Class C Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Class C Preferred Stock will be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed shares of Class C Preferred Stock.

4C. Redemption Price. For each share of Class C Preferred Stock which is to be redeemed, the Company will be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Company's principal office of the certificate representing such share of Class C Preferred Stock) an amount in immediately available funds equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). If the funds of the Company legally available for redemption of shares of Class C Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Class C Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of shares of Class C Preferred Stock ratably among the holders of the shares of Class C Preferred Stock to be redeemed based upon the aggregate Liquidation Value of such shares (plus all accrued but unpaid dividends thereon) held by each such holder. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Class C Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Class C Preferred Stock which the Company has become obligated to redeem on any Redemption Date but which it has not redeemed.

4D. Determination of the Number of Each Holder's Shares to be Redeemed. Except as otherwise provided herein, the number of shares of Class C Preferred Stock to be redeemed from

each holder thereof in redemptions hereunder will be the number of shares of Class C Preferred Stock determined by multiplying the total number of shares of Class C Preferred Stock to be redeemed by a fraction, the numerator of which will be the total number of shares of Class C Preferred Stock then held by such holder and the denominator of which will be the total number of shares of Class C Preferred Stock then outstanding.

4E. Dividends After Redemption Date. No share of Class C Preferred Stock is entitled to any dividends accruing after the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such share of Class C Preferred Stock is paid. On such date all rights of the holder of such share of Class C Preferred Stock will cease, and such share of Class C Preferred Stock will not be deemed to be outstanding.

4F. Redeemed or Otherwise Acquired Shares. Any shares of Class C Preferred Stock which are redeemed or otherwise acquired by the Company will be cancelled and will not be reissued, sold or transferred.

4G. Other Redemptions or Acquisitions. Neither the Company nor any Subsidiary will redeem or otherwise acquire any Class C Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro-rata to all holders of Class C Preferred Stock on the basis of the number of shares of Class C Preferred Stock owned by each such holder.

## II. Miscellaneous

### Part 1. Registration of Transfer.

The Company will keep at its principal office a register for the registration of Class C Preferred Stock. Upon the surrender of any certificate representing Class C Preferred Stock at such place, the Company will, at the request of the record holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of Class C Preferred Stock represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of Class C Preferred Stock as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate, and dividends will accrue on the Class C Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Class C Preferred Stock represented by the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless

such issuance is made in connection with a transfer of Class C Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

## Part 2. Replacement.

Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Class C Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is an institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Company will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Class C Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such loss, stolen, destroyed or mutilated certificate, and dividends will accrue on the Class C Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

## Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

"Liquidation Value" of the Class C Preferred Stock will be \$500.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class C Preferred Stock.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Preferred Stock" means, collectively, the Company's Class A Preferred Stock, Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock and Class E Preferred Stock.

"Redemption Date" as to any share of Class C Preferred Stock means the date specified in the notice of any redemption at the Company's option or the applicable date specified herein in the case of any other redemption.

"Subsidiary" means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any deter-

mination is being made, owned by the Company either directly or indirectly through Subsidiaries.

**Part 4. Amendment and Waiver.**

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class C Preferred Stock outstanding at the time such action is taken.

**Part 5. Notices.**

Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

**D. CLASS D PREFERRED STOCK**

**I. Terms Applicable to Class D Preferred Stock.**

**Part 1. Dividends.**

**1A. General Obligation.**

(i) Except as specifically otherwise provided herein, all shares of Preferred Stock shall be identical and shall entitle the holders thereof to the same rights and privileges of holders of Common Stock. The Company shall not subdivide or combine any shares of Class B Preferred Stock, or pay any dividend or retire any share or make any other distribution on any share of Class B Preferred Stock, or accord any other payment, benefit or preference to any share of Class B Preferred Stock, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all shares of Class D Preferred Stock. If dividends are declared which are payable in shares of Class B Preferred Stock, such dividends shall be payable in shares of Class B Preferred Stock to holders of Class B Preferred Stock and such dividends shall be payable in shares of Class D Preferred Stock to holders of Class D Preferred Stock.

(ii) When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware, the Company will pay preferential dividends to the holders of the Class D Preferred Stock as provided in this part 1. Dividends on each share of Class D Preferred

Stock will accrue cumulatively on a daily basis at the rate of 14% per annum on the sum of (i) the Liquidation Value thereof plus (ii) all accrued but unpaid dividends, from and including the date of issuance of each such share of Class D Preferred Stock to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of each such share of Class D Preferred Stock is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. Upon conversion of any shares of Class D Preferred Stock as provided in part 3 hereof, all accrued but unpaid dividends on the shares of Class D Preferred Stock so converted shall, at the election of the Company, either (i) be paid in full or in part at the time of such conversion or (ii) to the extent any such accrued but unpaid dividends remain unpaid, they will remain an outstanding obligation of the Company to the then former holders of Class D Preferred Stock who so elected to convert their shares into Class B Preferred Stock. The date on which the Company initially issues any share of Class D Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share of Class D Preferred Stock is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence any such share of Class D Preferred Stock. No dividends will be paid, declared or set apart with respect to the Class D Preferred Stock unless all accrued but unpaid dividends on the Class A Preferred Stock shall have been paid; provided, however, that the Company may, after February 12, 1992, pay dividends on up to an aggregate of \$300,000.00 worth of Class D Preferred Stock and Class E Preferred Stock, with such worth being based upon their liquidation values, prior to any dividend payments on the Class A Preferred Stock. The holders of Class D Preferred Stock will rank on a parity with holders of Class E Preferred Stock with respect to the priority to accrue and receive dividends.

(iii) Distribution of Partial Dividend Payments. If at any time the Company pays less than the total amount of dividends then accrued with respect to the Class D Preferred Stock, such payment will be distributed ratably among the holders of the Class D Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares of Class D Preferred Stock held by each such holder.

(iv) Liquidation. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a "Liquidation"), the holders of Class D Preferred Stock will be entitled to be paid on a parity with holders of Class E Preferred Stock, but after all payments shall have been made to the holders of Class A Preferred Stock and before any payment shall be made to the holders of

Class B Preferred Stock, Class C Preferred Stock or Common Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all shares of Class D Preferred Stock outstanding, and the holders of Class D Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class D Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the assets of the Company to be distributed among the holders of the Class D Preferred Stock will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class D Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated therein, to each record holder of Class D Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 1.

After the payment of all preferential amounts required to be paid to the holders of Class D Preferred Stock and any other class or series of stock of the Company ranking on liquidation on a parity with the Class D Preferred Stock, the holders of Class B Preferred Stock, Class C Preferred Stock and Common Stock then outstanding shall be entitled to receive the remaining assets of the Company available for distribution to its stockholders.

#### Part 2. Voting Rights of Class D Preferred Stock.

The holders of Class D Preferred Stock shall have full voting rights and powers, and each share of Class D Preferred Stock shall be entitled to one vote on any matter to be voted on by the stockholders of the Company (including, without limitation, the election or removal of directors), and the Class D Preferred Stock shall be aggregated with the Class A Preferred Stock, the Class B Preferred Stock and the Common Stock in determining the number of shares voting or entitled to vote on such matters. Holders of Class A Preferred Stock, Class B Preferred Stock, Class D Preferred Stock and Common Stock shall vote together as a single class, provided that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class D Preferred Stock so as to affect adversely the Class D Preferred Stock without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Class D Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, the increase in the number of author-

ized shares of Class D Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class D Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class D Preferred Stock.

**Part 3. Conversion of Class D Preferred Stock.**

**3A. Conversion of Rights.** Subject to and upon compliance with the provisions of this Section, each record holder of Class D Preferred Stock is entitled at any time after February 12, 1991, subject to the availability of authorized but unissued shares of Class B Preferred Stock, to convert each share of Class D Preferred Stock held by it into 23,742.31 shares of Class B Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class B Preferred Stock. Notwithstanding anything contained in this Section to the contrary, upon a change in control of the Company prior to February 12, 1991, each record holder of Class D Preferred Stock shall be entitled at that time to convert any and all of the shares of Class D Preferred Stock held by it into the number of shares of Class B Preferred Stock issuable upon such conversion. For the purposes of this part 3, a "change in control of the Company" shall be defined as the sale or transfer of all or substantially all of the business of the Company and its Subsidiaries, whether pursuant to a purchase of all the outstanding capital stock of the Company and/or all of its Subsidiaries, merger, consolidation, or purchase of all or substantially all of the assets of the Company and its Subsidiaries subject to all or substantially all of the liabilities of the Company and its Subsidiaries.

**3B. Conversion Procedure.**

(i) Each conversion of shares of Class D Preferred Stock will be effected by the surrender to the Company of the certificate or certificates representing the shares to be converted, duly endorsed or assigned in blank, with signatures guaranteed if reasonably requested by the Company, at the principal office of the Company (or such other office or agency of the Company as the Company may designate in writing to the holder or holders of the Class D Preferred Stock) at any time during its usual business hours, and by the giving of written notice by the holder of such Class D Preferred Stock stating that such holder desires to convert all or a stated number of the shares of Class D Preferred Stock represented by such certificate or certificates into shares of Class B Preferred Stock.

red Stock, subject to availability, which notice will also state the name or names (with addresses) and denominations in which the certificate or certificates for the shares of Class B Preferred Stock will be issued and will include instructions for delivery thereof.

(ii) Promptly after such surrender and the receipt of such written notice and statement, the Company will issue and deliver in accordance with such instructions the certificate or certificates for the shares of Class B Common Stock issuable upon such conversion. In addition, the Company will deliver to the converting holder a certificate representing any portion of the shares of Class D Preferred Stock which had been represented by the certificate or certificates delivered to the Company in connection with such conversion but which were not converted. Such conversion, to the extent permitted by law, will be deemed to have been effected as of the close of business on the date on which such certificate or certificates have been surrendered and such notice has been received, and at such time the rights of the holder of such Class D Preferred Stock (or specified portion thereof), as such holder will cease and the person or persons in whose name or names the certificate or certificates for shares of Class B Preferred Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Class B Preferred Stock represented thereby.

(iii) The Company will at all times reserve and keep available out of its authorized but unissued shares of Class B Preferred Stock solely for the purpose of issuance upon the conversion of the Class D Preferred Stock as provided in this part 3, such number of shares of Class B Preferred Stock as are then issuable upon the conversion of all then outstanding shares of Class D Preferred Stock into shares of Class B Preferred Stock hereunder. Notwithstanding the foregoing, if, at any time, there shall be an insufficient number of authorized shares of Class B Preferred Stock available for issuance upon conversion of Class D Preferred Stock, the Company will take all action necessary to propose and recommend to the stockholders of the Company that its Certificate of Incorporation be amended to authorize additional shares of Class B Preferred Stock in an amount sufficient to provide adequate reserves of shares for issuance upon such conversion, including the diligent solicitation of votes and proxies to vote in favor of

such an amendment. All shares of Class B Preferred Stock which are issuable upon conversion hereunder will, when issued, be duly and validly issued, fully paid and nonassessable.

(iv) The issuance of certificates for shares of Class B Preferred Stock upon conversion of shares of Class D Preferred Stock will be made without charge to any original holder of any shares of Class D Preferred Stock for any issuance tax in respect thereof, or other cost incurred by the Company in connection with such conversion and the related issuance of Class B Preferred Stock; provided that the Company will not be required to pay any such taxes or costs which may be payable in respect of any such conversion by any other person or in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the registered holder of the shares converted. The Company will not close its books against the transfer of any shares of Class D Preferred Stock or Class B Preferred Stock in a manner which would interfere with the conversion of Class D Preferred Stock.

## II. Miscellaneous.

### Part 1. Registration of Transfer.

The Company will keep at its principal office (or such other place as the Company reasonably designates) a register for the registration of shares of Class D Preferred Stock. Upon the surrender of any certificate representing shares of any class of Class D Preferred Stock at such place, the Company will, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Company forthwith will cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class D Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

## Part 2. Replacement.

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

## Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

"Liquidation Value" of the Class D Preferred Stock will be \$6,173.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class D Preferred Stock.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Preferred Stock" means, collectively, the Company's Class A Preferred Stock, Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock and Class E Preferred Stock.

"Subsidiary" means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any determination is being made, owned by the Company either directly or indirectly through Subsidiaries.

## Part 4. Amendment and Waiver.

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class D Preferred Stock outstanding at the time such action is taken.

**Part 5. Notices.**

Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

**E. CLASS E PREFERRED STOCK**

**I. Terms Applicable to Class E Preferred Stock.**

**Part 1. Dividends.**

**1A. General Obligation.** When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware, the Company will pay preferential dividends to the holders of the Class E Preferred Stock as provided in this part 1. Dividends on each share of Class E Preferred Stock will accrue cumulatively on a daily basis at the rate of 14% per annum on the sum of (i) the Liquidation Value thereof plus (ii) all accrued but unpaid dividends, from and including the date of issuance of each such share of Class E Preferred Stock to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of each such share of Class E Preferred Stock is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. The date on which the Company initially issues any share of Class E Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share of Class E Preferred Stock is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence any such share of Class E Preferred Stock. No dividends will be paid, declared or set apart with respect to the Class E Preferred Stock unless all accrued but unpaid dividends on the Class A Preferred Stock shall have been paid; provided, however, that the Company may, after February 12, 1992, pay dividends on up to an aggregate of \$300,000.00 worth of Class D Preferred Stock and Class E Preferred Stock, with such worth being based upon their liquidation values, prior to any dividend payments on the Class A Preferred Stock. The holders of Class E Preferred Stock will rank on a parity with holders of Class D Preferred Stock with respect to the priority to accrue and receive dividends.

**1B. Distribution of Partial Dividend Payments.** If at

any time the Company pays less than the total amount of dividends then accrued with respect to the Class E Preferred Stock, such payment will be distributed ratably among the holders of the Class E Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares of Class E Preferred Stock held by each such holder.

1C. Liquidation. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a "Liquidation"), the holders of Class E Preferred Stock will be entitled to be paid on a parity with holders of Class D Preferred Stock, but after all payments shall have been made to the holders of Class A Preferred Stock and before any payment shall be made to the holders of Class B Preferred Stock, Class C Preferred Stock or Common Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all shares of Class E Preferred Stock outstanding, and the holders of Class E Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class E Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the assets of the Company to be distributed among the holders of the Class E Preferred Stock will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class E Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated therein, to each record holder of Class E Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 1.

After the payment of all preferential amounts required to be paid to the holders of Class E Preferred Stock and any other class or series of stock of the Company ranking on liquidation on a parity with the Class E Preferred Stock, the holders of Class B Preferred Stock, Class C Preferred Stock and Common Stock then outstanding shall be entitled to receive the remaining assets of the Company available for distribution to its stockholders.

## Part 2. Voting Rights of Class E Preferred Stock.

The Class E Preferred Stock will have no voting rights or powers; provided, however, that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class E Preferred Stock so as to affect adversely the

Class E Preferred Stock without the written consent of the holders of a majority of the then outstanding shares of Class E Preferred Stock, consenting as a class. For this purpose, the increase in the number of authorized shares of Class E Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class E Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class E Preferred Stock.

Part 3. Redemptions.

3A. Scheduled Redemptions. The Company will, subject to the terms of its credit agreements, redeem all outstanding shares of Class E Preferred Stock on January 1, 2000, at a price per share of Class E Preferred Stock equal to the Liquidation Value thereof (plus all accrued but unpaid dividends). The Company will mail written notice of a redemption pursuant to this paragraph 3A to each record holder of Class E Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur.

3B. Optional Redemptions. The Company may, subject to the terms of its credit agreements, at any time redeem all or any portion of the Class E Preferred Stock then outstanding at a price per share equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). The Company will mail written notice of a redemption pursuant to this paragraph 3B to each record holder of Class E Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur. In case fewer than the total number of shares of Class E Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Class E Preferred Stock will be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed shares of Class E Preferred Stock.

3C. Redemption Price. For each share of Class E Preferred Stock which is to be redeemed, the Company will be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Company's principal office of the certificate representing such share of Class E Preferred Stock) an amount in immediately available funds equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). If the funds of the Company legally available for redemption of shares of Class E Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Class E Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum

possible number of shares of Class E Preferred Stock ratably among the holders of the shares of Class E Preferred Stock to be redeemed based upon the aggregate Liquidation Value of such shares (plus all accrued but unpaid dividends thereon) held by each such holder. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Class E Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Class E Preferred Stock which the Company has become obligated to redeem on any Redemption Date but which it has not redeemed.

3D. Determination of the Number of Each Holder's Shares to be Redeemed. Except as otherwise provided herein, the number of shares of Class E Preferred Stock to be redeemed from each holder thereof in redemptions hereunder will be the number of shares of Class E Preferred Stock determined by multiplying the total number of shares of Class E Preferred Stock to be redeemed by a fraction, the numerator of which will be the total number of shares of Class E Preferred Stock then held by such holder and the denominator of which will be the total number of shares of Class E Preferred Stock then outstanding.

3E. Dividends After Redemption Date. No share of Class E Preferred Stock is entitled to any dividends accruing after the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such share of Class E Preferred Stock is paid. On such date all rights of the holder of such share of Class E Preferred Stock will cease, and such share of Class E Preferred Stock will not be deemed to be outstanding.

3F. Redeemed or Otherwise Acquired Shares. Any shares of Class E Preferred Stock which are redeemed or otherwise acquired by the Company will be cancelled and will not be reissued, sold or transferred.

3G. Other Redemptions or Acquisitions. Neither the Company nor any Subsidiary will redeem or otherwise acquire any Class E Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro-rata to all holders of Class E Preferred Stock on the basis of the number of shares of Class E Preferred Stock owned by each such holder.

## II. Miscellaneous.

### Part 1. Registration of Transfer.

The Company will keep at its principal office (or such other place as the Company reasonably designates) a register for the registration of shares of Class E Preferred Stock. Upon the surrender of any certificate representing shares of any class of Class E Preferred Stock at such place, the Company will, at the

request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Company forthwith will cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class E Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

#### Part 2. Replacement.

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

#### Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

"Liquidation Value" of the Class E Preferred Stock will be \$2,922.67 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class E Preferred Stock.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Preferred Stock" means, collectively, the Company's Class

A Preferred Stock, Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock and Class E Preferred Stock.

"Redemption Date" as to any share of Class E Preferred Stock means the date specified in the notice of any redemption at the Company's option or the applicable date specified herein in the case of any other redemption.

"Subsidiary" means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any determination is being made, owned by the Company either directly or indirectly through Subsidiaries.

Part 4. Amendment and Waiver.

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class E Preferred Stock outstanding at the time such action is taken.

Part 5. Notices.

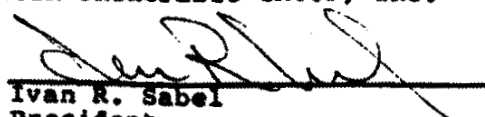
Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, said corporation has caused this Certificate to be signed by Ivan R. Sabel, its President, and attested by Richard A. Stein, its Secretary, this 12th day of February, 1990.

HANGER ORTHOPEDIC GROUP, INC.

By

  
Ivan R. Sabel  
President

ATTEST:

By

  
Richard A. Stein  
Secretary

730159016

FILED

JUN 8 1990

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
HANGER ORTHOPEDIC GROUP, INC.

\*\*\*\*\*

*Handwritten signature*  
SECRETARY OF STATE  
1 PM

Hanger Orthopedic Group, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of Hanger Orthopedic Group, Inc. a resolution was duly adopted setting forth a proposed amendment to the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation be amended by changing Article Fourth thereof so that, as amended, said Article shall be and read as follows:

"FOURTH: The authorized capital stock of the Corporation shall consist of twenty-five million (25,000,000) shares of Common Stock, one cent (\$.01) par value per share, and ten million (10,000,000) shares of Preferred Stock, one cent (\$.01) par value per share. The Board of Directors shall have the power to issue the Preferred Stock in series, with such designations, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof as shall be stated in the resolution or resolutions of the Board of Directors providing for the issue of such stock."

SECOND: That thereafter, pursuant to resolution of its Board of Directors, an Annual Meeting of Stockholders of the corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, at which meeting the necessary number of shares of the corporation's capital stock as required by statute were voted in favor of the aforementioned amendment to the Certificate of Incorporation of the corporation.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

HNG-00605

- 2 -

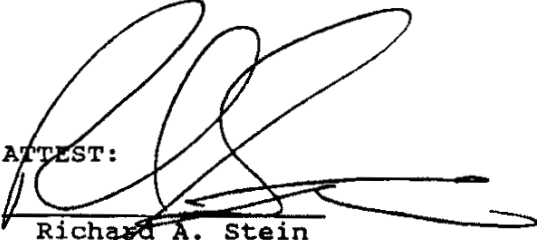
IN WITNESS WHEREOF, Hanger Orthopedic Group, Inc. has caused this certificate to be signed by Ivan R. Sabel, its President, and attested by Richard A. Stein, its Secretary, this 7th day of June, 1990.

SEQUEL CORPORATION

By:

  
Ivan R. Sabel  
President

ATTEST:

  
Richard A. Stein  
Secretary

[Seal]

HNG-00606

AMENDED CERTIFICATE OF DESIGNATIONS, PREFERENCES  
AND RIGHTS OF PREFERRED STOCK  
OF  
HANGER ORTHOPEDIC GROUP, INC.

\* \* \*

HANGER ORTHOPEDIC GROUP, INC., a corporation duly organized and validly existing under the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

That, pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation of said corporation, and pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, said Board of Directors, at a meeting duly held on February 5, 1990, adopted a resolution providing for the amendment and restatement of the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of the Preferred Stock of said corporation, which resolution is as follows:

RESOLVED THAT:

Of the 10,000,000 shares of the authorized but unissued Preferred Stock of the Company (the "Preferred Stock"), 434,800 shares shall be designated Class A Preferred Stock, par value \$.01 per share, 2,936,527 shares shall be designated Class B Preferred Stock, par value \$.01 per share, 300 shares shall be designated Class C Preferred Stock, par value \$.01 per share, 100 shares shall be designated Class D Preferred Stock, par value \$.01 per share, 100 shares shall be designated Class E Preferred Stock, par value \$.01 per share, and 100,000 shares shall be designated Class F Preferred Stock, par value \$.01 per share.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations and restrictions thereof in respect of the Preferred Stock of the Company.

A. CLASS A PREFERRED STOCK

Certain capitalized terms used in this Section A are defined in subdivision II, part 3 of this Section.

# I. Terms Applicable to the Class A Preferred Stock.

## Part 1. Dividends.

**1A. General Obligation.** When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware and the terms of any Preferred Stock ranking senior to, or on parity with, the Class A Preferred Stock, the Company will pay preferential dividends to the holders of the Class A Preferred Stock as provided in this part 1. Dividends on each share of Class A Preferred Stock will accrue cumulatively on a daily basis at the rate of 13% per annum on the sum of (i) the Liquidation Value thereof plus (ii) all accrued but unpaid dividends, from and including the date of issuance of each such share of Class A Preferred Stock to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of each such share of Class A Preferred Stock is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. The date on which the Company initially issues any share of Class A Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share of Class A Preferred Stock is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence any such share of Class A Preferred Stock. No dividends will be paid, declared or set apart with respect to the Class B Preferred Stock, the Class C Preferred Stock, the Class D Preferred Stock, the Class E Preferred Stock, the Common Stock or any other shares of capital stock of the Company ranking on liquidation junior to the Class A Preferred Stock unless all accrued but unpaid dividends on the Class A Preferred Stock shall have been paid; provided, however, that the Company may, after February 12, 1992, pay dividends on up to an aggregate of \$300,000.00 worth of Class D Preferred Stock and Class E Preferred Stock, with such worth being based upon their liquidation values, prior to any dividend payments on the Class A Preferred Stock.

**1B. Distribution of Partial Dividend Payments.** If at any time the Company pays less than the total amount of dividends then accrued with respect to the Class A Preferred Stock, such payment will be distributed ratably among the holders of the Class A Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares of Class A Preferred Stock held by each such holder.

## Part 2. Liquidation.

Subject to the rights of holders of Preferred Stock ranking senior to, or on parity with, the Class A Preferred Stock, upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a

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"Liquidation"), the holders of Class A Preferred Stock will be entitled to be paid, before any payment shall be made to the holders of Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock, Class E Preferred Stock or Common Stock or any other shares of capital stock of the Company ranking on Liquidation junior to the Class A Preferred Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all shares of Class A Preferred Stock outstanding, and the holders of Class A Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class A Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the entire amount of assets to be distributed among the holders of the Class A Preferred Stock will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class A Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated therein, to each record holder of Class A Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 2.

After the payment of all preferential amounts required to be paid to the holders of Class A Preferred Stock and any other class or series of stock of the Company ranking on liquidation on a parity with the Class A Preferred Stock, the holders of Class B Preferred Stock, Class C Preferred Stock, Class D Preferred Stock, Class E Preferred Stock and Common Stock then outstanding shall be entitled to receive, in the priorities and preferences set forth herein, the remaining assets of the Company available for distribution to its stockholders.

### Part 3. Voting Rights.

The Class A Preferred Stock will have full voting rights and powers, and each share of Class A Preferred Stock shall be entitled to one vote on any matter to be voted on by the stockholders of the Company (including, without limitation, the election or removal of directors), and the Class A Preferred Stock will be aggregated with the Class B Preferred Stock, Class D Preferred Stock and Common Stock in determining the number of shares voting or entitled to vote on such matters. The holders of Class A Preferred Stock, Class B Preferred Stock, Class D Preferred Stock and Common Stock shall vote together as a single class, provided that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class A Preferred Stock so as to affect adversely the Class A Preferred Stock without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Class A Preferred Stock, given in writing or

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by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, the increase in the number of authorized shares of Class A Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class A Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class A Preferred Stock.

**Part 4. Redemptions.**

**4A. Scheduled Redemptions.** The Company will, subject to the terms of its credit agreements and the provisions of any class of Preferred Stock senior to the Class A Preferred Stock, redeem all outstanding shares of Class A Preferred Stock on August 31, 1997, at a price per share of Class A Preferred Stock equal to the Liquidation Value thereof (plus all accrued but unpaid dividends). The Company will mail written notice of a redemption pursuant to this paragraph 4A to each record holder of Class A Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur.

**4B. Optional Redemptions.** The Company may, subject to the terms of its credit agreements and the provisions of any class of Preferred Stock senior to the Class A Preferred Stock, at any time redeem all or any portion of the Class A Preferred Stock then outstanding at a price per share equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). The Company will mail written notice of a redemption pursuant to this paragraph 4B to each record holder of Class A Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur. In case fewer than the total number of shares of Class A Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Class A Preferred Stock will be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed shares of Class A Preferred Stock.

**4C. Redemption Price.** For each share of Class A Preferred Stock which is to be redeemed, the Company will be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Company's principal office of the certificate representing such share of Class A Preferred Stock) an amount in immediately available funds equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). If the funds of the Company legally available for redemption of shares of Class A Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Class A Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of shares of Class A Preferred Stock ratably among the holders of the shares of Class A Preferred Stock to be redeemed based upon the aggregate

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Liquidation Value of such shares of Class A Preferred Stock (plus all accrued but unpaid dividends thereon) held by each such holder. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Class A Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Class A Preferred Stock which the Company has become obligated to redeem on any Redemption Date but which it has not redeemed.

4D. Determination of the Number of Each Holder's Shares to be Redeemed. Except as otherwise provided herein, the number of shares of Class A Preferred Stock to be redeemed from each holder thereof in redemptions hereunder will be the number of shares of Class A Preferred Stock determined by multiplying the total number of shares of Class A Preferred Stock to be redeemed by a fraction, the numerator of which will be the total number of shares of Class A Preferred Stock then held by such holder and the denominator of which will be the total number of shares of Class A Preferred Stock then outstanding.

4E. Dividends After Redemption Date. No share of Class A Preferred Stock is entitled to any dividends accruing after the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such share is paid. On such date all rights of the holder of such share of Class A Preferred Stock will cease, and such share of Class A Preferred Stock will not be deemed to be outstanding.

4F. Redeemed or Otherwise Acquired Shares. Any shares of Class A Preferred Stock which are redeemed or otherwise acquired by the Company will be cancelled and will become undesignated shares of Preferred Stock.

4G. Other Redemptions or Acquisitions. Neither the Company nor any Subsidiary will redeem or otherwise acquire any Class A Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro-rata to all holders of Class A Preferred Stock on the basis of the number of shares of Class A Preferred Stock owned by each such holder.

## II. Miscellaneous

### Part 1. Registration of Transfer.

The Company will keep at its principal office a register for the registration of Class A Preferred Stock. Upon the surrender of any certificate representing Class A Preferred Stock at such place, the Company will, at the request of the record holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of Class A Preferred Stock represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of Class A Preferred

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Stock as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate, and dividends will accrue on the Class A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Class A Preferred Stock represented by the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class A Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

## Part 2. Replacement.

Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Class A Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is an institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Company will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Class A Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends will accrue on the Class A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

## Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

"Liquidation Value" of the Class A Preferred Stock will be \$1.15 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class A Preferred Stock.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Redemption Date" as to any share of Class A Preferred Stock means the date specified in the notice of any redemption at the Company's option or the applicable date specified herein in the case of any other redemption.

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"Subsidiary" means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any determination is being made, owned by the Company either directly or indirectly through Subsidiaries.

Part 4. Amendment and Waiver.

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class A Preferred Stock outstanding at the time such action is taken.

Part 5. Notices.

Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

B. CLASS B PREFERRED STOCK

I. Terms Applicable to Class B Preferred Stock.

Part 1. Dividend and Other Rights of Preferred Stock.

(a) Except as specifically otherwise provided herein, all shares of Preferred Stock shall be identical and shall entitle the holders thereof to the same rights and privileges of holders of Common Stock. The Company shall not subdivide, combine or otherwise recapitalize any shares of Common Stock, or pay any dividend or retire any share or make any other distribution on any share of Common Stock, or accord any other payment, benefit or preference to any share of Common Stock, except by extending such subdivision, combination, recapitalization, distribution, payment, benefit or preference equally to all shares of Class B Preferred Stock. If dividends are declared which are payable in shares of Common Stock, such dividends shall be payable in shares of Common Stock to holders of Common Stock and such dividends shall be payable in shares of Class B Preferred Stock to holders of Class B Preferred Stock.

(b) Subject to the rights of holders of Preferred Stock ranking senior to, or on parity with, the Class B Preferred Stock, the holders of Class B Preferred Stock shall be entitled to participate ratably in dividends out of funds legally available therefor, when declared by the Board of Directors in respect of Common Stock. Subject to the rights of holders of Preferred Stock ranking senior to, or on parity with, the Class B Preferred Stock,

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upon liquidation, dissolution or winding up of the Company, the holders of Class B Preferred Stock shall be entitled to payments of \$.25 per share, and thereafter shall be entitled to share ratably in the assets of the Company available for distribution to the holders of Common Stock (based upon the number of shares outstanding of the Class B Preferred Stock and Common Stock).

**Part 2. Voting Rights of Class B Preferred Stock.**

The holders of Class B Preferred Stock shall have full voting rights and powers, and each share of Class B Preferred Stock shall be entitled to four votes on any matter to be voted on by the stockholders of the Company (including, without limitation, the election or removal of directors), and the Class B Preferred Stock shall be aggregated with the Class A Preferred Stock, Class D Preferred Stock and the Common Stock in determining the number of shares voting or entitled to vote on such matters. Holders of Class A Preferred Stock, Class B Preferred Stock, Class D Preferred Stock and Common Stock shall vote together as a single class, provided that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class B Preferred Stock so as to affect adversely the Class B Preferred Stock without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Class B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, the increase in the number of authorized shares of Class B Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class B Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class B Preferred Stock.

**Part 3. Conversion of Class B Preferred Stock.**

**3A. Conversion of Rights.** Subject to and upon compliance with the provisions of this Section, each record holder of Class B Preferred Stock is entitled at any time and from time to time to convert any and all of the shares of Class B Preferred Stock held by it into the same number of shares of Common Stock.

**3B. Conversion Procedure.**

(i) Each conversion of shares of Class B Preferred Stock will be effected by the surrender to the Company of the certificate or certificates representing the shares to be converted, duly endorsed or assigned in blank, with signatures guaranteed if reasonably requested by the Company, at the principal office of the Company (or such other office or agency of the Company as the Company may designate in writing to the holder or holders of the Class B Preferred Stock) at any time during its usual

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business hours, and by the giving of written notice by the holder of such Class B Preferred Stock stating that such holder desires to convert all or a stated number of the shares of Class B Preferred Stock represented by such certificate or certificates into Common Stock, which notice will also state the name or names (with addresses) and denominations in which the certificate or certificates for the Common Stock will be issued and will include instructions for delivery thereof.

(ii) Promptly after such surrender and the receipt of such written notice and statement, the Company will issue and deliver in accordance with such instructions the certificate or certificates for the Common Stock issuable upon such conversion. In addition, the Company will deliver to the converting holder a certificate representing any portion of the shares of Class B Preferred Stock which had been represented by the certificate or certificates delivered to the Company in connection with such conversion but which were not converted. Such conversion, to the extent permitted by law, will be deemed to have been effected as of the close of business on the date on which such certificate or certificates have been surrendered and such notice has been received, and at such time the rights of the holder of such Class B Preferred Stock (or specified portion thereof), as such holder will cease and the person or persons in whose name or names the certificate or certificates for shares of Common Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iii) The Company will at all times reserve and keep available out of its authorized but unissued shares of Common Stock or its treasury shares of Common Stock, solely for the purpose of issuance upon the conversion of the Class B Preferred Stock as provided in this part 3, such number of shares of Common Stock as are then issuable upon the conversion of all then outstanding shares of Class B Preferred Stock into shares of Common Stock hereunder. Notwithstanding the foregoing, if, at any time, there shall be an insufficient number of authorized or treasury shares of Common Stock available for issuance upon conversion of Class B Preferred Stock, the Company will take all action necessary to propose and recommend to the stockholders of the Company that its Certificate of Incorporation be amended to authorize additional shares of Common Stock in an amount sufficient to provide adequate reserves of shares for issuance upon such conversion, including the diligent solicitation of votes and proxies to vote in favor of such an amendment. All shares of Common Stock which are issuable upon

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conversion hereunder will, when issued, be duly and validly issued, fully paid and nonassessable.

(iv) The issuance of certificates for shares of Common Stock upon conversion of shares of Class B Preferred Stock will be made without charge to any original holder of any shares of Class B Preferred Stock for any issuance tax in respect thereof, or other cost incurred by the Company in connection with such conversion and the related issuance of Common Stock; provided that the Company will not be required to pay any such taxes or costs which may be payable in respect of any such conversion by any other person or in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the registered holder of the shares converted. The Company will not close its books against the transfer of any shares of Class B Preferred Stock or Common Stock in a manner which would interfere with the conversion of Class B Preferred Stock.

## II. Miscellaneous.

### Part 1. Registration of Transfer.

The Company will keep at its principal office (or such other place as the Company reasonably designates) a register for the registration of shares of Class B Preferred Stock. Upon the surrender of any certificate representing shares of any class of Class B Preferred Stock at such place, the Company will, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Company forthwith will cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class B Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

### Part 2. Replacement.

Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of any Class B Preferred Stock, and in the case of any such loss, theft or

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destruction, upon receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is an institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Company will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

### C. CLASS C PREFERRED STOCK

Certain capitalized terms used in this Section C are defined in subdivision II, part 3 of this Section.

#### I. Terms Applicable to the Class C Preferred Stock.

##### Part 1. Dividends.

1A. General Obligation. When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware and the terms of any class of Preferred Stock ranking senior to, or on parity with, the Class C Preferred Stock, the Company will pay preferential dividends to the holders of the Class C Preferred Stock as provided in this part 1. Dividends on each share of Class C Preferred Stock will accrue cumulatively on a daily basis at the rate of 9% per annum on the sum of (i) the Liquidation Value thereof plus (ii) all accrued but unpaid dividends, from and including the date of issuance of each such share of Class C Preferred Stock to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of each such share of Class C Preferred Stock is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. The date on which the Company initially issues any share of Class C Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share of Class C Preferred Stock is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence any such share of Class C Preferred Stock. No dividends will be paid, declared or set apart with respect to the Class B Preferred Stock, Common Stock or any other shares of capital stock of the Company ranking on liquidation junior to the Class C Preferred Stock unless all accrued but unpaid dividends on the Class C Preferred Stock shall have been paid.

1B. Distribution of Partial Dividend Payments. If at any time the Company pays less than the total amount of dividends then accrued with respect to the Class C Preferred Stock, such payment will be distributed ratably among the holders of the Class C Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares of Class C Preferred Stock held by each

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such holder.

## Part 2. Liquidation.

Subject to the rights of holders of Preferred Stock ranking senior to, or on parity with, the Class C Preferred Stock, upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a "Liquidation"), the holders of Class C Preferred Stock will be entitled to be paid, before any payment shall be made to the holders of Class B Preferred Stock, Common Stock or any other shares of capital stock of the Company ranking on liquidation junior to the Class C Preferred Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all shares of Class C Preferred Stock outstanding, and the holders of Class C Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class C Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the assets of the Company to be distributed among the holders of the Class C Preferred Stock will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class C Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated therein, to each record holder of Class C Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 2.

After the payment of all preferential amounts required to be paid to the holders of Class C Preferred Stock and any other class or series of stock of the Company ranking on liquidation on a parity with the Class C Preferred Stock, the holders of Class B Preferred Stock and Common Stock then outstanding shall be entitled to receive the remaining assets of the Company available for distribution to its stockholders.

## Part 3. Voting Rights.

The Class C Preferred Stock will have no voting rights or powers; provided, however, that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class C Preferred Stock so as to affect adversely the Class C Preferred Stock without the written consent of the holders of a majority of the then outstanding shares of Class C Preferred Stock, consenting as a class. For this purpose, the increase in the number of authorized shares of Class C Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class C Preferred Stock as to the

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right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class C Preferred Stock.

#### Part 4. Redemptions.

4A. Scheduled Redemptions. The Company will, subject to the terms of its credit agreements and the terms of any class of Preferred Stock ranking senior to, or on parity with, the Class C Preferred Stock, redeem all outstanding shares of Class C Preferred Stock on February 1, 2000, at a price per share of Class C Preferred Stock equal to the Liquidation Value thereof (plus all accrued but unpaid dividends). The Company will mail written notice of a redemption pursuant to this paragraph 4A to each record holder of Class C Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur.

4B. Optional Redemptions. The Company may, subject to the terms of its credit agreements and the terms of any class of Preferred Stock ranking senior to, or on parity with, the Class C Preferred Stock, at any time redeem all or any portion of the Class C Preferred Stock then outstanding at a price per share equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). The Company will mail written notice of a redemption pursuant to this paragraph 4B to each record holder of Class C Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur. In case fewer than the total number of shares of Class C Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Class C Preferred Stock will be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed shares of Class C Preferred Stock.

4C. Redemption Price. For each share of Class C Preferred Stock which is to be redeemed, the Company will be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Company's principal office of the certificate representing such share of Class C Preferred Stock) an amount in immediately available funds equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). If the funds of the Company legally available for redemption of shares of Class C Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Class C Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of shares of Class C Preferred Stock ratably among the holders of the shares of Class C Preferred Stock to be redeemed pursuant to Section 4D below. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Class C Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Class C Preferred Stock which the Company

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has become obligated to redeem on any Redemption Date but which it has not redeemed.

**4D. Determination of the Number of Each Holder's Shares to be Redeemed.** Except as otherwise provided herein, the number of shares of Class C Preferred Stock to be redeemed from each holder thereof in redemptions hereunder will be the number of shares of Class C Preferred Stock determined by multiplying the total number of shares of Class C Preferred Stock to be redeemed by a fraction, the numerator of which will be the total number of shares of Class C Preferred Stock then held by such holder and the denominator of which will be the total number of shares of Class C Preferred Stock then outstanding.

**4E. Dividends After Redemption Date.** No share of Class C Preferred Stock is entitled to any dividends accruing after the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such share of Class C Preferred Stock is paid. On such date all rights of the holder of such share of Class C Preferred Stock will cease, and such share of Class C Preferred Stock will not be deemed to be outstanding.

**4F. Redeemed or Otherwise Acquired Shares.** Any shares of Class C Preferred Stock which are redeemed or otherwise acquired by the Company will be cancelled and will become undesignated shares of Preferred Stock.

**4G. Other Redemptions or Acquisitions.** Neither the Company nor any Subsidiary will redeem or otherwise acquire any Class C Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro-rata to all holders of Class C Preferred Stock on the basis of the number of shares of Class C Preferred Stock owned by each such holder.

## **II. Miscellaneous**

### **Part 1. Registration of Transfer.**

The Company will keep at its principal office a register for the registration of Class C Preferred Stock. Upon the surrender of any certificate representing Class C Preferred Stock at such place, the Company will, at the request of the record holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of Class C Preferred Stock represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of Class C Preferred Stock as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate, and dividends will accrue on the Class C Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Class C Preferred Stock represented by the surrendered certificate. The issuance of new

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certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class C Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

## Part 2. Replacement.

Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Class C Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is an institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Company will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Class C Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends will accrue on the Class C Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

## Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

"Liquidation Value" of the Class C Preferred Stock will be \$500.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class C Preferred Stock.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Redemption Date" as to any share of Class C Preferred Stock means the date specified in the notice of any redemption at the Company's option or the applicable date specified herein in the case of any other redemption.

"Subsidiary" means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any determination is being made, owned by the Company either directly or indirectly through Subsidiaries.

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#### Part 4. Amendment and Waiver.

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class C Preferred Stock outstanding at the time such action is taken.

#### Part 5. Notices.

Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

#### D. CLASS D PREFERRED STOCK

##### I. Terms Applicable to Class D Preferred Stock.

##### Part 1. Dividends.

##### 1A. General Obligation.

When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware and the terms of any class of Preferred Stock ranking senior to, or on parity with, the Class D Preferred Stock, the Company will pay preferential dividends to the holders of the Class D Preferred Stock as provided in this part 1. Dividends on each share of Class D Preferred Stock will accrue cumulatively on a daily basis at the rate of 14% per annum on the sum of (i) the Liquidation Value thereof plus (ii) all accrued but unpaid dividends, from and including the date of issuance of each such share of Class D Preferred Stock to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of each such share of Class D Preferred Stock is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. Upon conversion of any shares of Class D Preferred Stock as provided in part 3 hereof, all accrued but unpaid dividends on the shares of Class D Preferred Stock so converted shall, at the election of the Company, either (i) be paid in full or in part at the time of such conversion or (ii) to the extent any such accrued but unpaid dividends remain unpaid, they will remain an outstanding obligation of the Company to the then former holders of Class D Preferred Stock who so elected to convert their shares into Class B Preferred Stock. The date on which the Company initially issues any share of Class D Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share of

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Class D Preferred Stock is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence any such share of Class D Preferred Stock. No dividends will be paid, declared or set apart with respect to the Class D Preferred Stock unless all accrued but unpaid dividends on the Class A Preferred Stock shall have been paid; provided, however, that the Company may, after February 12, 1992, pay dividends on up to an aggregate of \$300,000.00 worth of Class D Preferred Stock and Class E Preferred Stock, with such worth being based upon their liquidation values, prior to any dividend payments on the Class A Preferred Stock. The holders of Class D Preferred Stock will rank on parity with holders of Class E Preferred Stock with respect to the priority to receive dividend payments, and shall share all partial payments ratably with the holders of Class E Preferred Stock based upon the aggregate amounts of accrued but unpaid dividends outstanding on each class. No dividends will be paid, declared or set apart with respect to the Class B Preferred Stock, Class C Preferred Stock, the Common Stock or any other shares of capital stock of the Company ranking on liquidation junior to the Class D Preferred Stock unless all accrued but unpaid dividends on the Class D Preferred Stock shall have been paid.

(iii) Distribution of Partial Dividend Payments. If at any time the Company pays less than the total amount of dividends then accrued with respect to the Class D Preferred Stock, such payment will be distributed ratably among the holders of the Class D Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares of Class D Preferred Stock held by each such holder.

(iv) Liquidation. Subject to the rights of the holders of any class of Preferred Stock which ranks senior to, or on parity with, the Class D Preferred Stock, upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a "Liquidation"), the holders of Class D Preferred Stock will be entitled to be paid on a parity with holders of Class E Preferred Stock, and before any payment shall be made to the holders of Class B Preferred Stock, Class C Preferred Stock or Common Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all shares of Class D Preferred Stock outstanding, and the holders of Class D Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class D Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the assets of the Company to be distributed among the holders of the Class D Preferred Stock will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class D Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated therein, to

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each record holder of Class D Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 1.

After the payment of all preferential amounts required to be paid to the holders of Class D Preferred Stock and any other class or series of stock of the Company ranking on liquidation on a parity with the Class D Preferred Stock, the holders of Class B Preferred Stock, Class C Preferred Stock and Common Stock then outstanding shall be entitled to receive the remaining assets of the Company available for distribution to its stockholders.

**Part 2. Voting Rights of Class D Preferred Stock.**

The holders of Class D Preferred Stock shall have full voting rights and powers, and each share of Class D Preferred Stock shall be entitled to one vote on any matter to be voted on by the stockholders of the Company (including, without limitation, the election or removal of directors), and the Class D Preferred Stock shall be aggregated with the Class A Preferred Stock, the Class B Preferred Stock and the Common Stock in determining the number of shares voting or entitled to vote on such matters. Holders of Class A Preferred Stock, Class B Preferred Stock, Class D Preferred Stock and Common Stock shall vote together as a single class, provided that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class D Preferred Stock so as to affect adversely the Class D Preferred Stock without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Class D Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, the increase in the number of authorized shares of Class D Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class D Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class D Preferred Stock.

**Part 3. Conversion of Class D Preferred Stock.**

**3A. Conversion of Rights.** Subject to and upon compliance with the provisions of this Section, each record holder of Class D Preferred Stock is entitled at any time after October 31, 1990, subject to the availability of authorized but unissued shares of Class B Preferred Stock, to convert each share of Class D Preferred Stock held by it into 23,742.31 shares of Class B Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class B Preferred Stock.

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Notwithstanding anything contained in this Section to the contrary, upon a change in control of the Company prior to February 12, 1991, each record holder of Class D Preferred Stock shall be entitled at that time to convert any and all of the shares of Class D Preferred Stock held by it into the number of shares of Class B Preferred Stock issuable upon such conversion. For the purposes of this part 3, a "change in control of the Company" shall be defined as the sale or transfer of all or substantially all of the business of the Company and its Subsidiaries, whether pursuant to a purchase of all the outstanding capital stock of the Company and/or all of its Subsidiaries, merger, consolidation, or purchase of all or substantially all of the assets of the Company and its Subsidiaries subject to all or substantially all of the liabilities of the Company and its Subsidiaries.

### 3B. Conversion Procedure.

(i) Each conversion of shares of Class D Preferred Stock will be effected by the surrender to the Company of the certificate or certificates representing the shares to be converted, duly endorsed or assigned in blank, with signatures guaranteed if reasonably requested by the Company, at the principal office of the Company (or such other office or agency of the Company as the Company may designate in writing to the holder or holders of the Class D Preferred Stock) at any time during its usual business hours, and by the giving of written notice by the holder of such Class D Preferred Stock stating that such holder desires to convert all or a stated number of the shares of Class D Preferred Stock represented by such certificate or certificates into shares of Class B Preferred Stock, subject to availability, which notice will also state the name or names (with addresses) and denominations in which the certificate or certificates for the shares of Class B Preferred Stock will be issued and will include instructions for delivery thereof.

(ii) Promptly after such surrender and the receipt of such written notice and statement, the Company will issue and deliver in accordance with such instructions the certificate or certificates for the shares of Class B Common Stock issuable upon such conversion. In addition, the Company will deliver to the converting holder a certificate representing any portion of the shares of Class D Preferred Stock which had been represented by the certificate or certificates delivered to the Company in connection with such conversion but which were not converted. Such conversion, to the extent permitted by law, will be deemed to have been effected as of the close of business on the date on which such certificate or certificates have been surrendered and such notice has been received, and at such time the rights of the holder of such Class D Preferred Stock (or specified portion thereof), as such holder will cease and the person or persons in whose name or names the certificate or certificates for shares of Class B Preferred Stock are to be issued upon such conversion will be deemed to have become the holder or holders of record of the shares

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of Class B Preferred Stock represented thereby.

(iii) The Company will at all times reserve and keep available out of its authorized but unissued shares of Class B Preferred Stock solely for the purpose of issuance upon the conversion of the Class D Preferred Stock as provided in this part 3, such number of shares of Class B Preferred Stock as are then issuable upon the conversion of all then outstanding shares of Class D Preferred Stock into shares of Class B Preferred Stock hereunder. Notwithstanding the foregoing, if, at any time, there shall be an insufficient number of authorized shares of Class B Preferred Stock available for issuance upon conversion of Class D Preferred Stock, the Company will take all action necessary to propose and recommend to the stockholders of the Company that its Certificate of Incorporation be amended to authorize additional shares of Class B Preferred Stock in an amount sufficient to provide adequate reserves of shares for issuance upon such conversion, including the diligent solicitation of votes and proxies to vote in favor of such an amendment. All shares of Class B Preferred Stock which are issuable upon conversion hereunder will, when issued, be duly and validly issued, fully paid and nonassessable.

(iv) The issuance of certificates for shares of Class B Preferred Stock upon conversion of shares of Class D Preferred Stock will be made without charge to any original holder of any shares of Class D Preferred Stock for any issuance tax in respect thereof, or other cost incurred by the Company in connection with such conversion and the related issuance of Class B Preferred Stock; provided that the Company will not be required to pay any such taxes or costs which may be payable in respect of any such conversion by any other person or in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the registered holder of the shares converted. The Company will not close its books against the transfer of any shares of Class D Preferred Stock or Class B Preferred Stock in a manner which would interfere with the conversion of Class D Preferred Stock.

#### Part 4. Redemptions.

3A. Redemptions. At the request of any holder of Class D Preferred Stock made after January 1, 1999, the Company will, subject to the terms of its credit agreements and the terms of any class of Preferred Stock ranking senior to, or on parity with, the Class D Preferred Stock, redeem any and all outstanding shares of Class D Preferred Stock request to be redeemed at a price per share of Class D Preferred Stock equal to the Liquidation Value thereof (plus all accrued but unpaid dividends). Whenever any holder requests any redemption of Class D Preferred Stock, the Company shall establish a proposed Redemption Date not less than 30 nor more than 60 days after such request was made. The Company shall promptly notify each holder of Class D Preferred Stock of the proposed Redemption Date, and give each such holder at least 15 days after the date of the Company's notice to request that all

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or any portion of such holders Class D Preferred Stock also be redeemed on such Redemption Date.

4B. Redemption Price. For each share of Class D Preferred Stock which is to be redeemed, the Company will be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Company's principal office of the certificate representing such share of Class D Preferred Stock) an amount in immediately available funds equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). If the funds of the Company legally available for redemption of shares of Class D Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Class D Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of shares of Class D Preferred Stock among the holders of the shares of Class D Preferred Stock to be redeemed pursuant to Section 4C below. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Class D Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Class D Preferred Stock which the Company has become obligated to redeem on any Redemption Date but which it has not redeemed.

4C. Determination of the Number of Each Holder's Shares to be Redeemed. Except as otherwise provided herein, the number of shares of Class D Preferred Stock to be redeemed from each holder thereof in redemptions hereunder will be the number of shares of Class D Preferred Stock determined by multiplying the total number of shares of Class D Preferred Stock to be redeemed by a fraction, the numerator of which will be the total number of shares of Class D Preferred Stock then held by such holder and the denominator of which will be the total number of shares of Class D Preferred Stock then outstanding.

4D. Dividends After Redemption Date. No share of Class D Preferred Stock is entitled to any dividends accruing after the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such share of Class D Preferred Stock is paid. On such date all rights of the holder of such share of Class D Preferred Stock will cease, and such share of Class D Preferred Stock will not be deemed to be outstanding.

4E. Redeemed or Otherwise Acquired Shares. Any shares of Class E Preferred Stock which are redeemed or otherwise acquired by the Company will be cancelled and will become undesignated shares of Preferred Stock.

4F. Other Redemptions or Acquisitions. Neither the Company nor any Subsidiary will redeem or otherwise acquire any Class D Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro-rata to all holders of Class D Preferred Stock on the basis of the number of shares of

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Class D Preferred Stock owned by each such holder.

## II. Miscellaneous.

### Part 1. Registration of Transfer.

The Company will keep at its principal office (or such other place as the Company reasonably designates) a register for the registration of shares of Class D Preferred Stock. Upon the surrender of any certificate representing shares of any class of Class D Preferred Stock at such place, the Company will, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Company forthwith will cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class D Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

### Part 2. Replacement.

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

### Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

"Liquidation Value" of the Class D Preferred Stock will be \$6,173.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class D Preferred Stock.

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"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Subsidiary" means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any determination is being made, owned by the Company either directly or indirectly through Subsidiaries.

**Part 4. Amendment and Waiver.**

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class D Preferred Stock outstanding at the time such action is taken.

**Part 5. Notices.**

Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

**E. CLASS E PREFERRED STOCK**

**I. Terms Applicable to Class E Preferred Stock.**

**Part 1. Dividends.**

**1A. General Obligation.** When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware and the terms of any class of Preferred Stock ranking senior to, or on parity with, the Class E Preferred Stock, the Company will pay preferential dividends to the holders of the Class E Preferred Stock as provided in this part 1. Dividends on each share of Class E Preferred Stock will accrue cumulatively on a daily basis at the rate of 14% per annum on the sum of (i) the Liquidation Value thereof plus (ii) all accrued but unpaid dividends, from and including the date of issuance of each such share of Class E Preferred Stock to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of each such share of Class E Preferred Stock is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. The date on which the Company initially issues any share of Class E Preferred Stock will be deemed to be its "date of issuance"

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regardless of the number of times transfer of any such share of Class E Preferred Stock is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence any such share of Class E Preferred Stock. No dividends will be paid, declared or set apart with respect to the Class E Preferred Stock unless all accrued but unpaid dividends on the Class A Preferred Stock shall have been paid; provided, however, that the Company may, after February 12, 1992, pay dividends on up to an aggregate of \$300,000.00 worth of Class D Preferred Stock and Class E Preferred Stock, with such worth being based upon their liquidation values, prior to any dividend payments on the Class A Preferred Stock. The holders of Class E Preferred Stock will rank on a parity with holders of Class D Preferred Stock with respect to the priority to receive dividend payments, and shall share partial payments ratably with the holders of Class D Preferred Stock based upon the aggregate amounts of accrued but unpaid dividends outstanding on each class. No dividends will be paid, declared or set apart with respect to the Class B Preferred Stock, the Class C Preferred Stock, the Common Stock or any other shares of capital stock of the Company ranking on liquidation junior to the Class E Preferred Stock unless all accrued but unpaid dividends on the Class E Preferred Stock have been paid.

1B. Distribution of Partial Dividend Payments. If at any time the Company pays less than the total amount of dividends then accrued with respect to the Class E Preferred Stock, such payment will be distributed ratably among the holders of the Class E Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares of Class E Preferred Stock held by each such holder.

1C. Liquidation. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a "Liquidation"), the holders of Class E Preferred Stock will be entitled to be paid on a parity with holders of Class D Preferred Stock, but after all payments shall have been made to the holders of Class A Preferred Stock and before any payment shall be made to the holders of Class B Preferred Stock, Class C Preferred Stock or Common Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all shares of Class E Preferred Stock outstanding, and the holders of Class E Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class E Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the assets of the Company to be distributed among the holders of the Class E Preferred Stock will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class E Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated

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therein, to each record holder of Class E Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 1.

After the payment of all preferential amounts required to be paid to the holders of Class E Preferred Stock and any other class or series of stock of the Company ranking on liquidation on a parity with the Class E Preferred Stock, the holders of Class B Preferred Stock, Class C Preferred Stock and Common Stock then outstanding shall be entitled to receive the remaining assets of the Company available for distribution to its stockholders.

**Part 2. Voting Rights of Class E Preferred Stock.**

The Class E Preferred Stock will have no voting rights or powers; provided, however, that the Company will not amend, alter or repeal the preferences, special rights or other powers of the Class E Preferred Stock so as to affect adversely the Class E Preferred Stock without the written consent of the holders of a majority of the then outstanding shares of Class E Preferred Stock, consenting as a class. For this purpose, the increase in the number of authorized shares of Class E Preferred Stock or the authorization or issuance of any series of preferred stock with preference or priority over the Class E Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company shall not be deemed to affect adversely the Class E Preferred Stock.

**Part 3. Redemptions.**

**3A. Scheduled Redemptions.** The Company will, subject to the terms of its credit agreements, redeem all outstanding shares of Class E Preferred Stock on January 1, 2000, at a price per share of Class E Preferred Stock equal to the Liquidation Value thereof (plus all accrued but unpaid dividends). The Company will mail written notice of a redemption pursuant to this paragraph 3A to each record holder of Class E Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur.

**3B. Optional Redemptions.** The Company may, subject to the terms of its credit agreements, at any time redeem all or any portion of the Class E Preferred Stock then outstanding at a price per share equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). The Company will mail written notice of a redemption pursuant to this paragraph 3B to each record holder of Class E Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur. In case fewer than the total number of shares of Class E Preferred Stock represented by any certificate are redeemed, a new

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certificate representing the number of unredeemed shares of Class E Preferred Stock will be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed shares of Class E Preferred Stock.

3C. Redemption Price. For each share of Class E Preferred Stock which is to be redeemed, the Company will be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Company's principal office of the certificate representing such share of Class E Preferred Stock) an amount in immediately available funds equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). If the funds of the Company legally available for redemption of shares of Class E Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Class E Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of shares of Class E Preferred Stock ratably among the holders of the shares of Class E Preferred Stock to be redeemed based upon the aggregate Liquidation Value of such shares (plus all accrued but unpaid dividends thereon) held by each such holder. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Class E Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Class E Preferred Stock which the Company has become obligated to redeem on any Redemption Date but which it has not redeemed.

3D. Determination of the Number of Each Holder's Shares to be Redeemed. Except as otherwise provided herein, the number of shares of Class E Preferred Stock to be redeemed from each holder thereof in redemptions hereunder will be the number of shares of Class E Preferred Stock determined by multiplying the total number of shares of Class E Preferred Stock to be redeemed by a fraction, the numerator of which will be the total number of shares of Class E Preferred Stock then held by such holder and the denominator of which will be the total number of shares of Class E Preferred Stock then outstanding.

3E. Dividends After Redemption Date. No share of Class E Preferred Stock is entitled to any dividends accruing after the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such share of Class E Preferred Stock is paid. On such date all rights of the holder of such share of Class E Preferred Stock will cease, and such share of Class E Preferred Stock will not be deemed to be outstanding.

3F. Redeemed or Otherwise Acquired Shares. Any shares of Class E Preferred Stock which are redeemed or otherwise acquired by the Company will be cancelled and will become undesignated shares of Preferred Stock.

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3G. Other Redemptions or Acquisitions. Neither the Company nor any Subsidiary will redeem or otherwise acquire any Class E Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro-rata to all holders of Class E Preferred Stock on the basis of the number of shares of Class E Preferred Stock owned by each such holder.

## II. Miscellaneous.

### Part 1. Registration of Transfer.

The Company will keep at its principal office (or such other place as the Company reasonably designates) a register for the registration of shares of Class E Preferred Stock. Upon the surrender of any certificate representing shares of any class of Class E Preferred Stock at such place, the Company will, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Company forthwith will cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class E Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

### Part 2. Replacement.

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

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Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

"Liquidation Value" of the Class E Preferred Stock will be \$2,922.67 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class E Preferred Stock.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Redemption Date" as to any share of Class E Preferred Stock means the date specified in the notice of any redemption at the Company's option or the applicable date specified herein in the case of any other redemption.

"Subsidiary" means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any determination is being made, owned by the Company either directly or indirectly through Subsidiaries.

Part 4. Amendment and Waiver.

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class E Preferred Stock outstanding at the time such action is taken.

Part 5. Notices.

Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

F. CLASS F PREFERRED STOCK

I. Terms Applicable to Class F Preferred Stock.

Part 1. Dividends.

1A. General Obligation. When and as declared by the Company's board of directors and to the extent permitted under the General Corporation Law of Delaware, the Company will pay

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preferential dividends to the holders of the Class F Preferred Stock as provided in this part 1. Dividends on each share of Class F Preferred Stock will accrue cumulatively on a daily basis at the rate of 16.5% per annum on the sum of (i) the Liquidation Value thereof plus (ii) all accrued but unpaid dividends, from and including the date of issuance of each such share of Class F Preferred Stock to and including the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of each such share of Class F Preferred Stock is paid. Such dividends will accrue whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. The date on which the Company initially issues any share of Class F Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of any such share of Class F Preferred Stock is made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence any such share of Class F Preferred Stock. No dividends will be paid, declared or set apart with respect to any other class of Preferred Stock until all the outstanding shares of Class F Preferred Stock shall have been entirely redeemed pursuant to Section 1C or Part 3 below.

1B. Distribution of Partial Dividend Payments. If at any time the Company pays less than the total amount of dividends then accrued with respect to the Class F Preferred Stock, such payment will be distributed ratably among the holders of the Class F Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares of Class F Preferred Stock held by each such holder.

1C. Liquidation. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company (each such event being hereafter referred to as a "Liquidation"), the holders of Class F Preferred Stock will be entitled to be paid, prior to any other holders of any class of Preferred Stock, an amount in cash equal to the aggregate Liquidation Value (plus all accrued but unpaid dividends) of all shares of Class F Preferred Stock outstanding, and the holders of Class F Preferred Stock will not be entitled to any further payment. If, upon any Liquidation, the Company's assets to be distributed among the holders of the Class F Preferred Stock are insufficient to permit payment to such holders of the full amount to which they are entitled hereunder, then the assets of the Company to be distributed among the holders of the Class F Preferred Stock will be distributed ratably among such holders based upon the aggregate Liquidation Value (plus all accrued but unpaid dividends) of the Class F Preferred Stock held by each such holder. The Company will mail written notice of any Liquidation not less than 30 days prior to the payment date stated therein, to each record holder of Class F Preferred Stock. Neither the consolidation or merger of the Company into or with any other corporation or corporations, nor the sale or transfer by the Company of all or any part of its assets, nor the reduction of the

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capital stock of the Company, will be deemed to be a Liquidation for purposes of this part 1.

After the payment of all preferential amounts required to be paid to the holders of Class F Preferred Stock, the holders of all classes of Preferred Stock ranking junior to the Class F Preferred Stock and the Common Stock then outstanding shall be entitled to receive the remaining assets of the Company available for distribution to its stockholders.

**Part 2. Voting Rights of Class F Preferred Stock.**

2A. Except as set forth in this Part 2 or otherwise provided by law, the Class F Preferred Stock will have no voting rights or powers.

2B. Without the written consent of a majority of the then outstanding shares of Class F Preferred Stock, the Company will not:

(i) amend, alter or repeal the preferences, special rights or other powers of the Class F Preferred Stock so as to affect adversely the Class F Preferred Stock;

(ii) increase the number of authorized shares of Class F Preferred Stock or the authorization or issuance of any series of Preferred Stock with preference or priority over the Class F Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Company;

(iii) issue any Class F Preferred Stock, except pursuant to the Stock Purchase Agreement;

(iv) pay, declare, or set apart any dividends on any class of Preferred Stock ranking junior to the Class F Preferred Stock or purchase, redeem or otherwise acquire any class of Preferred Stock ranking junior to the Class F Preferred Stock; or

(v) permit any Subsidiary to take any action which the Company is prohibited from taking pursuant to clause (iii) above.

**Part 3. Redemptions.**

3A. Scheduled Redemptions. The Company will, subject to the terms of the Credit Agreements, redeem all outstanding shares of Class F Preferred Stock on September 1, 1998, at a price per share of Class F Preferred Stock equal to the Liquidation Value thereof (plus all accrued but unpaid dividends). The Company will mail written notice of a redemption pursuant to this paragraph 3A to each record holder of Class F Preferred Stock not more than 60

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nor less than 30 days prior to the date on which such redemption is to occur. In the event the Company is unable or otherwise fails to redeem all of the Class F Preferred Stock on September 1, 1998, the rate at which dividends accrue pursuant to Section 1A above shall automatically increase by two percentage points.

**3B. Optional Redemptions.** The Company may, subject to the terms of the Credit Agreements, at any time redeem all or any portion of the Class F Preferred Stock then outstanding at a price per share equal to (x) the Applicable Premium Percentage times (y) the Liquidation Value thereof plus all accrued but unpaid dividends thereon. The Applicable Premium Percentages are set forth below:

| <u>Prepayments<br/>Prior To The First<br/>Business Day Of The<br/>Month And Year<br/>Set Forth Below</u> | <u>Applicable<br/>Premium<br/>Percentage</u> |
|----------------------------------------------------------------------------------------------------------|----------------------------------------------|
| March 1991                                                                                               | 106%                                         |
| March 1992                                                                                               | 105%                                         |
| March 1993                                                                                               | 104%                                         |
| March 1994                                                                                               | 103%                                         |
| March 1995                                                                                               | 102%                                         |
| March 1996                                                                                               | 101%                                         |

The Company will mail written notice of a redemption pursuant to this paragraph 3B to each record holder of Class F Preferred Stock not more than 60 nor less than 30 days prior to the date on which such redemption is to occur. In case fewer than the total number of shares of Class F Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Class F Preferred Stock will be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed shares of Class F Preferred Stock.

**3C. Redemption Price.** For each share of Class F Preferred Stock which is to be redeemed, the Company will be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Company's principal office of the certificate representing such share of Class F Preferred Stock) an amount in immediately available funds equal to the Liquidation Value thereof (plus all accrued but unpaid dividends thereon). If the funds of the Company legally available for redemption of shares of Class F Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Class F Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of shares of Class F Preferred Stock ratably among the holders of the shares of Class F Preferred Stock to be redeemed pursuant to Section 3D

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below. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Class F Preferred Stock, such funds will immediately be used to redeem the balance of the shares of Class F Preferred Stock which the Company has become obligated to redeem on any Redemption Date but which it has not redeemed.

3D. Determination of the Number of Each Holder's Shares to be Redeemed. Except as otherwise provided herein, the number of shares of Class F Preferred Stock to be redeemed from each holder thereof in redemptions hereunder will be the number of shares of Class F Preferred Stock determined by multiplying the total number of shares of Class F Preferred Stock to be redeemed by a fraction, the numerator of which will be the total number of shares of Class F Preferred Stock then held by such holder and the denominator of which will be the total number of shares of Class F Preferred Stock then outstanding.

3E. Dividends After Redemption Date. No share of Class F Preferred Stock is entitled to any dividends accruing after the date on which the Liquidation Value (plus all accrued but unpaid dividends thereon) of such share of Class F Preferred Stock is paid. On such date all rights of the holder of such share of Class F Preferred Stock will cease, and such share of Class F Preferred Stock will not be deemed to be outstanding.

3F. Redeemed or Otherwise Acquired Shares. Any shares of Class F Preferred Stock which are redeemed or otherwise acquired by the Company will be cancelled and will become undesignated shares of Preferred Stock.

3G. Other Redemptions or Acquisitions. Neither the Company nor any Subsidiary will redeem or otherwise acquire any Class F Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro-rata to all holders of Class F Preferred Stock on the basis of the number of shares of Class F Preferred Stock owned by each such holder.

## II. Miscellaneous.

### Part 1. Registration of Transfer.

The Company will keep at its principal office (or such other place as the Company reasonably designates) a register for the registration of shares of Class F Preferred Stock. Upon the surrender of any certificate representing shares of any class of Class F Preferred Stock at such place, the Company will, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Company forthwith will cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such

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number of shares of such class as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. The issuance of new certificates will be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Company in connection with such issuance, unless such issuance is made in connection with a transfer of Class F Preferred Stock, in which case the transferring holder will pay all taxes arising from such transfer.

## Part 2. Replacement.

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

## Part 3. Definitions.

"Common Stock" means the Company's Common Stock, par value \$.01 per share.

"Credit Agreements" (i) means the Bank Credit Agreement, dated as of May 15, 1989 and as amended through October 31, 1990, between the Company and certain of its Subsidiaries, as borrowers, and the First Pennsylvania Bank, N.A., and (ii) the Stockholders Agreement, dated May 15, 1989 and as amended through October 31, 1990, among the Company, Chemical Equity Associates, and the Company's stockholders named therein.

"Liquidation Value" of the Class F Preferred Stock will be \$1,000.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the Class F Preferred Stock.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Redemption Date" as to any share of Class F Preferred Stock means the date specified in the notice of any redemption at the Company's option or the applicable date specified herein in the

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case of any other redemption.

"Stock Purchase Agreement" means the Stock and Note Purchase Agreement, dated February 28, 1989 and as amended from time to time, among J.E. Hanger, Inc., Chemical Equity Associates, Chemical Venture Capital Partners, Ronald J. Manganiello and Joseph M. Cestaro.

"Subsidiary" means any corporation of which the shares of stock having a majority of the general voting power in electing the board of directors are, at the time as of which any determination is being made, owned by the Company either directly or indirectly through Subsidiaries.

Part 4. Amendment and Waiver.

No amendment, modification or waiver will be binding or effective with respect to any provision of subdivision I above or this subdivision II without the prior written consent of the holders of at least a majority of the Class F Preferred Stock outstanding at the time such action is taken.

Part 5. Notices.

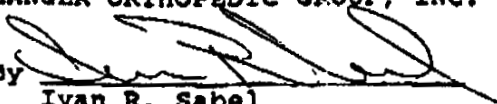
Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (i) to the Company, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder).

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IN WITNESS WHEREOF, said corporation has caused this Certificate to be signed by Ivan R. Sabel, its President, and attested by Richard A. Stein, its Secretary, this 30th day of April, 1991.

HANGER ORTHOPEDIC GROUP, INC.

By

  
Ivan R. Sabel  
President

ATTEST:

By

  
Richard A. Stein  
Secretary

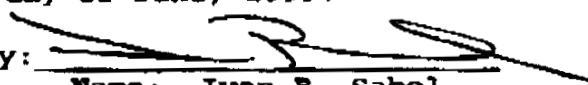
**CERTIFICATE OF ELIMINATION OF CLASS A, B, C, D, E AND F  
PREFERRED STOCK**

Pursuant To Section 151 of the  
General Corporation Law of the State of Delaware

**HANGER ORTHOPEDIC GROUP, INC.**, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolution was duly adopted by the Board of Directors of the Corporation as required by Section 151 of the Delaware General Corporation Law at a meeting duly called and held on June 9, 1999.

**RESOLVED**, that all series of previously authorized preferred stock, \$.01 par value per share, of the Corporation, namely the Class A Preferred Stock as to which the original Certificate of Designations, Preferences and Rights was filed on May 12, 1989, the Class B Preferred Stock, as to which the original Certificate of Designations, Preferences and Rights was filed on May 12, 1989, the Class C Preferred Stock, as to which the original Certificate of Designations, Preferences and Rights was filed on February 12, 1990, the Class D Preferred Stock, as to which the original Certificate of Designations, Preferences and Rights was filed on February 12, 1990, the Class E Preferred Stock, as to which the original Certificate of Designations, Preferences and Rights was filed on February 12, 1990 and the Class F Preferred Stock, as to which the original Certificate of Designations, Preferences and Rights was filed on April 30, 1991, no shares of which series of preferred stock are currently issued or outstanding, are hereby cancelled.

**IN WITNESS WHEREOF**, the Corporation has caused this Certificate to be duly executed by an authorized officer of the Corporation as of the 18<sup>th</sup> day of June, 1999.

By: 

Name: Ivan R. Sabel  
Title: Chairman of the Board,  
President and Chief  
Executive Officer

**CERTIFICATE OF DESIGNATIONS, POWERS, PREFERENCES AND RELATIVE,  
PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS AND  
QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS**

**OF**

**7% REDEEMABLE PREFERRED STOCK**

**OF**

**HANGER ORTHOPEDIC GROUP, INC.**

## TABLE OF CONTENTS

|                                                                                   |           |
|-----------------------------------------------------------------------------------|-----------|
| <b>Article I Number of Shares and Designations.....</b>                           | <b>1</b>  |
| <b>Article II Definitions .....</b>                                               | <b>1</b>  |
| <b>Article III Voting Rights .....</b>                                            | <b>10</b> |
| <u>3.1. General.....</u>                                                          | 10        |
| <u>3.2. Special Election of Directors.....</u>                                    | 10        |
| <u>3.3. Protective Provisions.....</u>                                            | 11        |
| <u>3.4. Covenants in Related Documents.....</u>                                   | 13        |
| <b>Article IV Dividends and Distributions .....</b>                               | <b>13</b> |
| <u>4.1. Cumulative Dividends.....</u>                                             | 13        |
| <u>4.2. Restrictions on Dividends, Etc.....</u>                                   | 14        |
| <u>4.3. Participating Dividends.....</u>                                          | 14        |
| <b>Article V Liquidation.....</b>                                                 | <b>15</b> |
| <u>5.1. Redeemable Preferred Stock.....</u>                                       | 15        |
| <u>5.2. Additional Payments.....</u>                                              | 15        |
| <u>5.3. Insufficient Funds.....</u>                                               | 15        |
| <b>Article VI Redemption .....</b>                                                | <b>15</b> |
| <u>6.1. Change of Control.....</u>                                                | 15        |
| <u>6.2. Redemption of Redeemable Preferred Stock at Corporation's Option.....</u> | 18        |
| <u>6.3. Mandatory Redemption.....</u>                                             | 18        |
| <u>6.4. Redemption at Holder's Option.....</u>                                    | 19        |
| <u>6.5. Warrants.....</u>                                                         | 20        |
| <u>6.6. Additional Payments.....</u>                                              | 21        |
| <b>Article VII Conversion .....</b>                                               | <b>21</b> |
| <u>7.1. Optional Conversion.....</u>                                              | 21        |
| <u>7.2. Mandatory Conversion.....</u>                                             | 22        |
| <u>7.3. Adjustment of Conversion Price.....</u>                                   | 22        |
| <u>7.4. Mechanics.....</u>                                                        | 27        |
| <u>7.5. Reservation of Shares.....</u>                                            | 28        |
| <b>Article VIII Certain Regulatory Matters .....</b>                              | <b>29</b> |

**CERTIFICATE OF DESIGNATIONS, POWERS, PREFERENCES AND RELATIVE,  
PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS AND  
QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF  
7% REDEEMABLE PREFERRED STOCK**

---

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

---

**HANGER ORTHOPEDIC GROUP, INC.**, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolution was duly adopted by the Board of Directors of the Corporation as required by Section 151 of the Delaware General Corporation Law at a meeting duly called and held on June 23, 1999.

**RESOLVED**, that a series of the class of authorized preferred stock, \$.01 par value per share, of the Corporation is hereby created and that the designations, powers, preferences and relative, participating optional or other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof, are hereby fixed as follows:

**ARTICLE I  
NUMBER OF SHARES AND DESIGNATIONS**

60,000 of the shares of the Corporation's preferred stock, \$.01 par value per share, are hereby designated 7% Redeemable Preferred Stock.

**ARTICLE II  
DEFINITIONS**

As used herein, the following capitalized terms have the following meanings:

"Affiliate" means, with respect to any Person, (a) a director, officer, member or general partner of such Person or any Person identified in clause (c) below, (b) a spouse, parent, sibling or descendant of such Person (or a spouse, parent, sibling or descendant of any director or officer of such Person or the general partner or managing member of such Person) and (c) any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For the purpose of the above definition, the term "control" (including, with correlative meaning, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Securities, by contract or otherwise.

"Affiliate Transaction" has the meaning ascribed to it in Section 3.3.

"Amended Charter" means the Amended and Restated Certificate of Incorporation, as amended by the Charter Amendment.

"Applicable Dividend Rate" means 7% per annum; provided that the Applicable Dividend Rate shall be automatically increased to 10% per annum from and after the occurrence of an Event of Non-Compliance until such time as such Event of Non-Compliance shall have been cured or shall otherwise cease to exist.

"Applicable Law" means, with respect to any Person, all provisions of laws, statutes, ordinances, rules, regulations, permits, certificates or orders of any Governmental Authority applicable to such Person or any of its assets or property or to which such Person or any of its assets or property is subject, and all judgments, injunctions, orders and decrees of all courts and arbitrators in proceedings or actions in which such Person is a party or by which it or any of its assets or properties is or may be bound or subject.

"By-laws" means the By-laws of the Corporation, as amended and in effect from time to time.

"Board" and "Board of Directors" means the Board of Directors of the Corporation.

"Certificate of Designations" means a certificate of designations, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions filed by the Corporation with respect to any of its Securities.

"Change of Control" has the meaning ascribed to the term "Change of Control" in the Indenture.

"Change of Control Offer" has the meaning ascribed to it in Section 6.1(a).

"Change of Control Purchase Price" has the meaning ascribed to it in Section 6.1(a).

"Change of Control Payment Date" has the meaning ascribed to it in Section 6.1(b).

"Charter Amendment" means the amendment to the Corporation's certificate of incorporation, in substantially the form attached as Exhibit B to the Securities Purchase Agreement, together with such changes as the parties to the Securities Purchase Agreement may agree.

"Chase" means Chase Equity Associates, L.P., a California limited partnership.

"Common Stock" means shares of Voting Common Stock, Non-Voting Common Stock and all other classes of capital stock of the Corporation hereafter authorized that are not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation; provided that, the Redeemable Preferred Stock shall not be deemed to be Common Stock.

"Common Stock Equivalents" means all shares of Common Stock outstanding, all shares of Common Stock issuable (without regard to any present restrictions on such issuance) upon the conversion, exchange or exercise of all Securities of the Corporation that are convertible, exchangeable or exercisable for Common Stock and all Common Stock appreciation rights, phantom Common Stock rights and other rights to acquire, or to receive or be paid an amount based on the value (less any exercise, conversion or purchase price) of, the Common Stock. With respect to the Redeemable Preferred Stock, as of any date, "Common Stock Equivalents" means the shares of Common Stock issuable in accordance with this Certificate of Designations upon the conversion of all of the outstanding shares of Redeemable Preferred Stock on such date (calculated by assuming that the Convertibility Effective Date had occurred and that such shares of Redeemable Preferred Stock were converted into shares of Non-Voting Common Stock which were then immediately converted into shares of Voting Common Stock).

"Common Stock Rights" means options, rights, warrants or other rights to acquire shares of Common Stock or Securities directly or indirectly convertible into, exercisable for or otherwise entitling any Person to receive any shares of Common Stock.

"Conversion Price" means \$15.50, subject to adjustment in accordance with Section 7.3.

"Convertibility Effective Date" means the first date on which (a) the Corporation shall have obtained the approval of its stockholders for the effectiveness of the convertibility of shares of Redeemable Preferred Stock into shares of Non-Voting Common Stock in accordance with Article VII, (b) the Charter Amendment shall have become effective in accordance with the laws of the State of Delaware and (c) the Corporation shall have delivered to the Holders of the Redeemable Preferred Stock notice of its election to have the Redeemable Preferred Stock become convertible in accordance with Article VII.

"Corporation" has the meaning ascribed to it in the first paragraph of this Certificate of Designations.

"Corporation Redemption" has the meaning ascribed to it in Section 6.2(a).

"Corporation Redemption Notice" has the meaning ascribed to it in Section 6.2(a).

"Corporation Redemption Date" has the meaning ascribed to it in Section 6.2(a).

"Dividend Accrual Period" means, with respect to a share of Redeemable Preferred Stock, (i) the initial period from and including the Original Issuance Date of such share to but excluding the first Dividend Payment Date occurring after such Original Issuance Date, (ii) a period from and including each Dividend Payment Date to but excluding the next succeeding Dividend Payment Date while such share remains outstanding and (iii) the final period ending on, but excluding, the date such share ceases to be outstanding and beginning on, and including, the Dividend Payment Date immediately preceding such date.

"Dividend Payment Date" means each March 31, June 30, September 30 and December 31, commencing September 30, 1999.

"Equity Incentive Plans" means any stock option, issuance, appreciation rights or other equity incentive plan; provided, however, that the maximum number of shares of Common Stock Equivalents issuable thereunder shall not exceed 2,362,013 shares and equivalents (subject to pro rata adjustment in the event of any stock dividend or distribution paid in shares of Common Stock or any stock split or subdivision, reverse stock split or combination or other similar pro rata recapitalization event affecting the Common Stock).

"Event of Non-Compliance" means any one of the following events, occurrences or conditions:

(i) any failure by the Corporation, after the fifth anniversary of the Original Issuance Date, to (A) pay on each of two consecutive Dividend Payment Dates the full amount of cash dividends accrued on the Redeemable Preferred Stock for the Dividend Accrual Period ending on such Dividend Payment Date or (B) declare and set aside funds on the Preferred Record Date for the payment of the full amount of cash dividends that will be accrued on the Redeemable Preferred Stock for the then current Dividend Accrual Period if the Corporation failed to pay the full amount of cash dividends accrued on the Redeemable Preferred Stock for the Dividend Accrual Period ending on the immediately preceding Dividend Payment Date;

(ii) any failure by the Corporation to perform or comply in any respect with any term, provision or covenant contained in any Related Document and, with respect to any such failure that can be remedied or cured, ten days shall have elapsed after the time that the Corporation becomes aware of such failure;

(iii) any representation or warranty made by the Corporation in any Certificate of Designations or in any Related Document proves to have been false or incorrect or misleading in any material respect at the time made;

(iv) the Corporation or any of its Significant Subsidiaries shall (A) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency or similar law, (B) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for any such Person or for any substantial part of its property or assets, (D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (E) make a general assignment for the benefit of creditors, (F) fail generally to pay its debts as they become due or (G) take any action in furtherance of any of the foregoing;

(v) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (A) relief in respect of the Corporation or any of its Significant Subsidiaries, or of any substantial part of their respective property or assets, under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency or similar law, (B) the appointment of a receiver, trustee, custodian, sequestrator or similar official for any such Person or for any substantial part of its property or (C) the winding-up or liquidation of any such Person,

and such proceeding, petition or order shall continue unstayed and in effect for a period of 30 consecutive days;

(vi) the Corporation fails to redeem any share of Redeemable Preferred Stock on the Corporation Redemption Date, the Mandatory Redemption Date or any other applicable redemption date (without giving effect to Section 6.4(e)); or

(vii) a final judgment for the payment of money in an amount in excess of \$5 million shall be rendered by a court or other tribunal against the Corporation or any of its Subsidiaries and shall remain undischarged for a period of 30 consecutive days during which such judgment and any levy or execution thereof shall not have been effectively stayed or vacated.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any similar federal law then in force.

"Fair Value" means with respect to (i) any Security that is not listed on any domestic securities exchange or quoted in the NASDAQ System or the domestic over-the-counter market or (ii) any property or assets other than cash or Securities, the fair value thereof determined in good faith jointly by the Corporation and the Requisite Senior Holders; provided, however, that, if the parties are not able to agree within a reasonable period of time (not to exceed thirty (30) days) what amount constitutes Fair Value, then the Fair Value will be determined pursuant to the Valuation Procedure.

"Governmental Authority" shall mean any Federal, state, municipal or other government, governmental department, commission, board, bureau, agency or instrumentality, or any court, in each case whether of the United States of America or any political subdivision thereof, or of any other country.

"Holder Redemption" has the meaning ascribed to it in Section 6.3.

"Holder Redemption Date" has the meaning ascribed to it in Section 6.3.

"Holder Redemption Price" means, at any time, for each outstanding share of Redeemable Preferred Stock, the product of the Market Price of a share of Voting Common Stock multiplied by the number of Common Stock Equivalents issuable upon conversion of such share of Redeemable Preferred Stock assuming that the Convertibility Effective Date had occurred prior to such time.

"Holders" means the holders of shares of the Redeemable Preferred Stock and/or the Non-Voting Common Stock, as the context shall require.

"Holders Director Election Notice" has the meaning ascribed to it in Section 3.2(d).

"Holders Director Removal Notice" has the meaning ascribed to it in Section 3.2(d).

"Indebtedness" has the meaning ascribed to it in the Indenture; provided, however, that Indebtedness shall not include any shares of capital stock of the Corporation or any of its Subsidiaries.

"Indenture" means the Indenture dated as of June 16, 1999, among the Corporation and the other signatories thereto governing the Corporation's 11¼ % Senior Subordinated Notes, as such Indenture is in effect on the Original Issuance Date.

"Investor Rights Agreement" means the Investor Rights Agreement dated as of the Original Issuance Date, among the Corporation and the other parties named therein, as amended, modified or supplemented from time to time.

"Junior Stock" means all shares of capital stock ranking junior to the Redeemable Preferred Stock with respect to dividends or a Liquidation.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest of any kind whatsoever in or on such asset (including the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction), (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of Securities, any purchase option, call, appreciation right or similar right of a third party with respect to such Securities.

"Liquidation" means any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

"Liquidation Amount" means with respect to each share of Redeemable Preferred Stock, the Original Cost of such share plus an amount equal to all accrued and unpaid dividends on such share, whether or not declared.

"Mandatory Redemption" has the meaning ascribed to it in Section 6.3.

"Mandatory Redemption Date" means the eleventh anniversary of the Original Issuance Date.

"Market Price" means, as to any Security, the average of the closing prices of such Security's sales on the New York Stock Exchange and on all other United States securities exchanges on which such Security is at the time listed, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges at the end of such day, or, if on any day such Security is not so listed, the average of the representative bid and asked prices quoted in the NASDAQ System as of 4:00 P.M., New York time, on such day, or, if on any day such Security is not quoted in the NASDAQ System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated, or any similar or successor organization, in each such case averaged over a period of 21 days consisting of the day as of which "Market Price" is being determined and the 20 consecutive trading days prior to such day. With respect to any Security that is not listed on any domestic securities exchange or

quoted in the NASDAQ System or the domestic over-the-counter market, the "Market Price" of such Security shall be the Fair Value thereof.

"Minimum Price Event" means, on any date after the third anniversary of the Original Issuance Date, that the Market Price of the Voting Common Stock as of such date is equal to or greater than 175% of the Conversion Price in effect on such date (without giving effect to any adjustment pursuant to the second sentence of Section 7.3(a)).

"Non-Voting Common Stock" means shares of the Corporation's Non-Voting Common Stock, par value \$.01 per share, to be authorized by the Corporation pursuant to the Charter Amendment.

"Original Cost" means, with respect to any share of Redeemable Preferred Stock, as of any particular date, the amount originally paid for such share when it was originally issued. In the event of any change (by way of any recapitalization, subdivision or recombination) in the number or kind of shares of Redeemable Preferred Stock, the Original Cost immediately prior to such change shall be ratably adjusted.

"Original Issuance Date" means, with respect to a share of Redeemable Preferred Stock, the date on which such share was first issued.

"Paribas" means Paribas North America, Inc.

"Person" shall be construed broadly and shall include without limitation an individual, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and a Governmental Authority.

"Preferred Record Date" has the meaning ascribed to it in Section 4.1.

"Public Offering" means an offering of shares of Voting Common Stock in an underwritten offering registered under the Securities Act.

"Put Effective Date" has the meaning ascribed to it in Section 6.4(a).

"Put Right" has the meaning ascribed to it in Section 6.4(a).

"Redeemable Preferred Stock" means the Corporation's 7% Redeemable Preferred Stock.

"Regulated Stockholder" means Chase, Paribas and any other Person (i) that is subject to the provisions of Regulation Y of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 225 (or any successor to such Regulation) ("Regulation Y"), (ii) that holds equity Securities of the Corporation and (iii) has given written notice to the Corporation that such Person is a Regulated Stockholder.

"Related Documents" means, collectively, the Securities Purchase Agreement, the Investor Rights Agreement, this Certificate of Designations, the Certificate of Incorporation of the Corporation in effect on the date hereof, the Amended Charter and the By-laws.

"Relinquishing Holder" means Paribas and its transferees and any other Holder of a share of Redeemable Preferred Stock that delivers a written notice to the Corporation to the effect that such Holder elects not to be entitled to vote with respect to any matter referred to in Section 3.2 or Section 3.3(c).

"Requisite Senior Holders" means the Holders of a majority of the outstanding shares of Redeemable Preferred Stock at the time in question.

"Sale of the Corporation" means (i) the sale of all or substantially all of the Corporation's assets, (ii) the sale or transfer of the outstanding capital stock of the Corporation or (iii) the merger or consolidation of the Corporation with or into another Person, in each case, in one or a series of related transactions, and in clauses (ii) and (iii) above, under circumstances in which the holders of a majority in voting power of the outstanding capital stock of the Corporation, immediately prior to such transaction, own less than a majority in voting power of the outstanding capital stock of the Corporation or the surviving or resulting corporation or acquirer, as the case may be, immediately following such transaction. A sale (or multiple related sales) of one or more Subsidiaries of the Corporation (whether by way of merger, consolidation, reorganization or sale of all or substantially all assets or Securities) which constitutes all or substantially all of the consolidated assets of the Corporation shall be deemed a Sale of the Corporation.

"Securities" means "securities" as defined in Section 2(1) of the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended, or any similar federal law then in force.

"Securities Purchase Agreement" means the Securities Purchase Agreement dated as of June 16, 1999, between the Corporation and the Holders named therein, as amended from time to time.

"Significant Subsidiary" means, with respect to any Person, any Subsidiary of such Person that satisfies the criteria for a "significant subsidiary" set forth in Rule 1.02(w) of Regulation S-X under the Exchange Act.

"Subsidiary" of any Person means any other Person (i) whose Securities having a majority of the general voting power in electing the board of directors or equivalent governing body of such other Person (excluding Securities entitled to vote only upon the failure to pay dividends thereon or the occurrence of other contingencies) are, at the time as of which any determination is being made, owned by such Person either directly or indirectly through one or more other entities constituting subsidiaries or (ii) more than a 50% interest in the profits or capital of whom is, at the time as of which any determination is being made, owned by such Person either directly or indirectly through one or more other entities constituting subsidiaries.

"Valuation Procedure" means the following procedure to determine the Fair Value (the "valuation amount"). The valuation amount shall be determined by an Appraiser selected by the Requisite Senior Holders, and set forth in a written notice delivered to the Corporation (the "appraiser selection notice"); provided that the Corporation may object to such Appraiser by

delivering a written notice of such objection to each Holder of shares of Redeemable Preferred Stock (the "appraiser objection notice"). If the Corporation does not deliver an appraiser objection notice within 10 days after delivery by the Requisite Senior Holders of the appraiser selection notice, then the Appraiser set forth in the appraiser selection notice shall be the Appraiser. If the Corporation delivers an appraiser objection notice, then the Appraiser will be selected by an arbitrator located in the City of New York, New York, selected by the American Arbitration Association (or if such organization ceases to exist, the arbitrator shall be chosen by a court of competent jurisdiction). The arbitrator shall select the Appraiser (within ten (10) days of its appointment) from a list, jointly prepared by the Corporation and the Requisite Senior Holders, of not more than six Appraisers of national standing in the United States, of which no more than three may be named by the Corporation and no more than three may be named by the Requisite Senior Holders. The arbitrator may consider, within the ten-day period allotted, arguments from the parties regarding which Appraiser to choose, but the selection by the arbitrator shall be made in its sole discretion from the list of six. The Corporation and the Requisite Senior Holders shall submit to the Appraiser their respective calculations of the valuation amount, and any supporting arguments and other data as they may desire, within 30 days of the appointment of the Appraiser, and the Appraiser shall as soon as practicable thereafter make its own calculation of the valuation amount. The final valuation amount for purposes hereof shall be the average of the two valuation amounts closest together, as determined by the Appraiser, from among the valuation amounts submitted by the Corporation and the Requisite Senior Holders and the valuation amount calculated by the Appraiser. The determination of the final valuation amount by such Appraiser shall be final and binding upon the parties. The Corporation shall pay the fees and expenses of the Appraiser and arbitrator (if any) used to determine the valuation amount. If required by any such Appraiser or arbitrator, the Corporation shall execute a retainer and engagement letter containing reasonable terms and conditions, including, without limitation, customary provisions concerning the rights of indemnification and contribution by the Corporation in favor of such investment banking firm or arbitrator and its officers, directors, partners, employees, agents and Affiliates. As used herein, "Appraiser" means (a) with respect to a determination of the Market Price of a Security, an investment banking firm experienced in the industry in which the Corporation participates and (b) with respect to a determination of any other valuation amount, a firm of the type generally considered to be qualified in making determinations of the type required.

"Voting Common Stock" means the Corporation's Common Stock, par value \$.01 per share.

"Voting Securities" of a Person means all classes of capital stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

## **ARTICLE III VOTING RIGHTS**

### **3.1. General.**

Except as may be required by law or as otherwise provided below, the Holders of shares of Redeemable Preferred Stock shall not be entitled to vote on any matter to be voted on by the stockholders of the Corporation, including any vote to elect directors of the Corporation.

### **3.2. Special Election of Directors.**

From and after the occurrence of an Event of Non-Compliance, the Holders of Redeemable Preferred Stock (other than the Relinquishing Holders) shall have the exclusive and special right, voting together as a single class, but separately from all other classes of capital stock, to elect two directors to the Board. One of such directors shall be entitled to serve on each committee of the Board. The Corporation shall take all necessary and desirable actions in connection with and in furtherance of such rights. Without limiting the generality of the foregoing, the following procedures shall apply:

(a) At such time as the Holders of shares of Redeemable Preferred Stock (other than the Relinquishing Holders) have the right to elect directors as provided in this Section 3.2, the size of the Board shall be automatically increased by two directors.

(b) The Holders of Redeemable Preferred Stock (other than the Relinquishing Holders) may exercise their rights pursuant to this Section 3.2 at a special meeting of such Holders or by delivering a notice to the Corporation, at any annual meeting of shareholders or by written consent in accordance with the laws of the State of Delaware.

(c) At any time when the Holders of shares of Redeemable Preferred Stock (other than the Relinquishing Holders) have the right to elect directors as provided in this Section 3.2, upon delivery of a written request by any Holder of Redeemable Preferred Stock (other than the Relinquishing Holders), the President, any Vice President, the Secretary or any Assistant Secretary of the Corporation shall call a special meeting of the Holders of shares of Redeemable Preferred Stock for the purpose of electing directors. Such meeting shall be held at the earliest practicable date at the principal executive office of this Corporation or at such other location as the Holder(s) of Redeemable Preferred Stock (other than the Relinquishing Holders) submitting a written request shall designate. At any meeting held for the purpose of electing directors at which the Holders of Redeemable Preferred Stock (other than the Relinquishing Holders) shall have the right to elect two directors as provided in this Section 3.2, the presence, in person or by proxy, of the holders of a majority of the number of shares of Redeemable Preferred Stock at the time outstanding (excluding those shares held by the Relinquishing Holders) shall be required to constitute a quorum of such class for the election of any director by the Holders of the Redeemable Preferred Stock (other than the Relinquishing Holders) as a class.

(d) During any period that the Holders of shares of Redeemable Preferred Stock (other than the Relinquishing Holders) shall have the right to vote as a class for directors as provided in this Section 3.2, (i) each director so elected shall hold office until such Holders elect a successor

director but in no event beyond the termination of the right of the Holders of shares of Redeemable Preferred Stock (other than the Relinquishing Holders) to vote as a class to elect directors and (ii) any vacancies in the Board so elected by the Holders of shares of Redeemable Preferred Stock (other than the Relinquishing Holders) shall be filled only by a vote of a majority (which majority may consist of only a single director) of the remaining directors thereof elected by the Holders of shares of Redeemable Preferred Stock or may be filled by the vote of holders of a majority of the number of shares of Redeemable Preferred Stock at the time outstanding (excluding those shares held by the Relinquishing Holders).

(e) Upon the Corporation becoming aware of the occurrence of an Event of Non-Compliance, it will deliver a notice to each Holder of Redeemable Preferred Stock.

### **3.3. Protective Provisions.**

(a) For so long as any shares of Redeemable Preferred Stock are outstanding, without first obtaining the affirmative written consent or approval of the Requisite Senior Holders, the Corporation shall not, and shall not permit any Subsidiary to:

(i) in any manner authorize, create, designate, issue or sell any shares of any class or series of capital stock of the Corporation (including any shares of treasury stock) or rights, options, warrants or other Securities convertible into or exercisable or exchangeable for capital stock or any debt Security which by its terms is convertible into or exchangeable for any equity Security or has any other equity feature or any Security that is a combination of debt and equity, which, in each case, as to the payment of dividends, distribution of assets or redemptions, including, without limitation, distributions to be made upon a Liquidation, is senior to or on a parity with the Redeemable Preferred Stock or which in any manner adversely affects the Holders of Redeemable Preferred Stock;

(ii) in any manner alter or change the terms, designations, powers, preferences, or the qualifications, limitations or restrictions, of the Redeemable Preferred Stock or the relative, participating, optional or other special rights of the Holders of the Redeemable Preferred Stock in their capacity as such;

(iii) reclassify the shares of any class or series of capital stock of the Corporation into shares of any other class or series of capital stock (i) ranking, either as to payment of dividends, distributions of assets or redemptions, including, without limitation, distributions to be made upon a Liquidation, senior to or on a parity with the Redeemable Preferred Stock or (ii) which in any manner adversely affects the terms, designations, powers or preferences of the Redeemable Preferred Stock or the relative, participating, optional or other special rights of the Holders of Redeemable Preferred Stock in their capacity as such;

(iv) amend, alter or repeal any of the provisions of (i) this Certificate of Designations, (ii) the Certificate of Incorporation of the Corporation (as amended, modified or restated from time to time) or (iii) the By-laws of the Corporation, if such amendment, alteration or repeal would have an adverse effect on the terms, designations,

powers, preferences of the Redeemable Preferred Stock or the relative, participating, optional or other special rights of the Holders of the Redeemable Preferred Stock in their capacity as such;

(v) agree to or permit to exist, or permit any Subsidiary to agree to or permit to exist, any provision in any agreement or understanding that would impose any restriction on the ability of the Corporation to honor the exercise of any rights of the Holders of the Redeemable Preferred Stock, other than limitations contained in the Indenture and the Credit Agreement on the Corporation's ability to make payments pursuant to Section 6.4;

(vi) agree or otherwise commit to take any of the actions set forth above.

(b) For so long as any shares of Redeemable Preferred Stock are outstanding, the Corporation shall not take any of the actions set forth in Section 3.3(a) in a manner that treats any Holder of a share of Redeemable Preferred Stock different in any material respect from any other Holder without first obtaining the prior written consent of such other Holder.

(c) For so long as any shares of Redeemable Preferred Stock are outstanding, without first obtaining the affirmative written consent or approval of the holders of a majority of the number of shares of Redeemable Preferred Stock at the time outstanding (other than the Relinquishing Holders), the Corporation shall not, and shall not permit any Subsidiary to:

(i) permit any Subsidiary to issue any capital stock to any Person other than the Corporation or a direct or indirect wholly owned Subsidiary of the Corporation;

(ii) enter into or permit to exist any transaction or series of related transactions, including, without limitation, any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with or for the benefit of any Affiliate of the Company (an "Affiliate Transaction"), unless such Affiliate Transaction is permitted by the terms and conditions of the Indenture; provided that in lieu of delivering to the Trustee (as defined in the Indenture) a favorable opinion as to the fairness to the Corporation of any such Affiliate Transaction, the Holders of Redeemable Preferred Stock shall have received a copy of such opinion;

(iii) directly or indirectly create, incur, assume, guarantee, acquire, become liable, contingently or otherwise, with respect to, or otherwise become responsible for payment of Indebtedness which is not permitted by the terms and conditions of the Indenture;

(iv) merge, consolidate or amalgamate with any Person, except that any wholly-owned Subsidiary of the Corporation may be merged or consolidated with or into any Person in connection with any acquisition permitted under Section 3.3(j);

(v) acquire or dispose of any business or assets in a single transaction or a series of related transactions with an aggregate value in such transaction or series of

related transactions in excess of \$100 million (including all assumed debt, all cash payments, and the fair market value of all Securities or other property issued as consideration);

(vi) engage in any business other than one or more of the businesses in which the Corporation or any of its Subsidiaries are engaged in on the Original Issuance Date or any business reasonably related thereto;

(vii) effect, approve or authorize any Liquidation or any recapitalization or reorganization of the Company or any Subsidiary; or

(viii) agree or otherwise commit to take any of the actions set forth above.

### **3.4. Covenants in Related Documents.**

For so long as any shares of Redeemable Preferred Stock are outstanding, the Corporation shall, and, if applicable, shall cause each of its Subsidiaries to, comply with and perform its obligations under each Related Document.

## **ARTICLE IV DIVIDENDS AND DISTRIBUTIONS**

### **4.1. Cumulative Dividends.**

(a) During each Dividend Accrual Period, dividends shall accrue on a daily basis at the Applicable Dividend Rate on the Liquidation Amount as of the beginning of the Dividend Accrual Period. Accrued dividends shall be payable in cash, on each Dividend Payment Date, when, as, and if declared by the Board of Directors of the Corporation, out of funds legally available for that purpose, to the Holders of Redeemable Preferred Stock, before any dividends shall be declared and paid or set aside for any Junior Stock. Dividends shall accrue and compound at the Applicable Dividend Rate regardless of whether the Board of Directors of the Corporation has declared a dividend payment or whether there are any profits, surplus or other funds of the Corporation legally available for dividends. Any dividends which accrue pursuant to this Section 4.1 during a Dividend Accrual Period and which shall not have been paid shall be classified as "accrued dividends" and shall remain "accrued and unpaid dividends" until paid or otherwise canceled pursuant to this Certificate of Designations.

(b) Any accrued dividends that are not paid in cash on the applicable Dividend Payment Date and all accrued dividends on such accrued but unpaid dividends shall not be payable thereafter in cash and, instead, shall be added to the Liquidation Amount. Dividends on each share of Redeemable Preferred Stock shall accrue pursuant to this Section 4.1 from and including the Original Issuance Date to, but excluding, the date such share is redeemed in full and all accrued but unpaid dividends thereon are also paid in full or such share is fully converted into shares of Non-Voting Common Stock pursuant to Article VII. Upon conversion of any share of Redeemable Preferred Stock, all accrued and unpaid dividends on such share of Redeemable Preferred Stock shall be canceled. All payments due under this Section to any Holder shall be made to the nearest cent. The dividends payable with respect to the Redeemable Preferred Stock

on each Dividend Payment Date shall be paid to the Holders of shares of the Redeemable Preferred Stock as they appear on the stock records of the Corporation on such date (the "Preferred Record Date") as shall be fixed by the Board of Directors, which Preferred Record Date shall be not more than 60 days prior to the applicable Dividend Payment Date and shall not precede the date upon which the resolution fixing such Preferred Record Date is adopted.

#### **4.2. Restrictions on Dividends, Etc.**

(a) For so long as any shares of Redeemable Preferred Stock are outstanding, the Corporation shall not (i) pay, declare or set funds apart for payment of, any dividend or make any other distribution or other payment on or with respect to any Junior Stock or (ii) redeem, repurchase, retire or otherwise acquire any Junior Stock, any Securities convertible into or exchangeable or exercisable directly or indirectly for Junior Stock or any appreciation, phantom or other similar rights to receive payment based on the value of the Common Stock; except (A) repurchases and redemptions of shares of Redeemable Preferred Stock and shares of Common Stock in accordance with the terms hereof and of the Amended Charter, as applicable, (B) dividends payable solely in shares of the class or series upon which such dividends are declared or paid, (C) dividends payable in shares of Common Stock with respect to any such Junior Stock, together with cash in lieu of fractional shares or (D) if there are no accrued and unpaid dividends in respect of any shares of Redeemable Preferred Stock for the then current Dividend Accrual Period, dividends or distributions to holders of Junior Stock or redemptions or repurchases of shares of Junior Stock to the extent that, after giving effect to prior or concurrent dividend payments with respect to the Redeemable Preferred Stock, such dividends, distributions, redemptions or repurchases are permitted under the Indenture.

(b) No dividend or distribution shall be paid to the Holders of Redeemable Preferred Stock in any form of consideration other than cash unless the Requisite Senior Holders at the time of the distribution, approve such distribution (including the valuation of the consideration being distributed).

(c) If at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Redeemable Preferred Stock, such payment shall be distributed ratably among the Holders of the Redeemable Preferred Stock according to the respective amounts which would be payable with respect to the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

#### **4.3. Participating Dividends.**

In addition to all dividends payable pursuant to Section 4.1, whenever the Corporation shall declare or pay any cash dividends on its Common Stock, at the option of the Corporation, the Holders of the Redeemable Preferred Stock shall be entitled to receive such dividends on a ratably basis based upon the Common Stock Equivalents issuable, directly or indirectly, in respect of the Redeemable Preferred Stock. Dividends payable pursuant to this Section 4.3 shall not reduce any dividends payable pursuant to Section 4.1. If the Corporation shall exercise its option not to declare or pay any dividend pursuant to the first sentence of this Section 4.3, the amount of such dividend which should have been declared or paid to the Holders of Redeemable

Preferred Stock will be included in the Missed Dividend Amount (in addition to all non-cash dividends).

## **ARTICLE V LIQUIDATION**

### **5.1. Redeemable Preferred Stock.**

(a) In the event of any Liquidation occurring prior to the Convertibility Effective Date, before any payment shall be made to the holders of any Junior Stock, the Holders of shares of Redeemable Preferred Stock then outstanding shall be entitled to receive out of the assets of the Corporation legally available for distribution to its stockholders an amount per share equal to the greater of (i) the Liquidation Amount and (ii) the Holder Redemption Price.

(b) In the event of any Liquidation occurring after the Convertibility Effective Date, before any payment shall be made to the holders of any Junior Stock, the Holders of shares of Redeemable Preferred Stock then outstanding shall be entitled to receive out of the assets of the Corporation legally available for distribution to its stockholders an amount per share equal to the greater of (i) the Liquidation Amount and (ii) the amount that such Holder would have received, calculated by assuming such share was converted into shares of Non-Voting Common Stock immediately prior to such Liquidation.

### **5.2. Additional Payments.**

In the event of any Liquidation, before any payment shall be made to the holders of any Junior Stock, the former Holders of shares of Redeemable Preferred Stock that has been redeemed pursuant to Section 6.2 or Section 6.3 shall be entitled to receive the amounts payable to them pursuant to Section 6.6.

### **5.3. Insufficient Funds.**

If, upon any Liquidation, the assets of the Corporation available for distribution shall be insufficient to pay the Persons entitled to receive the full amount to which such Persons are entitled to receive pursuant to Section 5.1 and Section 5.2, then such Persons shall share ratably in any distribution of assets according to the respective amounts which would be payable to such Persons upon such distribution with respect to the amounts payable to such Persons pursuant to such Sections.

## **ARTICLE VI REDEMPTION**

### **6.1. Change of Control.**

(a) Upon the occurrence of a Change of Control, the Corporation shall be obligated to make, in accordance with the procedures set forth in this Section 6.1, an offer to purchase (the "Change of Control Offer") the outstanding Redeemable Preferred Stock on the terms and conditions set forth in this Section 6.1 for a price per share equal to 101% of the Liquidation

Amount thereof as of the Change of Control Payment Date (the "Change of Control Purchase Price").

(b) Within 30 days of the occurrence of a Change of Control, the Corporation shall (i) cause a notice of the Change of Control Offer to be sent at least once to the Dow Jones News Service or similar business news service in the United States and (ii) send by first-class mail, postage prepaid, to each Holder of Redeemable Preferred Stock, at the address appearing in the register maintained by or on behalf of the Corporation, a notice stating:

(i) that the Change of Control Offer is being made pursuant to this Section 6.1 and that all shares of Redeemable Preferred Stock validly tendered will be accepted for payment;

(ii) the Change of Control Purchase Price and the purchase date (which shall be a business day not earlier than 30 days nor later than 60 days from the date such notice is mailed (the "Change of Control Payment Date"));

(iii) that any share of Redeemable Preferred Stock not validly tendered will continue to accrue dividends;

(iv) that, unless the Corporation defaults in the payment of the Change of Control Purchase Price therefor, any share of Redeemable Preferred Stock accepted for payment pursuant to the Change of Control Offer shall cease to accrue dividends on the Change of Control Payment Date;

(v) that Holders accepting the offer to have their Redeemable Preferred Stock purchased pursuant to a Change of Control Offer will be required to surrender their certificates representing shares of Redeemable Preferred Stock to the Corporation at the address specified in the notice prior to the close of business on the business day preceding the Change of Control Payment Date;

(vi) that Holders will be entitled to withdraw their acceptance if the Corporation receives, not later than the close of business on the third business day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the number of shares of Redeemable Preferred Stock delivered for purchase, and a statement that such Holder is withdrawing its election to have such Redeemable Preferred Stock purchased;

(vii) that Holders whose Redeemable Preferred Stock is being purchased only in part will be issued new certificates representing the number of shares of Redeemable Preferred Stock equal to the unpurchased portion of the certificates surrendered; and

(viii) any other procedures that a Holder must follow to accept a Change of Control Offer or effect withdrawal of such acceptance.

(c) The Corporation will comply with any securities laws and regulations, to the extent such laws and regulations are applicable to the purchase of the Redeemable Preferred Stock in

connection with a Change of Control Offer. Without limiting the foregoing, in the event that a Change of Control occurs and the Holders of Redeemable Preferred Stock exercise their right to require the Corporation to purchase Redeemable Preferred Stock, if such purchase constitutes a "tender offer" for purposes of Rule 14e-1 under the Exchange Act at that time, the Corporation will comply with the requirements of Rule 14e-1 as then in effect with respect to such purchase.

(d) On the Change of Control Payment Date, the Corporation shall, to the extent lawful, (i) accept for payment the number of shares of Redeemable Preferred Stock validly tendered pursuant to the Change of Control Offer and (ii) promptly mail to each Holder of shares so accepted the Change of Control Purchase Price therefor and execute and issue a new Redeemable Preferred Stock certificate representing the number of shares of Redeemable Preferred Stock equal to any unpurchased shares represented by a certificate surrendered. Unless the Corporation defaults in the payment for the shares of Redeemable Preferred Stock accepted for payment pursuant to the Change of Control Offer, dividends shall cease to accrue with respect to shares of Redeemable Preferred Stock so accepted and all rights of Holders of such tendered shares shall terminate, except for the right to receive payment therefor, on the Change of Control Payment Date.

(e) If any restriction or limitation contained in any agreement or instrument evidencing or governing any Indebtedness of the Corporation or any of its Subsidiaries would prevent the Corporation from making a Change of Control Offer or paying the applicable Change of Control Purchase Price (including any limitation on dividends or distributions by Subsidiaries), then, upon a Change of Control, prior to the mailing of the notice to Holders described in Section 6.1(b) above, but in any event within 30 days following any Change of Control, to the extent required to permit the purchase of Redeemable Preferred Stock pursuant to this Section 6.1, the Corporation shall be required to (i) cause the obligors thereunder to repay in full all obligations under such Indebtedness or (ii) cause such obligors to obtain the requisite consent from the holders of such Indebtedness to permit the purchase of the Redeemable Preferred Stock as described above and the transactions contemplated hereunder.

(f) (i) If the Corporation has issued any outstanding Junior Stock, and the Corporation is required to make a Change of Control Offer or to make a distribution with respect to such Junior Stock in the event of a Change of Control, the Corporation shall not consummate any such offer or distribution with respect to such Junior Stock until such time as the Corporation shall have paid the applicable Change of Control Purchase Price in full to the Holders of Redeemable Preferred Stock that have validly accepted the Corporation's Change of Control Offer and shall otherwise have consummated the Change of Control Offer made to Holders of the Redeemable Preferred Stock and (ii) the Corporation will not issue Junior Stock with change of control provisions requiring the payment of such Junior Stock prior to the payment of the Redeemable Preferred Stock in the event of a Change of Control under this Section 6.1.

(g) The Corporation will not be required to make a Change of Control Offer upon a Change of Control if a third party makes such Change of Control Offer contemporaneously with or upon a Change of Control in the manner, at the times and otherwise in compliance with the requirements of this Section 6.1 and purchases all Redeemable Preferred Stock validly tendered and not withdrawn under such Change of Control Offer.

## **6.2. Redemption of Redeemable Preferred Stock at Corporation's Option.**

(a) At any time and from time to time, the Corporation may elect to redeem all (but not less than all) of the outstanding shares of Redeemable Preferred Stock (a "Corporation Redemption") at a price per share equal to the Liquidation Amount thereof on the Corporation Redemption Date by giving notice to the Holders thereof of such election (the "Corporation Redemption Notice"), whereupon such Holders shall sell and transfer such shares of Redeemable Preferred Stock to the Corporation on such business day (the "Corporation Redemption Date") as shall be determined by the Corporation and set forth in the Corporation Redemption Notice, but in any event not earlier than 30 days and not later than 50 days after the date on which the Corporation Redemption Notice is delivered to such Holders.

(b) The closing of the Corporation's redemption of the Redeemable Preferred Stock pursuant to Section 6.2(a) shall take place at 10:00 a.m. New York City time on the Corporation Redemption Date at the Corporation's principal executive office or place of business. The Corporation Redemption Notice shall specify the Corporation Redemption Date and the location of the Corporation's principal executive office or place of business where the closing will occur. At the closing, the Corporation shall pay to each of the Holders of the Redeemable Preferred Stock, against the Corporation's receipt from such Holder of the certificate or certificates representing the shares of such Redeemable Preferred Stock then held by such Holder, an amount equal to the aggregate payment due pursuant to this Section 6.2 for all such shares, by wire transfer of immediately available funds, or if such Holder shall not have specified wire transfer instructions to the Corporation prior to the closing, by certified or official bank check made payable to the order of such Holder

(c) Anything contained in this Section 6.2 to the contrary notwithstanding, the outstanding shares of Redeemable Preferred Stock shall remain (i) subject to optional or mandatory conversion pursuant to Article VII and (ii) subject to redemption pursuant to Section 6.4, in each case, at all times on or prior to the Corporation Redemption Date.

## **6.3. Mandatory Redemption.**

(a) The Corporation shall redeem (the "Mandatory Redemption") all of the shares of the Redeemable Preferred Stock then outstanding on the Mandatory Redemption Date for an amount per share equal to the Liquidation Amount thereof as of the Mandatory Redemption Date. If the funds of the Corporation legally available for the redemption of shares of Redeemable Preferred Stock shall be insufficient to permit the payment of the amounts due to such Holders on the Mandatory Redemption Date, then the Holders of Redeemable Preferred Stock shall share in any legally available funds ratably according to the respective amounts which would be payable with respect to such shares if all amounts payable thereon, including amounts payable pursuant to Section 6.4 and Section 6.6, were paid in full. As soon as practicable after the Corporation has funds legally available therefor, the Corporation shall make the remaining payments required under this Section.

(b) The closing of the Corporation's redemption pursuant to Section 6.3(a) shall take place at 10:00 a.m. New York City time on the Mandatory Redemption Date at the Corporation's principal executive office or place of business. At the closing, the Corporation shall pay to each

Holder of the Redeemable Preferred Stock, against the Corporation's receipt from such Holder of the certificate or certificates representing the shares of such Redeemable Preferred Stock then held by such Holder, an amount equal to the aggregate payment due pursuant to this Section 6.3 for all such shares, by wire transfer of immediately available funds, or if such Holder shall not have specified wire transfer instructions to the Corporation prior to the closing, by certified or official bank check made payable to the order of such Holder.

#### **6.4. Redemption at Holder's Option.**

(a) Each holder of shares of Redeemable Preferred Stock shall have the right (the "Put Right") to require the Corporation to redeem its shares of Redeemable Preferred Stock in accordance with the further provisions of this Section 6.4. The Put Right shall become exercisable, if at all, commencing on the earliest of (the "Put Effective Date") (i) the 15-month anniversary of the Original Issuance Date; (ii) the earliest date at which (A) the Charter Amendment and/or (B) the approval of the effectiveness of convertibility of the Redeemable Preferred Stock in accordance with Article VII have been submitted to the Corporation's stockholders for a vote and the stockholders have failed to approve either such matter; and (iii) such time as the Corporation shall be obligated to deliver a notice of a Change of Control Offer pursuant to Section 6.1(b). Notwithstanding the foregoing, the Put Right shall cease to be exercisable upon the occurrence of the Convertibility Effective Date. The redemption price of each share of Redeemable Preferred Stock redeemed pursuant to the Put Right of the Holder thereof shall be equal to the Holder Redemption Price.

(b) Each Holder's rights under Section 6.4(a) may be exercised from time to time after the Put Effective Date by giving notice of such election to the Corporation (the "Holder Redemption Notice"), whereupon such Holder shall sell and transfer such shares of Redeemable Preferred Stock on such business day (the "Holder Redemption Date") as shall be determined by such Holder and set forth in the Holder Redemption Notice, but in any event not earlier than 10 days and not later than 50 days after the date on which the applicable Holder Redemption Notice is delivered to the Corporation. Each Holder Redemption Notice shall set forth the number of shares of the Redeemable Preferred Stock that the Holder desires to have the Corporation redeem on such Holder Redemption Date.

(c) The closing of the Corporation's redemption of the Redeemable Preferred Stock pursuant to Section 6.4(a) shall take place at 10:00 a.m. New York City time on the Holder Redemption Date at the Corporation's principal executive office or place of business. At the closing, the Corporation shall pay to the applicable Holder, against the Corporation's receipt from such Holder of the certificate or certificates representing the shares of Redeemable Preferred Stock referred to in the Holder Redemption Notice, an amount equal to the aggregate payment due pursuant to Section 6.4(a) for all shares being redeemed, by wire transfer of immediately available funds, or if such Holder shall not have specified wire transfer instructions to the Corporation prior to the closing, by certified or official bank check made payable to the order of such Holder.

(d) Each Holder shall be entitled to exercise its Put Right with respect to a share of Redeemable Preferred Stock at any time and from time to time following the commencement of

a Change of Control Offer in lieu of exercising its rights to tender its shares of Redeemable Preferred Stock to the Corporation in connection with such Change of Control Offer.

(e) If any restriction or limitation contained in any agreement or instrument evidencing or governing any Indebtedness of the Corporation or any of its Subsidiaries would prevent the Corporation from paying the Holder Redemption Price (including any limitation on dividends or distributions by Subsidiaries), then, upon delivery of a Holder Redemption Notice to the Corporation, to the extent required to permit the purchase of Redeemable Preferred Stock pursuant to this Section 6.4, the Corporation shall be required to use its best efforts to cause the obligors on such Indebtedness to obtain the requisite consent from the holders of such Indebtedness to permit the purchase of the Redeemable Preferred Stock as described above and the transactions contemplated hereunder. If the Corporation is not able to obtain the requisite consents from such holders, it shall use its best efforts to refinance its outstanding Indebtedness so as to permit the purchase of the Redeemable Preferred Stock as described above and the transactions contemplated hereunder. If, after using its best efforts, the Corporation is not able to obtain the requisite consent or refinance its outstanding Indebtedness, then, to the extent that the Corporation is restricted from paying the Holder Redemption Price, it shall have no obligation to do so and the applicable Holder(s) shall be entitled to revoke the exercise of their Put Rights (which may be exercised again at any time pursuant to this Section 6.4). Such revocation may be exercised by delivering a notice to the Corporation at any time prior to the payment in full of the Holder Redemption Price.

#### **6.5. Warrants.**

If, at any time on or after the Convertibility Effective Date, the Corporation shall redeem the outstanding shares of Redeemable Preferred Stock pursuant to Section 6.2, then, in addition to the cash redemption price payable pursuant to Section 6.2 in respect of the shares of Redeemable Preferred Stock being redeemed, the Corporation shall also issue warrants to the Holders of Redeemable Preferred Stock unless either (i) the Corporation Redemption Notice is delivered after the third anniversary of the Original Issuance Date and a Minimum Price Event has occurred during the thirty days immediately preceding the delivery of such Corporation Redemption Notice or (ii) a Corporation Redemption Notice is given at any time after the fifth anniversary of the Original Issuance Date.

Such warrant initially shall be exercisable for that number of shares of Non-Voting Common Stock equal to the number of shares of Non-Voting Common Stock issuable upon conversion of such Holder's Redeemable Preferred Stock immediately prior to the redemption thereof. The initial exercise price per share of Non-Voting Common Stock for such warrant shall be equal to the Conversion Price in effect immediately prior to the redemption of the Redeemable Preferred Stock pursuant to Section 6.2. Such warrant shall have customary cashless exercise provisions, customary anti-dilution protections economically identical to the antidilution protections applicable to the Redeemable Preferred Stock and shall otherwise be in form and substance reasonably acceptable to the Corporation and the Requisite Senior Holders. The warrant shall be delivered to the Holder at the closing of the Corporation Redemption in exchange for the certificate representing the shares of Redeemable Preferred Stock surrendered by such Holder.

#### **6.6. Additional Payments.**

If, at any time prior to the Convertibility Effective Date, the Corporation shall redeem the shares of Redeemable Preferred Stock pursuant to either Section 6.2 or Section 6.3, then, in addition to the redemption price received in such redemption, each Holder of Redeemable Preferred Stock shall have the right to receive, at such time (the "Additional Payment Date"), on or after the date of such redemption, as such Holder shall elect, an additional payment in respect of such share of Redeemable Preferred Stock equal to the Additional Payment Amount. The "Additional Payment Amount", with respect to any share of Redeemable Preferred Stock, shall be the amount, if any, by which (a) the Holder Redemption Price for such share, determined as of the Additional Payment Date as if such share had not previously been redeemed, exceeds (b) the redemption price paid for such share upon redemption pursuant to Section 6.2 or 6.3, as the case may be. If the Convertibility Effective Date occurs following any redemption pursuant to Section 6.2 or 6.3, then the Corporation shall be entitled to pay the Additional Payment Amount by issuing shares of Non-Voting Common Stock having an aggregate Market Price as of the Additional Payment Date equal to the Additional Payment Amount. A Holder shall exercise its rights under this Section 6.6 by delivering a written notice to the Company to such effect, indicating the name of the Holder from whom the shares of Redeemable Preferred Stock had been redeemed and the number of shares of Redeemable Preferred Stock redeemed by the Company from such Holder. Notwithstanding anything to the contrary set forth herein, any election pursuant to this Section 6.6 may be revoked at any time after the Additional Payment Date if the Corporation does not pay the Additional Payment Amount on the Additional Payment Date.

### **ARTICLE VII CONVERSION**

#### **7.1. Optional Conversion.**

From and after the Convertibility Effective Date, shares of Redeemable Preferred Stock shall be convertible at the option of the Holder thereof into shares of Non-Voting Common Stock in accordance with the following.

(a) Subject to and in compliance with the applicable provisions of this Article VII, each Holder of shares of Redeemable Preferred Stock shall have the right, at such Holder's option, at any time and from time to time from and after the Convertibility Effective Date, to convert each such share of Redeemable Preferred Stock held by such Holder into that number of fully paid and nonassessable shares of Non-Voting Common Stock equal to the quotient of (x) the Liquidation Amount as of the date of conversion of such share of Redeemable Preferred Stock plus the Missed Dividend Amount as of such date with respect to such share, divided by (y) the Conversion Price, as last adjusted and then in effect. The Corporation shall give the Holders reasonable prior notice of a Sale of the Corporation, including the price and material terms and conditions thereof, in order to provide the Holders reasonable opportunity to consider whether to convert shares of the Redeemable Preferred Stock into shares of Non-Voting Common Stock at or prior to such Sale of the Corporation. If the price or material terms or conditions of such transaction thereafter change, the Corporation shall promptly deliver written notice to the Holders specifying such changes.

(b) The term "Missed Dividend Amount" means, to the extent that a Holder does not receive dividends or other distributions pursuant to Section 4.3 (whether in cash or otherwise), the Fair Value of all non-cash dividends or distributions plus the amount of all cash dividends or distributions that such Holder would have received in respect of the Common Stock Equivalents held by such Holder in respect of each share of Redeemable Preferred Stock held by such Holder immediately prior to the record date for such Common Stock dividend (without giving effect to any prior application of this Section 7.1(b)).

## **7.2. Mandatory Conversion.**

From and after the Convertibility Effective Date, shares of Redeemable Preferred Stock shall be convertible at the option of the Corporation into shares of Non-Voting Common Stock in accordance with the following:

(a) At any time from and after the third anniversary of the Original Issuance Date (if the Convertibility Effect Date shall have occurred), the Corporation may elect to have all (but not less than all) of the then outstanding shares of Redeemable Preferred Stock converted into that number of fully paid and nonassessable shares of Non-Voting Common Stock into which such shares would have been convertible in the event of an optional conversion at such time pursuant to Section 7.1; provided that during the thirty days immediately preceding the delivery by the Corporation of a notice of conversion in accordance with Section 7.4(b), a Minimum Price Event shall have occurred.

(b) Notwithstanding anything to the contrary set forth in this Section 7.2, the Corporation may not exercise its rights under this Section 7.2 until such time as a shelf registration statement with respect to the shares of Non-Voting Common Stock or the shares of Voting Common Stock issuable upon the exercise thereof shall have been declared effective by the Securities and Exchange Commission in accordance with the Investor Rights Agreement.

## **7.3. Adjustment of Conversion Price.**

The Conversion Price shall be subject to adjustment from time to time as follows:

(a) The Conversion Price will be increased by \$1.00 if the Convertibility Effective Date is prior to September 30, 1999. The Conversion Price will be reduced by (i) \$1.00 if the Convertibility Effective Date is after December 31, 1999 and by an additional (ii) \$1.00 for every 90 days after December 31, 1999 if the Convertibility Effective Date shall not have occurred prior to any such reduction.

(b) If the Corporation shall, at any time or from time to time after the Original Issuance Date, issue any shares of Common Stock or Common Stock Rights (other than pursuant to an Equity Incentive Plan) without consideration or for a consideration per share less than (x) the Market Price of a share of Voting Common Stock or (y) except in the case of an issuance pursuant to a Public Offering, the Conversion Price in effect immediately prior to the issuance of such Common Stock or Common Stock Right, then the Conversion Price in effect immediately prior to each such issuance shall forthwith be lowered to a price equal to the product of:

(i) the Conversion Price in effect immediately prior to such calculation,  
multiplied by

(ii) a fraction, (A) the numerator of which is the sum of (I) the total number of shares of Common Stock outstanding (including any shares of Common Stock deemed to have been issued pursuant to Section 7.3(d)(iii) upon the issuance of a Common Stock Right having a per share exercise price, conversion price or exchange price equal to or lower than the Market Price of a share of Voting Common Stock) immediately prior to such issuance and (II) the number of additional shares of Voting Common Stock which the aggregate offering price (determined in the manner provided in Sections 7.3(d)(i) and (ii)) of the number of shares of Common Stock so offered (including any shares of Common Stock deemed to have been issued pursuant to Section 7.3(d)(iii)) would purchase at the greater of the Market Price of a share of Voting Common Stock and the Conversion Price in effect immediately prior to such issuance, and (B) the denominator of which is the total number of shares of Common Stock outstanding (including any shares of Common Stock deemed to have been issued pursuant to Section 7.3(d)(iii) upon the issuance of a Common Stock Right having a per share exercise price, conversion price or exchange price equal to or lower than the Market Price of a share of Voting Common Stock) immediately after the issuance of such Common Stock.

(c) If the Corporation shall, at any time or from time to time after the Original Issuance Date, directly or indirectly, redeem, purchase or otherwise acquire any shares of Common Stock or any Common Stock Right for a consideration per share greater than the Market Price of a share of Voting Common Stock (plus, in the case of Common Stock Rights, the additional per share consideration required to be paid to the Corporation upon exercise, conversion or exchange), then the Conversion Price in effect immediately prior to each such issuance shall forthwith be lowered to a price equal to the product of:

(i) the Conversion Price in effect immediately prior to such calculation,  
multiplied by

(ii) a fraction, (A) the numerator of which is the quotient of (I) the difference of (x) the product of the total number of shares of Common Stock outstanding (including any shares of Common Stock deemed to have been issued pursuant to Section 7.3(d)(iii) upon the issuance of a Common Stock Right having an exercise price, conversion price or exchange price equal to or lower than the Market Price of a share of Voting Common Stock) immediately prior to such issuance, multiplied by the Market Price of a share of Voting Common Stock immediately prior to such event minus (y) the aggregate consideration paid by the Corporation in such event (plus, in the case of Common Stock

Rights, the aggregate additional consideration to be paid by the Corporation upon exercise, conversion or exchange) divided by (II) the number of shares of Common Stock outstanding (including any shares of Common Stock deemed to have been issued pursuant to Section 7.3(d)(iii) upon the issuance of a Common Stock Right having an exercise price, conversion price or exchange price equal to or lower than the Market Price of a share of Voting Common Stock) immediately after the issuance of such Common Stock and (B) the denominator of which is the Market Price of a share of Voting Common Stock immediately prior to such event.

(d) For the purposes of any adjustment of the Conversion Price pursuant to Section 7.3(b) or (c) above, the following provisions shall be applicable:

(i) In the case of the issuance of Common Stock for cash in a public offering or private placement, the consideration shall be deemed to be the amount of cash paid therefor after deducting therefrom any discounts, commissions or placement fees payable by the Corporation to any underwriter or placement agent in connection with the issuance and sale thereof.

(ii) In the case of the issuance of 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.

(iii) In the case of the issuance of Common Stock Rights:

(A) the aggregate maximum number of shares of Common Stock deliverable upon exercise of 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 aggregate consideration (determined in the manner provided in Sections 7.3(d)(i) and (ii)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum aggregate purchase price provided in such options or rights for the Common Stock covered thereby;

(B) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such Securities convertible into or exchangeable for Common Stock 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, options, or rights were issued and for a consideration equal to the aggregate consideration received by the Corporation for any such Securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional aggregate consideration, if any, to be received by the Corporation 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 Sections 7.3(d)(i) and (ii));

(C) on any change in the number of shares or the exercise, conversion or exchange price of Common Stock deliverable upon exercise of any such options or rights or conversions of or exchange for such Securities, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon the issuance of such options, rights or Securities not exercised or converted prior to such change or options or rights related to such Securities not exercised or converted prior to such change been made upon the basis of the number of shares and price after giving effect to such change; and

(D) on 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 shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon the issuance of such options, rights, Securities or options or rights related to such Securities been made upon the basis of the issuance of only the number of shares of Common Stock 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 and subsequent conversion or exchange thereof; provided that no such readjustment shall be made to the extent that such expiration or termination is in connection with or related to any settlement, including any cash settlement, of any such options, rights, conversion rights or exchange rights.

(e) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, following the record date for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up (or if no record date is set, the date such stock dividend, subdivision of stock split is consummated), then, following the record date for such event, the Conversion Price shall be appropriately decreased so that the number of shares of Non-Voting Common Stock issuable on conversion of each share of Redeemable Preferred Stock, in each case, shall be increased in proportion to such increase in outstanding shares.

(f) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is decreased by a combination of the outstanding shares of Common Stock, then, following the record date for such combination, the Conversion Price shall be appropriately increased so that the number of shares of Non-Voting Common Stock issuable on conversion of each share of Redeemable Preferred Stock, in each case, shall be decreased in proportion to such decrease in outstanding shares.

(g) If any capital reorganization of the Corporation, any reclassification of the stock of the Corporation (other than a change in par value or from no par value to par value or from par value to no par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or any consolidation or merger of the Corporation shall occur, then each share of Redeemable Preferred Stock after such reorganization, reclassification, consolidation, or merger shall be convertible into the kind and number of shares of stock or other Securities or property of the Corporation or of the corporation resulting from such consolidation or surviving such merger

to which the holder of the number of shares of Non-Voting Common Stock deliverable (immediately prior to the time of such reorganization, reclassification, consolidation or merger) upon conversion of such share of Redeemable Preferred Stock would have been entitled upon such reorganization, reclassification, consolidation or merger. The provisions of this clause shall similarly apply to successive reorganizations, reclassifications, consolidations or mergers.

(h) If any event occurs of the type contemplated by the provisions of this Section 7.3 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features, but excluding any issuance of Common Stock or Common Stock Rights pursuant to an Equity Incentive Plan), then the Corporation's Board of Directors, in the good faith exercise of its fiduciary duties to the Holders of Redeemable Preferred Stock, shall make an appropriate reduction in the Conversion Price so as to protect the rights of the Holders of the Redeemable Preferred Stock.

(i) All calculations under this paragraph shall be made to the nearest one hundredth (1/100) of a cent. In no event will the Conversion Price be reduced below the par value of the Common Stock.

(j) In any case in which the provisions of this Section 7.3 shall require that an adjustment shall become effective immediately after a record date of an event, the Corporation may defer until the occurrence of such event issuing to the Holder of any share of Redeemable Preferred Stock converted after such record date and before the occurrence of such event the number of shares of capital stock issuable upon such conversion by reason of the adjustment required by such event in excess of the number of shares of capital stock issuable upon such conversion before giving effect to such adjustments; provided, however, that the Corporation shall deliver to such Holder an appropriate instrument evidencing such Holder's right to receive such excess shares.

(k) Whenever the Conversion Price shall be adjusted as provided in this Section 7.3, the Corporation shall make available for inspection during regular business hours, at its principal executive offices or at such other place as may be designated by the Corporation, a statement, signed by its chief executive officer and certified by the Corporation's independent public accountants, showing in detail the facts requiring such adjustment and the Conversion Price that shall be in effect after such adjustment. The Corporation shall also cause a copy of such statement to be sent by first class certified mail, return receipt requested and postage prepaid, to each Holder of Redeemable Preferred Stock at such Holder's address appearing on the Corporation's records. Where appropriate, such copy may be given in advance and may be included as part of any notice required to be mailed under the provisions of Section 7.3(k).

(l) If the Corporation shall propose to take any action of the types described in Sections 7.3(e), (f) or (g), the Corporation shall give notice to each Holder of shares of Redeemable Preferred Stock, in the manner set forth in Section 7.3(k), which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price and the number, kind or class of shares or other Securities or property which shall be deliverable or purchasable upon the occurrence of such action or

deliverable upon conversion of shares of Redeemable Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least 10 days prior to the date so fixed, and in case of all other action, such notice shall be given at least 10 days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(m) In the event that the Requisite Senior Holders consent in writing to limit, or waive in its entirety, any anti-dilution adjustment to which the Holders of the Redeemable Preferred Stock would otherwise be entitled hereunder, the Corporation shall not be required to make any adjustment whatsoever with respect to any Redeemable Preferred Stock in excess of such limit or at all, as the terms of such consent may dictate.

#### **7.4. Mechanics.**

(a) Any Holder of shares of Redeemable Preferred Stock electing to convert the shares or any portion thereof in accordance with Section 7.1 shall give written notice to the Corporation. Such notice shall state that such Holder elects to convert shares of Redeemable Preferred Stock, the number of such shares that it elects to convert, the applicable Expected Conversion Date and the name or names in which such holder wishes the certificate or certificates for shares of Non-Voting Common Stock to be issued. A Holder may make any notice of conversion, whether such conversion is in connection with a Sale of the Corporation or otherwise, conditional upon the happening of any event or the passage of time. A Holder may rescind any notice of conversion prior to the Conversion Date.

(b) If the Corporation is entitled to have all of the shares of Redeemable Preferred Stock converted into Non-Voting Common Stock pursuant to Section 7.2, it may give a written notice to all Holders of Redeemable Preferred Stock. Such notice shall state that the Corporation elects to convert all of the outstanding shares of Redeemable Preferred Stock into Non-Voting Common Stock and the Expected Conversion Date, which shall be not more than 30 days and not less than 10 days after delivery of such notice. If any Holder desires to have a certificate or certificates representing the shares of Non-Voting Common Stock issued in a name or names other than the name in which the shares being converted are issued, then, at least two business days prior to the Conversion Date, such Holder shall deliver a notice to such effect to the Corporation.

(c) On or prior to the date indicated in any notice of conversion delivered pursuant to Section 7.4(a) or 7.4(b) (as applicable, the "Expected Conversion Date"), the applicable Holder or, in the case of a notice pursuant to Section 7.4(b), all Holders of shares of Redeemable Preferred Stock shall surrender the certificate or certificates representing such shares of Redeemable Preferred Stock to be converted, duly endorsed, at the office of the Corporation or any transfer agent for such shares. On the Expected Conversion Date, the Corporation shall issue and deliver to or upon the order of such Holder, against delivery of the certificates representing the shares of Redeemable Preferred Stock that have been converted, a certificate or certificates for the number of shares of Non-Voting Common Stock to which such Holder shall be entitled (in the number(s) and denomination(s) designated by such Holder), and, in the case of a partial conversion pursuant to Section 7.1, the Corporation shall deliver to such Holder a

certificate or certificates for the number of shares of Redeemable Preferred Stock that such Holder has not elected to convert.

(d) The Corporation shall pay any documentary, stamp or similar issue or transfer tax due on the issuance of Non-Voting Common Stock upon the conversion of Redeemable Preferred Stock or due on the issuance of a new certificate or certificates for any shares of Redeemable Preferred Stock not converted. Subject to the prior satisfaction or waiver of any conditions set forth in any notice of conversion (as permitted under Section 7.4(a)), the conversion right with respect to any shares of Redeemable Preferred Stock shall be deemed to have been exercised on the latest of (i) the date upon which the certificates representing the shares of Non-Voting Common Stock shall have been so delivered, (ii) the date on which all of the conditions set forth in any notice of exercise (as permitted by Section 7.4(a)) shall have been satisfied or waived and (iii) the Expected Conversion Date (such date, the "Actual Conversion Date") and the person or persons entitled to receive the shares of Non-Voting Common Stock issuable upon conversion shall be treated for all purposes as the record Holder or Holders of such Non-Voting Common Stock on and after that date.

(e) No fractional shares of Non-Voting Common Stock or scrip shall be issued upon conversion of shares of Redeemable Preferred Stock. The number of full shares of Non-Voting Common Stock issuable upon conversion of Redeemable Preferred Stock shall be computed on the basis of the aggregate number of shares of such Redeemable Preferred Stock to be converted. Instead of any fractional shares of Non-Voting Common Stock which would otherwise be issuable upon conversion of any such shares, the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to the product of (i) the Market Price of a share of Voting Common Stock and (ii) such fractional interest. The holders of fractional interests shall not be entitled to any rights as stockholders of the Corporation in respect of such fractional interests.

(f) Upon issuance of shares in accordance with this Section, each share of Non-Voting Common Stock issued shall be duly authorized, validly issued, fully paid and non-assessable, with no personal liability attaching to the ownership thereof and free from all taxes or Liens with respect thereto due to any action or failure to act by or on behalf of the Corporation.

(g) The Corporation shall take all such actions as may be necessary to assure that all shares issued pursuant to this Section may be so issued without violation of any Applicable Law or any requirements of any securities exchange upon which such shares may be listed (except for official notice of issuance which will be immediately transmitted by the Corporation upon issuance). The Corporation shall not close its books against the transfer of shares in any manner which would interfere with the timely conversion of any shares.

#### **7.5. Reservation of Shares.**

From and after the Convertibility Effective Date, the Corporation shall at all times reserve and keep available out of its authorized but unissued shares of each class of capital stock or its treasury shares, solely for the purpose of issuance upon the conversion of shares of Redeemable Preferred Stock and the exercise of the warrants which may be issued pursuant to

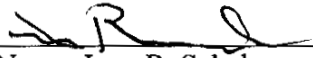
Section 6.4, such number of shares of such class as are then issuable upon the conversion of the shares of Redeemable Preferred Stock or the exercise of such warrants.

## **ARTICLE VIII CERTAIN REGULATORY MATTERS**

The Corporation shall not redeem, purchase, acquire or take any other action affecting outstanding shares of any capital stock entitled to general voting rights if, after giving effect to such redemption, purchase, acquisition or other action, a Regulated Stockholder would own (i) more than 4.99% of any class of Voting Securities of the Corporation (other than any class of Voting Securities that is (or is made prior to any such redemption, purchase, acquisition or other action) convertible into a class of non-Voting Securities that are otherwise identical to the Voting Securities and convertible into such Voting Securities on terms reasonably acceptable to such Regulated Stockholder) or (ii) more than 24.99% of the total equity of the Corporation or more than 24.99% of the total value of all capital stock and subordinated debt of the Corporation (in each case determined by assuming such Regulated Stockholder (but no other holder) has exercised, converted or exchanged all of its options, warrants and other convertible or exchangeable Securities).

\* \* \* \*

**IN WITNESS WHEREOF**, the Corporation has caused this Certificate to be duly executed by an authorized officer of the Corporation as of the 25<sup>th</sup> day of June, 1999.

By:   
Name: Ivan R. Sabel  
Title: President

#70369

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
HANGER ORTHOPEDIC GROUP, INC.**

Hanger Orthopedic Group, Inc., a corporation existing under the laws of the State of Delaware, DOES HEREBY CERTIFY:

**FIRST:** That at a meeting of the Board of Directors of Hanger Orthopedic Group, Inc., a resolution was duly adopted setting forth a proposed amendment to the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

**RESOLVED,** that the Certificate of Incorporation of this corporation be amended by changing Article Fourth thereof so that, as amended, said Article shall be and read as follows:

**"FOURTH:** The authorized capital stock of the Corporation shall consist of 70,000,000 shares of Common Stock, consisting of 60,000,000 shares of Common Stock, par value \$0.01 per share (the "Voting Common Stock") and 10,000,000 shares of Non-Voting Common Stock, par value \$0.01 per share, and 10,000,000 shares of Preferred Stock, par value \$0.01 per share. The Board of Directors of the Corporation shall have the power to issue the Preferred Stock in series, with such designations, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof as shall be stated in the resolution or resolutions of the Board of Directors providing for the issuance of such stock. Nothing contained herein to the contrary shall affect in any manner the outstanding shares of the Corporation's 7% Redeemable Preferred Stock or the certificate of designations, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions of such Preferred Stock (the "Certificate of Designations"), except to the extent expressly set forth therein.

All shares of Common Stock will be identical and will entitle the holders thereof to the same rights and privileges, except as otherwise provided herein.

(a) Voting Rights.

(i) Voting Common Stock. Except as set forth herein or as otherwise required by law, each outstanding share of Voting Common Stock shall be entitled to vote on each matter on which the stockholders of the Corporation shall be entitled to

vote, and each holder of Voting Common Stock shall be entitled to one vote for each share of such stock held by such holder.

(ii) Non-Voting Common Stock. Except as set forth herein or as otherwise required by law, each outstanding share of Non-Voting Common Stock shall not be entitled to vote on any matter on which the stockholders of the Corporation shall be entitled to vote, and shares of Non-Voting Common Stock shall not be included in determining the number of shares voting or entitled to vote on any such matters; provided that the holders of Non-Voting Common Stock shall have the right to vote as a separate class on any merger or consolidation of the Corporation with or into another entity or entities, or any recapitalization or reorganization, in which shares of Non-Voting Common Stock would receive or be exchanged for consideration different on a per share basis from consideration received with respect to or in exchange for the shares of Voting Common Stock or would otherwise be treated differently from shares of Voting Common Stock in connection with such transaction, except that shares of Non-Voting Common Stock may, without such a separate class vote, receive or be exchanged for non-voting securities which are otherwise identical on a per share basis in amount and form to the voting securities received with respect to or exchanged for the Voting Common Stock so long as (i) such non-voting securities are convertible into such voting securities on the same terms as the Non-Voting Common Stock is convertible into Voting Common Stock and (ii) all other consideration is equal on a per share basis. Notwithstanding the foregoing, holders of shares of the Non-Voting Common Stock shall be entitled to vote as a separate class on any amendment to this paragraph (a)(ii) of this Article Fourth and on any amendment, repeal or modification of any provision of this Certificate of Incorporation that adversely affects the powers, preferences or special rights of holders of the Non-Voting Common Stock.

(b) Dividends. Any dividend or distribution on the Common Stock shall be payable on shares of Voting Common Stock and Non-Voting Common Stock, share and share alike; provided, that (i) in the case of dividends payable in shares of Common Stock of the Corporation, or options, warrants or rights to acquire shares of such Common Stock, or securities convertible into or exchangeable for shares of such Common Stock, the shares, options, warrants, rights or securities so payable shall be payable in shares of, or options, warrants or rights to acquire, or securities convertible into or exchangeable for, Common Stock of the same class upon which the dividend or distribution is being paid and (ii) if the dividends consist of other voting securities of the Corporation, the Corporation shall make available to each holder of Non-Voting Common Stock, at such holder's request, dividends consisting of non-voting securities of the Corporation which are otherwise identical to the voting securities and which are convertible into or exchangeable for such voting securities on the same terms as the Non-Voting Common Stock is convertible into the Voting Common Stock.

(c) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of shares of Voting Common Stock and Non-Voting Common Stock shall be entitled to share ratably, share and share alike, in the remaining net assets of the Corporation.

(d) Conversion.

(i) Conversion of Voting Common Stock. Subject to and upon compliance with the provisions of this paragraph (d) of this Article Fourth, any Regulated Stockholder (defined below) shall be entitled to convert, at any time and from time to time, any or all of the shares of Voting Common Stock held by such stockholder into the same number of shares of Non-Voting Common Stock.

(ii) Conversion of Non-Voting Common Stock. Subject to and upon compliance with the provisions of this paragraph (d)(ii) of this Article Fourth, each record holder of Non-Voting Common Stock shall be entitled at any time and from time to time in such holder's sole discretion and at such holder's option, to convert any or all of the shares of such holder's Non-Voting Common Stock into the same number of shares of Voting Common Stock; provided, however, that Non-Voting Common Stock constituting Restricted Stock (defined below) with respect to a particular Regulated Stockholder may not be converted into Voting Common Stock to the extent that immediately prior thereto, or as a result of such conversion, the number of shares of Voting Common Stock which constitute such Restricted Stock held by all holders thereof would exceed the number of shares of Voting Common Stock which such Regulated Stockholder reasonably determines it and its Affiliates (defined below) may own, control or have the power to vote under any law, regulation, rule or other requirement of any governmental authority at the time applicable to such Regulated Stockholder or its Affiliates; and, provided, further, that each holder of Non-Voting Common Stock may convert such shares into Voting Common Stock if such holder reasonably believes that such converted shares will be transferred within fifteen (15) days pursuant to a Conversion Event (defined below) and such holder agrees not to vote any such shares of Voting Common Stock prior to such Conversion Event and undertakes to promptly convert such shares back into Non-Voting Common Stock if such shares are not transferred pursuant to a Conversion Event. Each Regulated Stockholder may provide for further restrictions upon the conversion of any shares of Restricted Stock by providing the Corporation with signed, written instructions specifying such additional restrictions and legending such shares as to the existence of such restrictions.

(iii) Conversion Procedure. Each conversion of shares of Common Stock of the Corporation into shares of another class of Common Stock of the Corporation shall be effected by the surrender of the certificate or certificates representing the shares to be converted (the "Converting Shares") at the principal office of the Corporation (or such other office or agency of the Corporation as the Corporation may designate by written notice to the holders of Common Stock) at any time during its usual business hours, together with written notice by the holder of such Converting Shares, stating that such holder desires to convert the Converting Shares, or a stated number of the shares represented by such certificate or certificates, into an equal number of shares of the class into which such shares may be converted (the "Converted Shares"). Such notice shall also state the name or names (with addresses) and denominations in which the certificate or certificates for Converted Shares are to be issued and shall include instructions for the delivery thereof. The Corporation shall promptly notify each Regulated Stockholder of its receipt of such notice. Promptly after such surrender and the receipt of such written

notice, the Corporation will issue and deliver in accordance with the surrendering holder's instructions the certificate or certificates evidencing the Converted Shares issuable upon such conversion, and the Corporation will deliver to the converting holder a certificate (which shall contain such legends as were set forth on the surrendered certificate or certificates) representing any shares which were represented by the certificate or certificates that were delivered to the Corporation in connection with such conversion, but which were not converted; provided, however, that if such conversion is subject to paragraph (d)(iv) of this Article Fourth, the Corporation shall not issue such certificate or certificates until the expiration of the Deferral Period referred to therein. Such conversion, to the extent permitted by law, shall be deemed to have been effected as of the close of business on the date on which such certificate or certificates shall have been surrendered and such notice shall have been received by the Corporation, and at such time the rights of the holder of the Converting Shares as such holder shall cease (except that, in the case of a conversion subject to paragraph (d)(iv) of this Article Fourth, the conversion shall be deemed to be effective upon the expiration of the Deferral Period referred to therein) and the person or persons in whose name or names the certificate or certificates for the Converted Shares are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the Converted Shares. Upon issuance of shares in accordance with this paragraph (d) of this Article Fourth, such Converted Shares shall be deemed to be duly authorized, validly issued, fully paid and non-assessable. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which will be immediately transmitted by the Corporation upon issuance). The Corporation shall not close its books against the transfer of shares of Common Stock in any manner which would interfere with the timely conversion of any shares of Common Stock.

Notwithstanding any provision of this paragraph (d) of this Article Fourth to the contrary, each holder of Non-Voting Common Stock shall be entitled to convert shares of Non-Voting Common Stock in connection with any Conversion Event if such holder reasonably believes that such Conversion Event will be consummated, and a written request for conversion from any holder of Non-Voting Common Stock to the Corporation stating such holder's reasonable belief that a Conversion Event shall occur shall be conclusive and shall obligate the Corporation to effect such conversion in a timely manner so as to enable each such holder to participate in such Conversion Event. The Corporation will not cancel the shares of Non-Voting Common Stock so converted before the 15th day following such Conversion Event and will reserve such shares until such 15th day for reissuance in compliance with the next sentence. If any shares of Non-Voting Common Stock are converted into shares of Voting Common Stock in connection with a Conversion Event and such shares of Voting Common Stock are not actually distributed, disposed of or sold pursuant to such Conversion Event, such shares of Voting Common Stock shall be promptly converted back into the same number of shares of Non-Voting Common Stock.

(iv) Notice of Conversion to Other Regulated Stockholders; Deferral. The Corporation shall not convert or directly or indirectly redeem, purchase or otherwise acquire any shares of Voting Common Stock or any other class of capital stock of the Corporation or take any other action affecting the voting rights of such shares, if such action will increase the percentage of any class of outstanding voting securities owned or controlled by any Regulated Stockholder (other than any such stockholder which requested that the Corporation take such action, or which otherwise waives in writing its rights under this paragraph (d)(iv) of this Article Fourth), unless the Corporation gives written notice (the "Deferral Notice" ) of such action to each Regulated Stockholder. The Corporation will defer making any such conversion, redemption, purchase or other acquisition, or taking any such other action for a period of twenty (20) days (the "Deferral Period") after giving the Deferral Notice in order to allow each Regulated Stockholder to determine whether it wishes to convert or take any other action with respect to the Common Stock it owns, controls or has the power to vote, and if any such Regulated Stockholder then elects to convert any shares of Voting Common Stock, it shall notify the Corporation in writing within ten (10) days of the issuance of the Deferral Notice, in which case the Corporation shall (i) promptly notify from time to time prior to the end of such 20-day period each other Regulated Stockholder holding shares of each proposed conversion, and (ii) effect the conversions requested by all Regulated Stockholders in response to the notices issued pursuant to this paragraph (d)(iv) of this Article Fourth at the end of the Deferral Period. Upon complying with the procedures hereinabove set forth in this paragraph (d)(iv) of this Article Fourth, the Corporation may so convert or directly or indirectly redeem, purchase or otherwise acquire any shares of Voting Common Stock or any other class of capital stock of the Corporation or take any other action affecting the voting rights of such shares.

(e) Miscellaneous.

(i) Restrictions on Redemptions, Etc. The Corporation shall not redeem, purchase, acquire or take any other action affecting outstanding shares of Common Stock (including, without limitation, being a party to any merger, consolidation, recapitalization, reorganization or other transaction pursuant to which a Regulated Holder would be required to take any Securities or subordinated debt) if, after giving effect to such redemption, purchase, acquisition or other action, a Regulated Stockholder would have or might reasonably be expected to have a Regulatory Problem.

(ii) Stock Splits; Adjustments. If the Corporation shall in any manner subdivide (by stock split, stock dividend or otherwise) or combine (by reverse stock split or otherwise) the outstanding shares of the Voting Common Stock or the Non-Voting Common Stock, then the outstanding shares of each other class of Common Stock shall be subdivided or combined, as the case may be, to the same extent, share and share alike, and effective provision shall be made for the protection of the conversion rights hereunder.

In case of any reorganization, reclassification or change of shares of the Voting Common Stock or Non-Voting Common Stock (other than a change in par value or from par to no par value or as a result of subdivision or combination), or in case of any consolidation of

the Corporation with one or more corporations or a merger of the Corporation with another corporation (other than a consolidation or merger in which the Corporation is the resulting or surviving corporation and which does not result in any reclassification or change of outstanding shares of Voting Common Stock or Non-Voting Common Stock), each holder of a share of Voting Common Stock or Non-Voting Common Stock shall have the right at any time thereafter, so long as the conversion right hereunder with respect to such share would exist had such event not occurred, to convert such share into the kind and amount of shares of stock and other securities and properties (including cash) receivable upon such reorganization, reclassification, change, consolidation or merger by a holder of the number of shares of Voting Common Stock or Non-Voting Common Stock into which such shares of Voting Common Stock or Non-Voting Common Stock, as the case may be, might have been converted immediately prior to such reorganization, reclassification, change, consolidation or merger. In the event of such reorganization, reclassification, change, consolidation or merger, effective provision shall be made in the certificate of incorporation of the resulting or surviving corporation or otherwise for the protection of the conversion rights of the shares of Voting Common Stock and Non-Voting Common Stock that shall be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion of such shares of Voting Common Stock or Non-Voting Common Stock into which such Voting Common Stock or Non-Voting Common Stock might have been converted immediately prior to such event.

(iii) Reservation of Shares. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Voting Common Stock and Non-Voting Common Stock or its treasury shares, solely for the purpose of issuance upon the conversion of shares of Voting Common Stock and Non-Voting Common Stock, such number of shares of such class as are then issuable upon the conversion of all outstanding shares of Voting Common Stock and Non-Voting Common Stock which may be converted.

(iv) No Charge. The issuance of certificates for shares of any class of Common Stock (upon conversion of shares of any other class of Common Stock or otherwise) shall be made without charge to the holders of such shares for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and/or the issuance of shares of Common Stock; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Common Stock converted.

(v) Registration of Transfer. The Corporation shall keep at its principal office (or such other place as the Corporation reasonable designates) a register for the registration of shares of Common Stock. Upon the surrender of any certificate representing shares of any class of Common Stock at such place, the Corporation shall, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Corporation forthwith shall cancel such surrendered certificate. Each such new certificate will

represent such number of shares of such class as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. Subject to any other restrictions on transfer to which such holder or such shares may be bound, the Corporation will also register such new certificate in such name as requested by the holder of the surrendered certificate.

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

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

(f) Definitions. As used herein, the following terms shall have the meanings shown below:

(i) "Affiliate" shall mean with respect to any Person, any other person, directly or indirectly controlling, controlled by or under common control with such Person. For the purpose of the above definition, the term "control" (including with correlative meaning, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(ii) "Conversion Event" shall mean (a) any public offering or public sale of securities of the Corporation (including a public offering registered under the Securities Act of 1933, as amended, and a public sale pursuant to Rule 144 thereunder or any similar rule then in force), (b) any sale of securities of the Corporation to a person or group of persons (within the meaning of the Securities Exchange Act of 1934, as amended (the "1934 Act")) if, after such sale, such person or group of persons in the aggregate would own or control securities which possess in the aggregate the ordinary voting power to elect a majority of the Corporation's directors (provided that such sale has been approved by the Corporation's Board of Directors or a committee thereof), (c) any sale of securities of the Corporation to a person or group of persons (within the

meaning of the 1934 Act) if, after such sale, such person or group of persons in the aggregate would own or control securities of the Corporation (excluding any Non-Voting Common being converted and disposed of in connection with such Conversion Event) which possess in the aggregate the ordinary voting power to elect a majority of the Corporation's directors, (d) any sale of securities of the Corporation to a person or group of persons (within the meaning of the 1934 Act) if, after such sale, such person or group of persons would not, in the aggregate, own, control or have the right to acquire more than two percent (2%) of the outstanding securities of any class of voting securities of the Corporation, and (e) a merger, consolidation or similar transaction involving the Corporation if, after such transaction, a person or group of persons (within the meaning of the 1934 Act) in the aggregate would own or control securities which possess in the aggregate the ordinary voting power to elect a majority of the surviving corporation's directors (provided that the transaction has been approved by the Corporation's Board of Directors or a committee thereof).

(iii) "Person" or "person" shall be construed broadly and shall include an individual, a partnership, a limited liability company, a corporation, a trust, a joint venture, an unincorporated organization or a government or any department or agency thereof.

(iv) "Regulated Stockholder" shall mean Chase Equity Associates, L.P., Paribas North America, Inc. or any other stockholder that (i) is subject to the provisions of Regulation Y, (ii) holds shares of Common Stock of the Corporation and (iii) has provided written notice to the Corporation of its status as a "Regulated Stockholder" hereunder.

(v) "Regulation Y" shall mean Regulation Y of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 225 (or any successor to such Regulation).

(vi) "Regulatory Problem" means, with respect to any Regulated Stockholder, that such Regulated Stockholder would own more than 4.99% of any class of voting securities of any Person (other than any class of voting securities which is (or, in the case of any redemption, purchase, acquisition or other action, is made prior to consummation thereof) convertible into a class of non-voting securities which are otherwise identical to the voting securities and convertible into such voting securities on terms reasonably acceptable to such Regulated Stockholder) or more than 24.99% of the total equity of such Person or more than 24.99% of the total value of all capital stock and subordinated debt of such Person (in each case determined by assuming such Regulated Holder (but no other holder) has exercised, converted or exchanged all of its options, warrants and other convertible or exchangeable securities).

(vii) "Restricted Stock" means, with respect to any Regulated Stockholder, any outstanding shares of Voting Common Stock and/or Non-Voting Common Stock ever held of record by such Regulated Stockholder or its Affiliates, excluding treasury shares; provided, however, that any such shares shall cease to be Restricted Stock with respect to such Regulated Stockholder when such shares are transferred in a transaction which is a Conversion Event or are acquired by the Corporation or any subsidiary of the

Corporation; and provided, further, that the Corporation shall have no responsibility for determining whether any outstanding shares of Voting Common Stock and/or Non-Voting Common Stock constitute Restricted Stock with respect to any particular Regulated Stockholder, but shall instead be entitled to receive, and rely exclusively upon, a written notice provided by such Regulated Stockholder designating such shares as Restricted Stock.

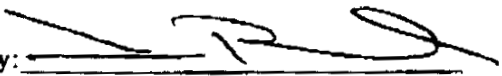
**SECOND:** That thereafter, pursuant to resolution of its Board of Directors, an Annual Meeting of Stockholders of the corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, at which meeting the necessary number of shares of the Corporation's capital stock as required by statute were voted in favor of the aforementioned amendment to the Certificate of Incorporation of the corporation.

**THIRD:** That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

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**IN WITNESS WHEREOF,** Hanger Orthopedic Group, Inc. has caused this certificate to be signed by a duly authorized officer as of the 16th day of September, 1999.

**HANGER ORTHOPEDIC GROUP, INC.**

By: 

Name: Ivan R. Sabel

Title: Chairman of the Board and  
Chief Executive Officer

#70370

**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF DESIGNATIONS, POWERS, PREFERENCES  
AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER  
SPECIAL RIGHTS AND QUALIFICATIONS,  
LIMITATIONS OR RESTRICTIONS**

**of**

**7% REDEEMABLE PREFERRED STOCK**

**of**

**HANGER ORTHOPEDIC GROUP, INC.,  
a Delaware Corporation  
(the "Certificate of Designations")**

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Pursuant to Section 242 the  
General Corporation Law of the State of Delaware

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Hanger Orthopedic Group, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), hereby certifies that the following resolution was duly adopted by the Board of Directors of the Corporation and was approved by the holders of a majority of the outstanding shares of Common Stock of the Corporation and by the holder of a majority of the outstanding shares of 7% Redeemable Preferred Stock of the Corporation in accordance with the provisions of Section 242 of the Delaware General Corporation Law at a meeting duly called and held on May 16, 2000.

**RESOLVED**, that the Certificate of Designations setting forth the terms of the Redeemable Preferred Stock of the Corporation shall be amended as follows:

Section 1. The definition of "Change of Control" set forth in Article II of the Certificate of Designations is hereby deleted in its entirety and replaced with the following:

"Change of Control" means (a) a "Change of Control" (as defined in the Indenture) or (b) a Merger Change of Control.

Page 2

Section 2. Article II of the Certificate of Designations is hereby amended by adding a new definition thereto which shall read in its entirety as follows:

"Merger Change of Control" means a merger, consolidation or amalgamation between the Corporation or any wholly-owned Subsidiary and any other Person, except a merger or consolidation of any Subsidiary with or into any Person in connection with any acquisition permitted under Section 3.3(c)(v)."

Section 3. Section 3.3 of the Certificate of Designations is hereby amended by deleting Section 3.3(c)(iv) and replacing it with "Intentionally Omitted."

IN WITNESS WHEREOF, the Corporation had caused this Certificate of Amendment to signed as of the 16<sup>th</sup> day of May, 2000.

**HANGER ORTHOPEDIC GROUP, INC.**

By: 

Name: Ivan R. Sabel

Title: Chairman of the Board, President  
and Chief Executive Officer

75846

**HNG-00685**

## FAX

REQUESTOR NAME The Corporation Trust Company  
ADDRESS Wilmington/

FILE DATE 0/26/2006  
FILE TIME 9:08

ATTN.

PHONE

NAME of COMPANY/ENTITY

SRV NUMBER

FILE NUMBER

**FILER'S NUMBER**

RESERVATION NO.

TYPE OF DOCUMENT

DOCUMENT CODE

CHANGE of NAME

CHANGE of AGENT/OFFICE

## CHANGE OF STOCK

| COMMENTS/FILING INSTRUCTIONS |
|------------------------------|
|                              |

SODDFS5 04-01-03

## CREDIT CARD CHARGES

☐ I have my authorization to charge my credit card for this service:

Exp. Date

Signature

Printed Name

AGENT USE ONLY

## INSTRUCTIONS

1. Fully shade in the required Priority square using a dark pencil or marker, staying within the square.
2. Each request must be submitted as a separate item, with its own Filing sheet as the **FIRST PAGE**.

**HNG-00686**

**HANGER ORTHOPEDIC GROUP, INC.**

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**CERTIFICATE OF DESIGNATIONS  
OF  
SERIES A CONVERTIBLE PREFERRED STOCK**

(Pursuant to Section 151 of the Delaware General Corporation Law)

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Hanger Orthopedic Group, Inc., a Delaware corporation (the "**Corporation**"), in accordance with the provisions of Section 103 of the Delaware General Corporation Law (the "**DGCL**") does hereby certify that, in accordance with Section 141(c) of the DGCL, the following resolution was duly adopted by the Board of Directors of the Corporation as of May 3, 2006:

RESOLVED, that the Board of Directors of the Corporation pursuant to authority expressly vested in it by the provisions of the Certificate of Incorporation of the Corporation, hereby authorizes the issuance of one series of Preferred Stock designated as the Series A Convertible Preferred Stock, par value \$0.01 per share, of the Corporation and hereby fixes the designation, number of shares, powers, preferences, rights, qualifications, limitations and restrictions thereof (in addition to any provisions set forth in the Certificate of Incorporation of the Corporation which are applicable to the Preferred Stock of all classes and series) as follows:

**SERIES A CONVERTIBLE PREFERRED STOCK**

1. Designation, Amount and Par Value. The following series of preferred stock shall be designated as the Corporation's Series A Convertible Preferred Stock (the "**Series A Preferred Stock**"), and the number of shares so designated shall be 50,000. Each share of Series A Preferred Stock shall have a par value of \$0.01 per share. The "**Stated Value**" for each share of Series A Preferred Stock equals the sum of (i) \$1,000 plus (ii) any amount added to the Stated Value pursuant to Section 3 hereof.

2. Definitions. In addition to the terms defined elsewhere in this Certificate of Designations the following terms have the meanings indicated:

"**Acceleration Event**" means the occurrence of any one or more of the following events: (i) a Liquidation Event; (ii) the Corporation shall consummate a public offering of shares of Common Stock pursuant to an effective registration statement under the Securities Act; (iii) the average of the Closing Price for each day during any period of twenty (20) consecutive Trading Days exceeds 200% of the Forced Conversion Price on the twentieth (20<sup>th</sup>) Trading Day of such period; or (iv) any other Fundamental Transaction.

**"Bankruptcy Event"** means any of the following events: (a) the Corporation or a Subsidiary of the Corporation commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Subsidiary thereof; (b) there is commenced against the Corporation or any Subsidiary any such case or proceeding that is not dismissed within 60 days after commencement; (c) the Corporation or any Subsidiary is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered; (d) the Corporation or any Subsidiary suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 days; (e) the Corporation or any Subsidiary makes a general assignment for the benefit of creditors; (f) the Corporation or any Subsidiary fails to pay, or states that it is unable to pay or is unable to pay, its debts generally as they become due; (g) the Corporation or any Subsidiary calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts; or (h) the Corporation or any Subsidiary, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

**"Business Day"** means any day except Saturday, Sunday and any day on which banking institutions in New York City are authorized or required by law or other governmental action to close.

**"Closing Price"** means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Shares are then listed or quoted on the Trading Market, the closing price per Common Share for such date (or the nearest preceding date) on the Trading Market or exchange on which the Common Shares are then listed or quoted; or (b) in all other cases, the fair market value of a Common Share as determined by an independent appraiser selected in good faith by a majority in interest of the Purchasers.

**"Common Stock"** means the common stock of the Corporation, par value \$0.01 per share, and any securities into which such common stock may hereafter be reclassified.

**"Conversion Condition"** means that the Corporation shall have obtained shareholder approval of the conversion of all of the outstanding shares of Series A Preferred Stock into shares of Common Stock at the Forced Conversion Price in accordance with the rules and regulations of the Trading Market.

**"Conversion Price"** means the Holder Conversion Price or Forced Conversion Price, as applicable.

**"Equity Conditions"** means, with respect to a specified issuance of Common Stock, that each of the following conditions is satisfied: (i) the number of authorized but unissued and otherwise unreserved shares of Common Stock is sufficient for such issuance; (ii) the Common Stock is listed or quoted (and is not suspended from trading)

on the Trading Market and such shares of Common Stock are approved for listing upon issuance; (iii) no Bankruptcy Event has occurred; (iv) the conversion of the Series A Preferred Stock is permitted by the Trading Market and all other applicable laws, rules and regulations; and (v) the Corporation is not in default with respect to any material obligation hereunder or under any other Transaction Document.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

**“Forced Conversion Price”** means, as of any particular date, an amount equal to the sum of (a) \$6.45 plus (b) an amount equal to the quotient obtained by dividing (i) all dividends paid by the Corporation per share of Series A Preferred Stock prior to such date, by (ii) the number of shares of Common Stock receivable upon the conversion of one share of Series A Preferred Stock on such date by a Holder pursuant to Section 7(a) below; provided that in no event shall the Forced Conversion Price exceed the Holder Conversion Price then in effect.

**“Fundamental Transaction”** means the occurrence of any of the following in one or a series of related transactions: (i) an acquisition after the date of the Purchase Agreement by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) under the Exchange Act) of more than thirty five percent of the voting rights or voting equity interests in the Corporation; (ii) a replacement of more than one-half of the members of the Corporation’s board of directors with members that are not approved by those individuals who are members of the board of directors on the date of the Purchase Agreement; (iii) a merger or consolidation of the Corporation or any Subsidiary or a sale of all or substantially all of the assets of the Corporation in one or a series of related transactions, unless following such transaction or series of transactions, the holders of the Corporation’s securities prior to the first such transaction continue to hold at least half of the voting rights or voting equity interests in of the surviving entity or acquirer of such assets; (iv) a recapitalization, reorganization or other transaction involving the Corporation or any Subsidiary that constitutes or results in a transfer of more than one-half of the voting rights or voting equity interests in the Corporation; (v) consummation of a “Rule 13e-3 transaction” as defined in Rule 13e-3 under the Exchange Act with respect to the Corporation; (vi) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property; (vii) the Corporation effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property; or (viii) the execution by the Corporation of an agreement directly or indirectly providing for any of the foregoing events.

**“Holder”** means any holder of Series A Preferred Stock.

**“Holder Conversion Price”** means \$7.56 per share (as adjusted for stock dividends, stock splits, stock combinations or other similar events).

**“Junior Securities”** means the Common Stock and all other equity or equity equivalent securities of the Corporation.

**“Liquidation Event”** means any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary.

**“Original Issue Date”** means the date of the first issuance of any shares of the Series A Preferred Stock, regardless of the number of transfers of any particular shares of Series A Preferred Stock and regardless of the number of certificates that may be issued to evidence shares of Series A Preferred Stock.

**“Person”** means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

**“Purchase Agreement”** means the Amended and Restated Preferred Stock Purchase Agreement, dated as of May 25, 2006, among the Corporation and the purchasers of the Series A Preferred Stock, as amended from time to time.

**“Registration Rights Agreement”** means the Registration Rights Agreement, dated as of the date of the Purchase Agreement, among the Corporation and the Holders.

**“Rule 144”** means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Securities and Exchange Commission having substantially the same effect as such Rule.

**“Securities Act”** means the Securities Act of 1933, as amended.

**“Subsidiary”** means any significant subsidiary of the Corporation as defined in Rule 1-02(w) of Regulation S-X promulgated by the Commission.

**“Trading Day”** means (a) any day on which the Common Stock is listed or quoted and traded on the Trading Market, or (b) if the Common Stock is not then listed or quoted and traded on the Trading Market, then any Business Day.

**“Trading Market”** means the New York Stock Exchange or, at any time the Common Stock is not listed for trading on the New York Stock Exchange, any other national exchange or the NASDAQ, if the Common Stock is then listed or quoted on such exchange or the NASDAQ.

**“Transaction Documents”** means the Purchase Agreement, the Registration Rights Agreement, this Certificate of Designations and any other documents or agreements executed or delivered in connection with the transactions contemplated under the Purchase Agreement and thereunder.

**“Underlying Shares”** means the shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock and in satisfaction of any other

obligation of the Corporation to issue shares of Common Stock pursuant to the Transaction Documents.

3. Dividends.

(a) Each Holder shall be entitled to receive, and the Corporation shall pay, cumulative dividends on the Series A Preferred Stock at the rate per share (as a percentage of the Stated Value per share) of 3.33% per annum, payable quarterly in arrears commencing on June 30, 2006 and thereafter on each September 30, December 31, March 31 and June 30, except if such date is not a Trading Day, in which case such dividend shall be payable on the next succeeding Trading Day (each, a **"Dividend Payment Date"**). Dividends on the Series A Preferred Stock shall be calculated on the basis of a 360-day year, shall accrue daily commencing on the Original Issue Date for the Series A Preferred Stock, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. The Corporation may elect, by written notice to the holders of Series A Preferred Stock, to defer the payment of dividends otherwise payable on that Dividend Payment Date. In the event of any dividend deferral, the amount of deferred dividends per share of Series A Preferred Stock shall be added to the Stated Value of that share. No dividend or other distribution (other than a dividend or distribution payable solely in Common Stock) shall be paid on or set apart for payment on Common Stock or any other Junior Securities unless all accrued and unpaid dividends on the Series A Preferred Stock (including, without limitation, any amounts previously added to Stated Value pursuant to this Section 3) have been paid in accordance with this Certificate of Designations.

(b) Immediately prior to the occurrence of any Acceleration Event prior to the fifth anniversary of the Original Issuance Date, the Stated Value of each share of Series A Preferred Stock shall immediately and automatically be increased by an amount per share equal to all dividends that would otherwise be payable on a share of Series A Preferred Stock on each Dividend Payment Date on and after the occurrence of such Acceleration Event and prior to and including the fifth anniversary of the Original Issuance Date (the **"Acceleration Period"**). The accelerated payment of dividends pursuant to this Section 3(b) shall be in lieu of, and not in addition to, the dividends that would otherwise be payable on each Dividend Payment Date during the Acceleration Period. For the purpose of clarity, each Holder shall be entitled to receive, and the Corporation shall pay, all dividends payable in accordance with Section 3(a) above on each Dividend Payment Date after the fifth anniversary of the Original Issuance Date.

(c) All accrued but unpaid dividends (including, without limitation, any amounts added to Stated Value as a result of deferred dividends or accelerated dividends as provided above) shall be payable upon a Liquidation Event in cash, and shall be payable upon conversion by the Holder of the Series A Preferred Stock, at the option of the Holder, either (i) in cash (to the extent permitted under applicable law and under any agreement or instrument relating to debt the Company may incur from time to time) or (ii) in additional Underlying Shares as provided in Section 8(a).

4. Registration of Issuance and Ownership of Series A Preferred Stock. The Corporation shall register the issuance and ownership of shares of the Series A Preferred Stock,

upon records to be maintained by the Corporation for that purpose (the “**Series A Preferred Stock Register**”), in the name of the record Holders thereof from time to time. The Corporation may deem and treat the registered Holder of shares of Series A Preferred Stock as the absolute owner thereof for the purpose of any conversion hereof or any distribution to such Holder, and for all other purposes, absent actual notice to the contrary.

5. Registration of Transfers. The Corporation shall register the transfer of any shares of Series A Preferred Stock in the Series A Preferred Stock Register, upon surrender of certificates evidencing such Shares to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series A Preferred Stock so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring Holder.

6. Liquidation.

(a) In the event of any Liquidation Event, the Holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Junior Securities by reason of their ownership thereof, an amount per share in cash equal to the greater of (i) the Stated Value for each share of Series A Preferred Stock then held by them (as adjusted for any stock split, stock dividend, stock combination or other similar transactions with respect to the Series A Preferred Stock), plus all accrued but unpaid dividends (including, without duplication, dividends added to Stated Value as provided in Section 3 above) on such Series A Preferred Stock as of the date of such event, and (ii) the amount per share that would be payable to a holder of Series A Preferred Stock had all shares of Series A Preferred Stock been converted to Underlying Shares immediately prior to such Liquidation Event (and taking into account Section 3(b), if applicable) (the “**Series A Stock Liquidation Preference**”). If, upon the occurrence of a Liquidation Event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such Holders of the full Series A Stock Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the Holders of the Series A Preferred Stock in proportion to the aggregate Series A Stock Liquidation Preference that would otherwise be payable to each of such Holders.

(b) In the event of a Liquidation Event, following completion of the distributions required by the first sentence of paragraph (a) of this Section 6, if assets or surplus funds remain in the Corporation, the holders of the Common Stock and other Junior Securities shall share in all remaining assets of the Corporation.

(c) The Corporation shall provide written notice of any Liquidation Event or Fundamental Transaction to each record Holder not less than 45 days prior to the payment date or effective date thereof, provided that such information shall be made known to the public prior to or in connection with such notice being provided to the Holders. At the request of any Holder, which must be delivered prior to the effective date of a Fundamental Transaction (or, if later, within five (5) Trading Days after such Holder receives notice of such Fundamental Transaction from the Corporation), such Fundamental Transaction will be treated as a Liquidation Event with respect to such Holder for the purposes of this Section 6.

(d) In the event that, immediately prior to the closing of a Liquidation Event the cash distributions required by subsection 6(a) have not been made, the Corporation shall forthwith either: (i) cause such closing to be postponed until such time as such cash distributions have been made, or (ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice by the Corporation required under subsection 6(c).

7. Conversion

(a) Conversion at Option of Holder. At the option of any Holder, any shares of Series A Preferred Stock held by such Holder may be converted into Common Stock based on the Holder Conversion Price then in effect for the Series A Preferred Stock. A Holder may convert shares of Series A Preferred Stock into Common Stock pursuant to this paragraph at any time and from time to time (subject to the last sentence of this Section 7(a)) after the Original Issue Date, by delivering to the Corporation a conversion notice (the “**Conversion Notice**”), in the form attached hereto as Exhibit A, appropriately completed and duly signed, and the date any such Conversion Notice is delivered to the Corporation (as determined in accordance with the notice provisions hereof) is a “**Conversion Date**.” Notwithstanding anything to the contrary contained herein, the Holder may not convert any shares of Series A Preferred Stock into Common Stock pursuant to this paragraph prior to July 26, 2006; provided that the restriction on conversion contained in this sentence shall be void and of no force and effect immediately prior to the occurrence of an Acceleration Event or the Company filing any proxy statement with the U.S. Securities and Exchange Commission.

(b) Conversion at Option of Corporation. At any time after the Conversion Condition is satisfied, the Corporation may elect to require the Holders to convert all shares of the applicable Series A Preferred Stock into Common Stock based on the Forced Conversion Price by delivering an irrevocable written notice of such election to the Holders. The tenth (10<sup>th</sup>) Trading Day after the delivery of such notice will be the “**Conversion Date**” for such required conversion. Notwithstanding the foregoing, the Corporation may not require any conversion under this paragraph (and any notice thereof will be void), unless from the beginning of such ten Trading Day period through the Conversion Date, the Equity Conditions are satisfied (or waived in writing by the applicable Holder) on each Trading Day with respect to all of the Underlying Shares then issuable upon conversion in full of all outstanding Series A Preferred Stock.

8. Mechanics of Conversion.

(a) The number of Underlying Shares issuable upon any conversion of shares of Series A Preferred Stock hereunder shall equal the Stated Value of such shares of Series A Preferred Stock to be converted divided by the applicable Conversion Price on the Conversion Date.

(b) Upon conversion of any shares of Series A Preferred Stock, the Corporation shall promptly (but in no event later than three Trading Days after the Conversion Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate a certificate for the Underlying

Shares issuable upon such conversion, free of restrictive legends unless such Underlying Shares are still required to bear a restrictive legend. The Holder, or any Person so designated by the Holder to receive Underlying Shares, shall be deemed to have become holder of record of such Underlying Shares as of the Conversion Date. If the shares are then not required to bear a restrictive legend, the Corporation shall, upon request of the Holder, deliver Underlying Shares hereunder electronically through The Depository Trust Corporation ("DTC") or another established clearing corporation performing similar functions, and shall credit the number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit Withdrawal Agent Commission System ("DWAC").

(c) A Holder shall deliver the original certificate(s) evidencing the Series A Preferred Stock being converted in connection with the conversion of such Series A Preferred Stock. Upon surrender of a certificate following one or more partial conversions, the Corporation shall promptly deliver to the Holder a new certificate representing the remaining shares of Series A Preferred Stock.

(d) The Corporation's obligations to issue and deliver Underlying Shares upon conversion of Series A Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by any Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by any Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by any Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to any Holder in connection with the issuance of such Underlying Shares.

9. Voting Rights. Except as otherwise provided herein or as required by applicable law, the Holders of the Series A Preferred Stock shall be entitled to vote on all matters on which holders of Common Stock are entitled to vote, including, without limitation, the election of directors. For such purposes, each Holder shall be entitled to a number of votes in respect of the shares of Series A Preferred Stock owned by it equal to the number of shares of Common Stock into which such shares of Series A Preferred Stock are convertible by the Holders as of the record date for the determination of stockholders entitled to vote on such matter, or if no record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise provided herein, in any relevant agreement or as required by applicable law, the holders of the Series A Preferred Stock and Common Stock, respectively, shall vote together as a single class on all matters submitted to a vote or consent of stockholders; provided that so long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the shares of Series A Preferred Stock then outstanding, (a) alter or change adversely the powers, preferences or rights given to the Series A Preferred Stock or alter or amend this Certificate of Designation (whether by merger, reorganization, consolidation or otherwise), (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation Event or Fundamental Transaction senior to or otherwise *pari passu* with the Series A Preferred Stock, (c) amend its certificate of incorporation or other charter documents so as to affect adversely any rights of the Holders (whether by merger, reorganization, consolidation or otherwise), (d)

increase the authorized number of shares of Series A Preferred Stock, (e) pay or declare any dividend or make any distribution on any Junior Securities, except pro rata stock dividends on the Common Stock payable in additional shares of Common Stock, or (f) enter into any agreement with respect to the foregoing.

10. Charges, Taxes and Expenses. Issuance of certificates for shares of Series A Preferred Stock and for Underlying Shares issued on conversion of (or otherwise in respect of) the Series A Preferred Stock shall be made without charge to the Holders for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Corporation. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring the Series A Preferred Stock or receiving Underlying Shares in respect of the Series A Preferred Stock.

11. Replacement Certificates. If any certificate evidencing Series A Preferred Stock or Underlying Shares is mutilated, lost, stolen or destroyed, or a Holder fails to deliver such certificate as may otherwise be provided herein, the Corporation shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution for such certificate, a new certificate, but only upon receipt of evidence reasonably satisfactory to the Corporation of such loss, theft or destruction (in such case) and, in each case, customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

12. Reservation of Underlying Shares. The Corporation covenants that it shall at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Underlying Shares as required hereunder, the number of Underlying Shares which are then issuable and deliverable upon the conversion of (and otherwise in respect of) all outstanding Series A Preferred Stock (taking into account the adjustments of Section 13), free from preemptive rights or any other contingent purchase rights of persons other than the Holder. The Corporation covenants that all Underlying Shares so issuable and deliverable shall, upon issuance in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Corporation covenants that it shall use its best efforts to satisfy each of the Equity Conditions.

13. Certain Adjustments. The Conversion Price is subject to adjustment from time to time as set forth in this Section 13.

(a) Stock Dividends and Splits. If the Corporation, at any time while Series A Preferred Stock is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case the applicable Conversion Price for Series A Preferred Stock shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock

outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Pro Rata Distributions. If the Corporation, at any time while Series A Preferred Stock is outstanding, distributes or pays as a dividend to holders of Common Stock (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph), (iii) rights or warrants to subscribe for or purchase any security, or (iv) any other asset (including, without limitation, cash) (in each case, “**Distributed Property**”), then in each such case the Corporation shall simultaneously deliver to each Holder the Distributed Property that each such Holder would have been entitled to receive in respect the number of Underlying Shares then issuable pursuant to Section 7(a) above had the Holder been the record holder of such Underlying Shares immediately prior to the applicable record or payment date.

(c) Fundamental Transactions. If the Corporation, at any time while Series A Preferred Stock is outstanding, effects any Fundamental Transaction, then upon any subsequent conversion of Series A Preferred Stock, each Holder shall have the right to receive, for each Underlying Share that would have been issuable upon such conversion absent such Fundamental Transaction, the same kind and amount of securities, cash or property as it could have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the “**Alternate Consideration**”). For purposes of any such conversion, the determination of the applicable Conversion Prices for the Series A Preferred Stock shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then each Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of Series A Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall issue to the Holder a new series of preferred stock consistent with the foregoing provisions and evidencing the Holders’ right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this paragraph (c) and insuring that the Series A Preferred Stock (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(d) Calculations. All calculations under this Section 13 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account

of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(e) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 13, the Corporation at its expense will promptly compute such adjustment in accordance with the terms hereof and prepare a certificate describing in reasonable detail such adjustment and the transactions giving rise thereto, including all facts upon which such adjustment is based. Upon written request, the Corporation will promptly deliver a copy of each such certificate to each Holder and to the Corporation's Transfer Agent.

(f) Notice of Corporate Events. If the Corporation (i) declares a dividend (other than a dividend pursuant to Section 3 above) or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Corporation or any Subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Corporation, then the Corporation shall deliver to each Holder a notice describing the material terms and conditions of such transaction, at least 20 calendar days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction.

14. Fractional Shares. The Corporation shall not be required to issue or cause to be issued fractional Underlying Shares on conversion of Series A Preferred Stock. If any fraction of an Underlying Share would, except for the provisions of this Section, be issuable upon conversion of Series A Preferred Stock, the number of Underlying Shares to be issued will be rounded up to the nearest whole share.

15. Notices. Any and all notices or other communications or deliveries hereunder (including without limitation any Conversion Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section prior to 4:30 p.m. (New York City time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Trading Day or later than 4:30 p.m. (New York City time) on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be: (i) if to the Corporation, to Two Bethesda Metro Center, Suite 1300, Bethesda, MD 20814, facsimile: (301) 986-0702, Attention: Corporate Secretary, or (ii) if to a Holder, to the address or facsimile number appearing on the Corporation's stockholder records or such other address or facsimile number as such Holder may provide to the Corporation in accordance with this Section.

16. Miscellaneous.

(a) The headings herein are for convenience only, do not constitute a part of this Certificate of Designations and shall not be deemed to limit or affect any of the provisions hereof.

(b) No provision of this Certificate of Designations may be amended, except in a written instrument signed by the Corporation and Holders of at least 51% of the shares of Series A Preferred Stock then outstanding. Any of the rights of the Holders of Series A Preferred Stock set forth herein, including any Equity Conditions or any other similar conditions for the Holders' benefit, may be waived by the affirmative vote of Holders of at least 51% of the shares of Series A Preferred Stock then outstanding. No waiver of any default with respect to any provision, condition or requirement of this Certificate of Designations shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

IN WITNESS WHEREOF, Hanger Orthopedic Group, Inc. has caused this Certificate of Designations to be duly executed as of this 26<sup>th</sup> day of May, 2006.

HANGER ORTHOPEDIC GROUP, INC.

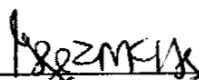
By:   
Name: George E. McHenry  
Title: Chief Financial Officer &  
Executive Vice President

**EXHIBIT A**

**FORM OF CONVERSION NOTICE**

(To be executed by the registered Holder  
in order to convert shares of Series A Preferred Stock)

The undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock indicated below into shares of common stock, par value \$0.01 per share (the "**Common Stock**"), of Hanger Orthopedic Group, Inc., a Delaware corporation (the "**Corporation**"), according to the conditions hereof, as of the date written below.

\_\_\_\_\_  
Date to Effect Conversion

\_\_\_\_\_  
Number of shares of Series A Preferred Stock owned prior  
to Conversion

\_\_\_\_\_  
Number of shares of Series A Preferred Stock to be  
Converted

\_\_\_\_\_  
Stated Value of shares of Series A Preferred Stock to be  
Converted

\_\_\_\_\_  
Number of shares of Common Stock to be Issued

\_\_\_\_\_  
Applicable Conversion Price

\_\_\_\_\_  
Number of shares of Series A Preferred Stock subsequent  
to Conversion

\_\_\_\_\_  
Name of Holder

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CERTIFICATE OF OWNERSHIP**

**MERGING**

**DOBI - Symplex, Inc., a Delaware corporation**

**INTO**

**Hanger Orthopedic Group, Inc., a Delaware corporation**

(Subsidiary into parent pursuant to Section 253 of the General Corporation Law of Delaware)

\*\*\*\*\*

Hanger Orthopedic Group, Inc., a corporation incorporated on the 3<sup>rd</sup> day of March, 1988, pursuant to the provisions of the Del. Code Ann. tit. 8, §§ 101 and 102, General Corporation Law of the State of Delaware;

**DOES HEREBY CERTIFY:**

**FIRST:** That this corporation owns 100% of the capital stock of DOBI-Symplex, Inc., a corporation incorporated on the 23rd day of March, 1992 A.D., pursuant to the provisions of the Del. Code Ann. tit. 8, §§ 101 and 102, General Corporation and that this corporation, by a resolution of its Board of Directors duly adopted at a meeting held on the 14<sup>th</sup> day of December, 2006 A.D., determined to and did merge into itself said DOBI-Symplex, Inc., which resolution is in the following words to wit:

**WHEREAS** this corporation lawfully owns 100% of the outstanding stock of DOBI-Symplex, Inc., a corporation organized and existing under the laws of Delaware, and

**WHEREAS** this corporation desires to merge into itself the said DOBI-Symplex, Inc., and to be possessed of all the estate, property, rights, privileges and franchises of said corporation,

**NOW, THEREFORE, BE IT RESOLVED**, that this corporation merge into itself said DOBI-Symplex, Inc. and assumes all of its obligations, and

**FURTHER RESOLVED**, that an authorized officer of this corporation be and he or she is hereby directed to make and execute a certificate of ownership setting forth a copy of the resolution to merge said DOBI-Symplex, Inc. and assume its liabilities and obligations, and the date of adoption thereof, and to file the same in the office of the Secretary of State of Delaware, and a certified copy thereof in the office of the Recorder of Deeds of New Castle County; and

**FURTHER RESOLVED**, that the officers of this corporation be and they hereby are authorized and directed to do all acts and things whatsoever, whether within or without the State of Delaware; which may be in any way necessary or proper to effect said merger.

**FURTHER RESOLVED**, that the merger shall become effective on December 31, 2006;

**FURTHER RESOLVED**, that anything herein or elsewhere to the contrary notwithstanding, this merger may be amended or terminated and abandoned by the Board of Directors of Hanger Orthopedic Group, Inc. at any time prior to the time that this merger filed with the Secretary of State becomes effective.

**IN WITNESS WHEREOF**, said parent corporation has caused its corporate seal to be affixed and this Certificate to be signed by an authorized officer this 14<sup>th</sup> day of December, 2006.

By: 

Name: Thomas F. Kirk

Title: President

CERTIFICATE OF OWNERSHIP

MERGING

Hanger Services Corporation, a Nevada corporation

INTO

Hanger Orthopedic Group, Inc., a Delaware corporation

(Subsidiary into parent pursuant to Section 253 of the General Corporation Law of Delaware)

\*\*\*\*\*

Hanger Orthopedic Group, Inc., a corporation incorporated on the 3rd day of March, 1988, pursuant to the provisions of the Del. Code Ann. tit. §§ 101 and 102 General Corporation Law of the State of Delaware;

**DOES HEREBY CERTIFY:**

**FIRST:** That this corporation owns 100% of the capital stock of Hanger Services Corporation, a corporation incorporated on the 7th day of November, 2002 A.D., pursuant to the provisions of the Nev. Rev. Stat. 78.030 and 78.035 and that this corporation, by a resolution of its Board of Directors duly adopted at a meeting held on the 14<sup>th</sup> day of December, 2006 A.D., determined to and did merge into itself said Hanger Services Corporation, which resolution is in the following words to wit:

**WHEREAS** this corporation lawfully owns 100% of the outstanding stock of Hanger Services Corporation, a corporation organized and existing under the laws of Nevada, and

**WHEREAS** this corporation desires to merge into itself the said Hanger Services Corporation, and to be possessed of all the estate, property, rights, privileges and franchises of said corporation,

**NOW, THEREFORE, BE IT RESOLVED**, that this corporation merge into itself said Hanger Services Corporation and assumes all of its obligations, and

**FURTHER RESOLVED**, that an authorized officer of this corporation be and he or she is hereby directed to make and execute a certificate of ownership setting forth a copy of the resolution to merge said Hanger Services Corporation and assume its liabilities and obligations, and the date of adoption thereof, and to file the same in the office of the Secretary of State of Delaware, and a certified copy thereof in the office of the Recorder of Deeds of New Castle County; and

**FURTHER RESOLVED**, that the officers of this corporation be and they hereby are authorized and directed to do all acts and things whatsoever, whether within or without the State of Delaware; which may be in any way necessary or proper to effect said merger.

**FURTHER RESOLVED**, that the merger shall become effective on December 31, 2006;

**FURTHER RESOLVED**, that anything herein or elsewhere to the contrary notwithstanding, this merger may be amended or terminated and abandoned by the Board of Directors of Hanger Orthopedic Group, Inc. at any time prior to the time that this merger filed with the Secretary of State becomes effective.

**IN WITNESS WHEREOF**, said parent corporation has caused its corporate seal to be affixed and this Certificate to be signed by an authorized officer this 14<sup>th</sup> day of December, 2006.

By:   
Name: Thomas F. Kirk  
Title: President

**CERTIFICATE OF ELIMINATION OF 7% REDEEMABLE PREFERRED STOCK  
AND SERIES A CONVERTIBLE PREFERRED STOCK**

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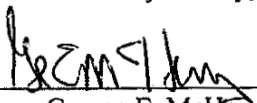
Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

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**HANGER ORTHOPEDIC GROUP, INC.**, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolution was duly adopted by the Board of Directors of the Corporation as required by Section 151(g) of the Delaware General Corporation Law at a meeting duly called and held on November 6, 2008.

**RESOLVED**, that all currently existing series of authorized preferred stock, \$.01 par value per share, of the Corporation, namely the 7% Redeemable Preferred Stock, as to which the original Certificate of Designations, Powers, Preferences and Relative, Participating, Optional or other Special Rights and Qualifications, Limitations or Restrictions was filed on June 28, 1999, and as to which a Certificate of Amendment to Certificate of Designations, Powers, Preferences and Relative, Participating, Optional or other Special Rights and Qualifications, Limitations or Restrictions was filed on May 16, 2000, and the Series A Convertible Preferred Stock, as to which the original Certificate of Designations was filed on May 26, 2006, no shares of which series of preferred stock are currently issued or outstanding, are hereby cancelled.

**IN WITNESS WHEREOF**, the Corporation has caused this Certificate to be duly executed by an authorized officer of the Corporation as of the 22nd day of May, 2009.

By:   
Name: George E. McHenry  
Title: Executive Vice President and  
Chief Financial Officer

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
HANGER ORTHOPEDIC GROUP, INC.**

Hanger Orthopedic Group, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The original Certificate of Incorporation was filed with the Secretary of State on March 3, 1988 under the name of Delaware Sequel Corporation.

2. This Amended Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the Delaware General Corporation Law by the directors and stockholders of the Corporation, and restates, integrates and further amends the provisions of the Corporation's Certificate of Incorporation.

3. The text of the Amended and Restated Certificate of Incorporation is amended and restated in its entirety to read as follows:

FIRST: Name. The name of the Corporation is Hanger Orthopedic Group, Inc.

SECOND: Agent for Service. The address of the registered office of the Corporation in Delaware is 1209 Orange Street, Wilmington, Delaware 19801. The name and address of the registered agent of the Corporation in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, New Castle County, Wilmington, Delaware 19801.

THIRD: Purpose. The nature of the business to be transacted by the Corporation and the purposes for which it is formed are to transact any and all lawful business for which corporations may be incorporated under the Delaware General Corporation Law.

FOURTH: Capital Stock. The authorized capital stock of the Corporation shall consist of 70,000,000 shares of Common Stock, consisting of 60,000,000 shares of Common Stock, par value \$0.01 per share (the "Common Stock") and 10,000,000 shares of Preferred Stock, par value \$0.01 per share. The Board of Directors of the Corporation shall have the power to issue the Preferred Stock in series, with such designations, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof as shall be stated in the resolution or resolutions of the Board of Directors providing for the issuance of such stock. Nothing contained herein to the contrary shall affect in any manner the certificate of designations, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions of such Preferred Stock (the "Certificate of Designations"), except to the extent expressly set forth therein. All shares of Common Stock will be identical and will entitle the holders thereof to the same rights and privileges, as follows:

(a) Voting Rights. Except as set forth herein or as otherwise required by law, each outstanding share of Common Stock shall be entitled to vote on each matter on which the stockholders of the Corporation shall be entitled to vote, and each holder of Common Stock shall be entitled to one vote for each share of such stock held by such holder.

(b) Dividends. Subject to any other provisions of this Amended and Restated Certificate of Incorporation, as it may be amended from time to time, the holders of shares of Common Stock shall be entitled to receive such dividends or other distributions in cash, stock or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(c) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of shares of Common Stock shall be entitled to share ratably in the remaining net assets of the Corporation.

(d) Miscellaneous.

(i) No Charge. The issuance of certificates for shares of Common Stock shall be made without charge to the holders of such shares for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with the issuance of shares of Common Stock; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the then-current holder of the Common Stock.

(ii) Registration of Transfer. The Corporation shall keep at its principal office (or such other place as the Corporation reasonable designates) a register for the registration of shares of Common Stock. Upon the surrender of any certificate representing shares of Common Stock at such place, the Corporation shall, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of Common Stock represented by the surrendered certificate, and the Corporation forthwith shall cancel such surrendered certificate. Each such new certificate will represent such number of shares of Common Stock as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. Subject to any other restrictions on transfer to which such holder or such shares may be bound, the Corporation will also register such new certificate in such name as requested by the holder of the surrendered certificate.

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

lost, stolen, destroyed or mutilated certificate.

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

FIFTH: Existence. The corporation is to have perpetual existence.

SIXTH: No Preemptive Rights; Treasury Stock. Shareholders shall have no preemptive right to acquire unissued shares of the Corporation's capital stock, treasury shares or securities convertible into such shares. The Board of Directors of the Corporation shall have the power and authority from time to time to authorize the sale of, and to sell, for cash or otherwise, all or any portion of the unissued and/or treasury stock of the Corporation without such stock, or any portion thereof, being first offered to the shareholders of the Corporation.

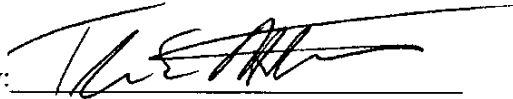
SEVENTH: Director Liability. A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, as the same exists or hereafter may be amended, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Delaware General Corporation Law. Any repeal or modification of this paragraph by the shareholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

EIGHTH: Amendment of Bylaws. The Corporation's By-Laws may be adopted, amended, altered or repealed by the affirmative vote of the holders of at least a majority of the total number of issued and outstanding shares of Common Stock of the Corporation entitled to vote at any annual or special meeting. In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power to adopt, amend, alter or repeal the Corporation's By-Laws upon the affirmative vote or written consent of at least a majority of the entire Board of Directors; provided, however, that no provisions of the By-Laws adopted by the shareholders shall be amended, altered or repealed by the Board of Directors if the provisions so adopted by the shareholders so provide.

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**IN WITNESS WHEREOF**, Hanger Orthopedic Group, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer as of the 13<sup>th</sup> day of May 2011.

**HANGER ORTHOPEDIC GROUP, INC.**

By: 

Name: Thomas E. Hartman

Title: Vice President and General Counsel

CERTIFICATE OF CHANGE OF LOCATION OF REGISTERED OFFICE  
AND OF REGISTERED AGENT

**HANGER ORTHOPEDIC GROUP, INC.**

It is hereby certified that:

1. The name of the corporation (hereinafter called the "corporation") is:

**HANGER ORTHOPEDIC GROUP, INC.**

2. The registered office of the corporation within the State of Delaware is hereby changed to 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle.

3. The registered agent of the corporation within the State of Delaware is hereby changed to Corporation Service Company, the business office of which is identical with the registered office of the corporation as hereby changed.

4. The corporation has authorized the changes hereinbefore set forth by resolution of its Board of Directors.

Signed on September 1, 2011

/s/ Maureen Cathell  
Name: Maureen Cathell  
Title: Vice President

**AMENDMENT NO. 1 TO  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
HANGER ORTHOPEDIC GROUP, INC.**

Hanger Orthopedic Group, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware (the "Secretary of State") on March 3, 1988 under the name of Delaware Sequel Corporation, and the Amended and Restated Certificate of Incorporation was filed with the Secretary of State on May 13, 2011 under the name Hanger Orthopedic Group, Inc.

2. This Amendment No. 1 (this "Amendment") to the Amended and Restated Certificate of Incorporation amends the provisions of the Corporation's Amended and Restated Certificate of Incorporation to change the name of the Corporation from "Hanger Orthopedic Group, Inc." to "Hanger, Inc." as follows:

The text of the Amended and Restated Certificate of Incorporation is hereby amended by deleting Article First in its entirety and replacing it with the following:

FIRST: Name. The name of the Corporation is Hanger, Inc.

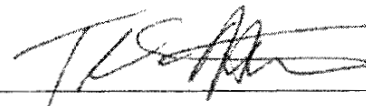
3. This Amendment was duly adopted in accordance with Section 242 of the Delaware General Corporation Law by the directors and stockholders of the Corporation.

4. This Amendment will be effective as of 12:01 a.m. Eastern Time on June 8, 2012.

**IN WITNESS WHEREOF**, the Corporation has caused this Amendment No. 1 to the Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer as of the 7<sup>th</sup> day of June 2012.

**HANGER ORTHOPEDIC GROUP, INC.**

By: \_\_\_\_\_



Name: Thomas E. Hartman  
Title: Vice President and General Counsel

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
HANGER, INC.**

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

1. The original Certificate of Incorporation was filed with the Secretary of State on March 3, 1988 under the name of Delaware Sequel Corporation.

2. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on May 13, 2011 under the name of Hanger Orthopedic Group, Inc.

3. A Certificate of Change of Location of Registered Office and of Registered Agent was filed with the Secretary of State of the State of Delaware on September 7, 2011 changing (a) the registered office of the Corporation within the State of Delaware to 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle, and (b) the registered agent of the Corporation within the State of Delaware to Corporation Service Company.

4. An Amendment to the Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware effective June 8, 2012 changing the name of the Corporation from "Hanger Orthopedic Group, Inc." to "Hanger, Inc."

5. This Restated Certificate of Incorporation was duly adopted in accordance with Section 245 of the Delaware General Corporation Law by the directors of the Corporation, and restates and integrates the provisions of the Corporation's Amended and Restated Certificate of Incorporation, as previously amended, without any further amendment thereto and there is no discrepancy between the provisions of the Corporation's Amended and Restated Certificate of Incorporation, as previously amended, and the provisions of this Restated Certificate of Incorporation.

6. This Restated Certificate of Incorporation will be effective upon filing with the Secretary of State of the State of Delaware.

7. The text of the Amended and Restated Certificate of Incorporation, as previously amended, is hereby restated in its entirety to read as follows:

FIRST: Name. The name of the Corporation is Hanger, Inc.

SECOND: Agent for Service. The address of the registered office of the Corporation in Delaware is 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle. The name and address of the registered agent of the Corporation in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle.

THIRD: Purpose. The nature of the business to be transacted by the Corporation and the purposes for which it is formed are to transact any and all lawful business for which corporations may be incorporated under the Delaware General Corporation Law.

FOURTH: Capital Stock. The authorized capital stock of the Corporation shall consist of 70,000,000 shares of stock, consisting of 60,000,000 shares of Common Stock, par value \$0.01 per share (the "Common Stock") and 10,000,000 shares of Preferred Stock, par value \$0.01 per share. The Board of Directors of the Corporation shall have the power to issue the Preferred Stock in series, with such designations, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof as shall be stated in the resolution or resolutions of the Board of Directors providing for the issuance of such stock. Nothing contained herein to the contrary shall affect in any manner the certificate of designations, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions of such Preferred Stock (the "Certificate of Designations"), except to the extent expressly set forth therein. All shares of Common Stock will be identical and will entitle the holders thereof to the same rights and privileges, as follows:

(a) Voting Rights. Except as set forth herein or as otherwise required by law, each outstanding share of Common Stock shall be entitled to vote on each matter on which the stockholders of the Corporation shall be entitled to vote, and each holder of Common Stock shall be entitled to one vote for each share of such stock held by such holder.

(b) Dividends. Subject to any other provisions of this Restated Certificate of Incorporation, as it may be amended from time to time, the holders of shares of Common Stock shall be entitled to receive such dividends or other distributions in cash, stock or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(c) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of shares of Common Stock shall be entitled to share ratably in the remaining net assets of the Corporation.

(d) Miscellaneous.

(i) No Charge. The issuance of certificates for shares of Common Stock shall be made without charge to the holders of such shares for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with the issuance of shares of Common Stock; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the then-current holder of the Common Stock.

(ii) Registration of Transfer. The Corporation shall keep at its principal office (or such other place as the Corporation reasonable designates) a register for the registration of shares of Common Stock. Upon the surrender of any certificate representing shares of Common Stock at such place, the Corporation shall, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefor representing in

the aggregate the number of shares of Common Stock represented by the surrendered certificate, and the Corporation forthwith shall cancel such surrendered certificate. Each such new certificate will represent such number of shares of Common Stock as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate. Subject to any other restrictions on transfer to which such holder or such shares may be bound, the Corporation will also register such new certificate in such name as requested by the holder of the surrendered certificate.

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

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

FIFTH: Existence. The corporation is to have perpetual existence.

SIXTH: No Preemptive Rights; Treasury Stock. Shareholders shall have no preemptive right to acquire unissued shares of the Corporation's capital stock, treasury shares or securities convertible into such shares. The Board of Directors of the Corporation shall have the power and authority from time to time to authorize the sale of, and to sell, for cash or otherwise, all or any portion of the unissued and/or treasury stock of the Corporation without such stock, or any portion thereof, being first offered to the shareholders of the Corporation.

SEVENTH: Director Liability. A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, as the same exists or hereafter may be amended, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Delaware General Corporation Law. Any repeal or modification of this paragraph by the shareholders of the Corporation shall be prospective only, and shall not adversely affect

any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

EIGHTH: Amendment of Bylaws. The Corporation's By-Laws may be adopted, amended, altered or repealed by the affirmative vote of the holders of at least a majority of the total number of issued and outstanding shares of Common Stock of the Corporation entitled to vote at any annual or special meeting. In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power to adopt, amend, alter or repeal the Corporation's By-Laws upon the affirmative vote or written consent of at least a majority of the entire Board of Directors; provided, however, that no provisions of the By-Laws adopted by the shareholders shall be amended, altered or repealed by the Board of Directors if the provisions so adopted by the shareholders so provide.

[The next page is the signature page.]

IN WITNESS WHEREOF, Hanger, Inc. has caused this Restated Certificate of Incorporation to be signed by a duly authorized officer as of the 27 day of August, 2012.

**HANGER, INC.**

By: \_\_\_\_\_

Name: Thomas E. Hartman

Title: Vice President and General Counsel

**CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS**

**OF**

**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

**OF**

**HANGER, INC.**

The undersigned, Thomas E. Hartman, the Senior Vice President, General Counsel and Secretary of Hanger, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify that, pursuant to the authority conferred upon the Board of Directors of the Corporation by the Corporation's Amended and Restated Certificate of Incorporation to issue shares of preferred stock in series by distinct designation by the Board of Directors of the Corporation, and pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors on February 28, 2016 adopted the following resolution creating a series of preferred stock designated as Series A Junior Participating Preferred Stock:

**RESOLVED**, that, pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Corporation's Amended and Restated Certificate of Incorporation and the Delaware General Corporation Law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be and it hereby is created, and that the designation and number of shares and relative rights and preferences thereof are as set forth below:

**Series A Junior Participating Preferred Stock**

(1) Designation and Amount. There is hereby created a series of Preferred Stock that shall be designated as "Series A Junior Participating Preferred Stock", par value \$0.01 per share (the "Series A Preferred Stock"), and the number of shares constituting such series shall be 60,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; *provided* that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation into Series A Preferred Stock.

(2) Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, the holders of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first business days of January, April, July and October in each year (each such date being referred to herein as a "Quarterly Dividend

Payment Date”), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (i) \$1.00 or (ii) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all noncash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time after February 28, 2016 (the “Rights Declaration Date”) (a) declare any dividend on Common Stock payable in shares of Common Stock, (b) subdivide the outstanding Common Stock, or (c) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (ii) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); *provided that*, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

(3) Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Rights Declaration Date declare or pay any dividend on Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other resolution of the Board of Directors creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) Except as set forth herein, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(4) Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, *provided* that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of

any stock of the Corporation ranking junior to or on a parity with (both as to dividends or upon dissolution, liquidation or winding up) the Series A Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any corporation of which an amount of voting securities sufficient to elect at least a majority of the directors of such corporation is beneficially owned, directly or indirectly, by the Corporation or otherwise controlled by the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

(5) Reacquired Shares. All shares of Series A Preferred Stock that shall at any time have been reacquired by the Corporation shall, after such reacquisition, have the status of authorized but unissued shares of Preferred Stock of the Corporation, without designation as to series, and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

(6) Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (A) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received \$1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, *provided* that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (B) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all other such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (A) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding

immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(7) Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination, share exchange or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (A) declare any dividend on Common Stock payable in shares of Common Stock, (B) subdivide the outstanding Common Stock, or (C) combine the outstanding shares of Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

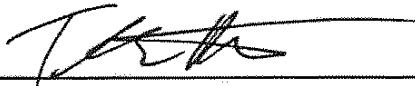
(8) No Redemption. The shares of Series A Preferred Stock shall not be redeemable.

(9) Amendment. To the fullest extent permitted by applicable law, prior to such time as shares of Series A Preferred Stock are issued and outstanding, the Board of Directors may modify, amend, alter or revoke any of the number of shares of Series A Preferred Stock, the powers, preferences or special rights of the Series A Preferred Stock or the other terms of the Series A Preferred Stock. From and after such time as shares of Series A Preferred Stock are issued and outstanding, the Amended and Restated Certificate of Incorporation of the Corporation shall not be amended in any manner that would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting together as a single class.

(10) Fractional Shares. Series A Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

(11) Ranking. The Series A Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, whether or not upon the dissolution, liquidation or winding up of the Corporation, unless the terms of any such series shall provide otherwise.

IN WITNESS WHEREOF, I have hereunto subscribed my name as of this 28th  
day of February, 2016.



Name: Thomas E. Hartman

Title: Senior Vice President, General Counsel  
and Secretary

**CERTIFICATE OF OWNERSHIP AND MERGER**

**MERGING**

**OPNET, INC.**

**INTO**

**HANGER, INC.**

-----

The following Certificate of Ownership and Merger for the merger of a parent corporation and its subsidiary corporation is submitted pursuant to Section 253 of the General Corporation Law of Delaware.

Hanger, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Parent Corporation"),

**DOES HEREBY CERTIFY**

**FIRST:** That the Parent Corporation was incorporated on March 3, 1988 pursuant to the General Corporation Law of the State of Delaware.

**SECOND:** That the Parent Corporation owns 100% of the capital stock of OPNET, Inc., a corporation incorporated on April 3, 1996 pursuant to the laws of the State of Nevada (the "Subsidiary Corporation").

**THIRD:** That the Parent Corporation, by the following resolutions of its Board of Directors, adopted as of December 22, 2016, determined to and did merge into itself the Subsidiary Corporation.

RESOLVED, that Parent Corporation merges into itself Subsidiary Corporation and assumes all of its obligations.

RESOLVED, that the merger shall be effective as of December 31, 2016.

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

[The next page is the signature page.]

IN WITNESS WHEREOF, the Parent Corporation has caused this Certificate to be signed by an authorized officer this 21<sup>st</sup> day of December, 2016.

HANGER, INC.

By:   
Thomas E. Hartman  
Senior Vice President & General Counsel

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 08:01 AM 10/03/2022  
FILED 08:01 AM 10/03/2022  
SR 20223673320 - File Number 2153738

## CERTIFICATE OF MERGER

OF

**HERO MERGER SUB, INC.**  
(a Delaware corporation)

with and into

**HANGER, INC.**  
(a Delaware corporation)

Pursuant to Section 251(c) of the Delaware General Corporation Law (the “DGCL”), Hanger, Inc., a Delaware corporation (the “Corporation”), executed the following Certificate of Merger:

**FIRST:** The name of each constituent corporation is Hanger, Inc., a Delaware corporation, and Hero Merger Sub, Inc., a Delaware corporation.

**SECOND:** An Agreement and Plan of Merger, dated as of July 21, 2022 (the “Agreement and Plan of Merger”), by and among Hero Parent, Inc., a Delaware corporation, Hero Merger Sub, Inc., a Delaware corporation, and the Corporation has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with Section 251 of the DGCL.

**THIRD:** The name of the surviving corporation (the “Surviving Corporation”) is Hanger, Inc., a Delaware corporation.

**FOURTH:** The certificate of incorporation of the Corporation as in effect immediately prior to the effective time of the merger shall, at the effective time of the merger, be amended and restated in its entirety to read as set forth on Exhibit A hereto, and, as so amended and restated, shall be the Certificate of Incorporation of the Surviving Corporation.

**FIFTH:** The executed Agreement and Plan of Merger is on file at the office of the Surviving Corporation at 10910 Domain Drive, Suite 300, Austin, Texas 78758.

**SIXTH:** A copy of the Agreement and Plan of Merger will be provided by the Surviving Corporation, upon request and without cost, to any stockholder of any constituent corporation.

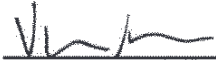
**SEVENTH:** The merger shall become effective upon the filing of this Certificate of Merger with the Secretary of State of Delaware.

*[Signature Page Follows]*

**HNG-00725**

**IN WITNESS WHEREOF**, the Surviving Corporation has caused this Certificate of Merger to be signed by an authorized officer this 3<sup>rd</sup> day of October, 2022.

Hanger, Inc.

By:   
Name: Vinit K. Asar

Title: President and Chief Executive  
Officer

*[Signature Page to Certificate of Merger]*

**HNG-00726**

**EXHIBIT A**

**THIRD AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
HANGER, INC.**

**ARTICLE I**

The name of the corporation is Hanger, Inc. (the “Corporation”).

**ARTICLE II**

The address of the Corporation’s registered office in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is: The Corporation Trust Company.

**ARTICLE III**

The nature of the business and the purposes to be conducted and promoted by the Corporation are to conduct any lawful business, to promote any lawful purpose and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as amended (“DGCL”). The Corporation will have perpetual existence.

**ARTICLE IV**

1. The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock, \$0.01 par value per share (the “Common Stock”).

2. Shares of the Common Stock may be issued from time to time as the Board of Directors of the Corporation (the “Board”) shall determine and on such terms and for such consideration as shall be fixed by the Board. The amount of the authorized Common Stock of the Corporation may be increased or decreased by the affirmative vote of the holders of a majority of the outstanding Common Stock of the Corporation entitled to vote.

**ARTICLE V**

Elections of directors need not be by written ballot unless required by the Bylaws of the Corporation. Any director may be removed from office either with or without cause at any time by the affirmative vote of the holders of a majority of the outstanding Common Stock of the Corporation entitled to vote, given at a meeting of the stockholders called for that purpose, or by the consent of the holders of a majority of the outstanding Common Stock of the Corporation entitled to vote, given in accordance with DGCL Section 228.

## **ARTICLE VI**

In furtherance and not in limitation of the powers conferred upon the Board by law, the Board shall have the power to make, adopt, alter, amend and repeal from time to time the Bylaws of the Corporation subject to the right of the stockholders entitled to vote with respect thereto to alter, amend and repeal Bylaws made by the Board.

## **ARTICLE VII**

The personal liability of the directors or former directors of the Corporation to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director is hereby eliminated to the fullest extent permitted by paragraph (7) of subsection (b) of DGCL Section 102, as the same may be amended and supplemented from time to time. Any repeal or modification of this Article VII by the stockholders of the Corporation shall not adversely affect any right or protection of a director or former director of the Corporation existing hereunder (or previously existed) with respect to any act or any act or omission occurring prior to such repeal or modification. If the DGCL is hereafter amended to further eliminate or limit the personal liability of directors, then the liability of a director or former director of the Corporation shall be eliminated or limited to the fullest extent then permitted.

## **ARTICLE VIII**

The Corporation, to the full extent permitted by Section 145 of the DGCL, as amended from time to time, shall indemnify all persons whom it may indemnify pursuant thereto, including, without limitation, its past or present directors and officers. Expenses (including attorneys' fees) incurred by an officer or director (past or present) in defending any civil, criminal, administrative, or investigative action, suit or proceeding for which such officer or director may be entitled to indemnification hereunder shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized hereby. Any repeal or modification of this Article VIII by the stockholders of the Corporation shall not adversely affect any right or protection of an officer or director or former officer or director of the Corporation existing hereunder (or previously existed) with respect to any act or any act or omission occurring prior to such repeal or modification.

## **ARTICLE IX**

Subject to the last sentence of Articles VII and VIII of this Third Amended and Restated Certificate of Incorporation, the Corporation reserves the right to amend or repeal any provision contained in this Third Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.

STATE OF DELAWARE  
CERTIFICATE OF CHANGE OF REGISTERED AGENT  
AND/OR REGISTERED OFFICE

The corporation organized and existing under the General Corporation Law of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is HANGER, INC.  
\_\_\_\_\_.
2. The Registered Office of the corporation in the State of Delaware is changed to  
251 Little Falls Drive  
\_\_\_\_\_ (street), in the City of Wilmington, DE,  
County of New Castle Zip Code 19808. The name of the  
Registered Agent at such address upon whom process against this Corporation may be  
served is Corporation Service Company.
3. The foregoing change to the registered office/agent was adopted by a resolution of  
the Board of Directors of the corporation.

By: /s/ Thomas E. Hartman  
Authorized Officer

Name: Thomas E. Hartman  
Print or Type