

Filing Fee: \$150.00

License Fee: \$15.00 minimum (§7-1.1-124)

ID Number:

126885



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Office of the Secretary of State
Corporations Division
100 North Main Street
Providence, Rhode Island 02903-1335

BUSINESS CORPORATION

APPLICATION FOR CERTIFICATE OF AUTHORITY
(To Be Filed In Duplicate Original)

Pursuant to the provisions of Section 7-1.1-103 of the General Laws, 1956, as amended, the undersigned foreign corporation hereby applies for a Certificate of Authority to transact business in the state of Rhode Island, and for that purpose submits the following statement:

- The name of the corporation is CHARTONE, INC.
- It is incorporated under the laws of Delaware
- The name, if different, which it elects to use in Rhode Island is:
 - If the name of the corporation in its jurisdiction of incorporation does not contain the word "corporation," "company," "incorporated," or "limited," or an abbreviation thereof, then list the name of the corporation with the addition of one of the above corporate endings for use in Rhode Island:
CHARTONE, INC.
 - If the corporate name is not available in Rhode Island, then set forth below the fictitious name under which the corporation will qualify and transact business in Rhode Island as stated in the "Fictitious Business Name Statement" to be filed with this application:
Delaware Chartone, Inc.
- The date of its incorporation is 09/01/1999 and the period of its duration is Perpetual
- The address of its principal office in the state or country under the laws of which it is incorporated is _____
- The address of its proposed registered office in Rhode Island is 10 Weybosset Street
(Street Address, not P.O. Box)
Providence, RI 02903 and the name of its proposed registered agent in Rhode Island at
(City/Town) (Zip Code)
that address is C T Corporation System
(Name of Agent)
- The specific purpose or purposes which it proposes to pursue in the transaction of business in Rhode Island are:
The provision of outsourcing services for the release and delivery of patient medical records.

8. The names and respective addresses of the directors and officers are: SEE ATTACHMENT

	Name	Address
Director	BRIAN CAHILL	226 AIRPORT PKWY, #200, SAN JOSE, CA 95110
Director	JOEL ACKERMAN	226 AIRPORT PKWY, #200, SAN JOSE, CA 95110
President	BRIAN CAHILL	226 AIRPORT PKWY, #200 SAN JOSE, CA 95110
Vice President	ALAN MOSS	226 AIRPORT PKWY, #200, SAN JOSE, CA 95110
Treasurer		
Secretary	GEORGE ABATTOGLIO	226 AIRPORT PKWY, #200 SAN JOSE, CA 95110

RECEIVED
SECRETARY OF STATE
CORPORATIONS DIV.
SEP 05 2002
FILED
By [Signature]
290627

9. The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is: **SEE ATTACHMENT**

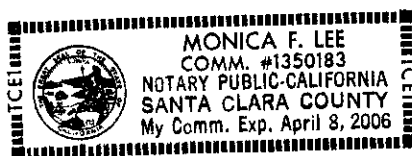
Number of Shares	Class	Series	Par Value or Statement that Shares are without Par Value
26,031,532.00	COMMON		0.001

10. The aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is: **SEE ATTACHMENT**

Number of Shares	Class	Series	Par Value or Statement that Shares are without Par Value
181,001	COMMON		0.001
2,520,000	PREFERRED	A	0.01
2,130,000	PREFERRED	B	0.01

11. (a) An estimate of the value of all property to be owned by the corporation for the following year, wherever located, is \$ 5,618,000.00.
- (b) An estimate of the value of the corporation's property to be located within Rhode Island during the following year is \$ 1,000.00.
- (c) An estimate, expressed as a percentage, of the proportion that the estimated value of the property of the corporation to be located within this state during the following year bears to the value of all property of the corporation to be owned during the following year, wherever located, is 0.02% %. [divide (b) by (a) and multiply by 100 to obtain the percentage].
12. (a) An estimate of the gross amount of business to be transacted by the corporation during the following year is \$ 60,800,000.00.
- (b) An estimate of the gross amount of business to be transacted by the corporation at or from places of business in Rhode Island during the following year is \$ 290,000.00.
- (c) An estimate, expressed as a percentage, of the proportion that the gross amount of business to be transacted by the corporation at or from places of business in this state during the following year bears to the gross amount thereof which will be transacted by the corporation during the following year is 0.48% % [divide (b) by (a) and multiply by 100 to obtain the percentage].
13. This application is accompanied by certified copies of its articles of incorporation and all amendments thereto, duly authenticated by the secretary of state or other authorized officer of the jurisdiction of its incorporation.

Date: 6/30/02



CHARTONE, INC.

Print Exact Name of Corporation Making Application

By [Signature]

☐ President or ☒ Vice President (check one)

By [Signature] **AND**

☒ Secretary or ☐ Assistant Secretary (check one)

STATE OF California
COUNTY OF Santa Clara

In San Jose, on this 16th day of July, 2002, personally appeared before me GEORGE ABATJONIAN who, being by me first duly sworn, declared that he/she is the CFO and Secretary of the corporation and that he/she signed the foregoing document as such officer of the corporation, and that the statements herein contained are true.

[Signature]
Notary Public
My Commission Expires: April 8, 2006

Attachment to Rhode Island
Application for Certificate of Authority

Purpose Clause

THE PROVISION OF OUTSOURCING SERVICES FOR THE RELEASE AND DELIVERY OF PATIENT MEDICAL RECORDS Notwithstanding the foregoing, the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized to do business under the laws of its jurisdiction of incorporation.

Capital Stock

- | | | |
|----|-------------------------------------|-----------|
| 1. | Class: | PREFERRED |
| | Number Authorized: | 1,200,000 |
| | Number Issued: | 1,200,000 |
| | Does this series have a Par Value?: | Yes |
| | Par Value Amount: | \$0.01 |
| 2. | Class: | PREFERRED |
| | Number Authorized: | 400,766 |
| | Number Issued: | 400,766 |
| | Does this series have a Par Value?: | Yes |
| | Par Value Amount: | \$0.001 |

Officers & Directors

- | | | |
|----|-------------------|------------------------|
| 1. | Full Name: | BRIAN CAHILL |
| | Officer/Director: | Officer, Director |
| | Officer's Title: | PRESIDENT & CEO |
| | Business Address: | 226 AIRPORT PKWY, #200 |
| | City: | SAN JOSE |
| | State: | CA |
| | ZIP Code: | 95110 |
| 2. | Full Name: | GEORGE ABATJOGLOU |
| | Officer/Director: | Officer |
| | Officer's Title: | CFO & SECRETARY |
| | Business Address: | 226 AIRPORT PKWY, #200 |
| | City: | SAN JOSE |
| | State: | CA |
| | ZIP Code: | 95110 |
| 3. | Full Name: | ALAN MOSS |
| | Officer/Director: | Officer |
| | Officer's Title: | EVP OPERATIONS |
| | Business Address: | 226 AIRPORT PKWY, #200 |
| | City: | SAN JOSE |
| | State: | CA |
| | ZIP Code: | 95110 |
| 4. | Full Name: | GEOFFREY RAKER |
| | Officer/Director: | Director |
| | Officer's Title: | |
| | Business Address: | 226 AIRPORT PKWY, #200 |

City:	SAN JOSE
State:	CA
ZIP Code:	95110

Delaware

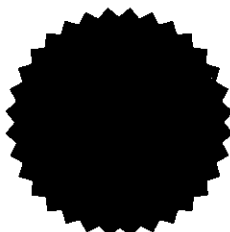
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The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OF "CHARTONE, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, FILED THE SEVENTEENTH DAY OF DECEMBER, A.D. 2001, AT 2 O'CLOCK P.M.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3091065 8100X

AUTHENTICATION: 1896589

020467472

DATE: 07-22-02

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 02:00 PM 12/17/2001
010648564 - 3091065

**FOURTH
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
CHARTONE, INC.**

**Pursuant to section 242
of the
Delaware General Corporation Law**

*** * * * ***

CHARTONE, INC., a Delaware corporation (the "Corporation"), hereby certifies as follows:

The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of Delaware on September 1, 1999, was amended and restated on April 28, 2000 pursuant to Section 242 and Section 245 of the Delaware General Corporation Law to, among other things, change the name of the Corporation from "PASC Acquisition Corporation" to "ChartOne, Inc.," was further amended and restated on June 1, 2000 and October 20, 2000 pursuant to Section 242 and Section 245 of the Delaware General Corporation Law, and is hereby further amended and restated pursuant to Section 242 and Section 245 of the Delaware General Corporation Law. All amendments to the Certificate of Incorporation reflected herein have been duly proposed by the Board of Directors of the Corporation and duly adopted by the stockholder of the Corporation in accordance with the provisions of such Sections.

This Fourth Amended and Restated Certificate of Incorporation restates and integrates and further amends the Amended and Restated Certificate of Incorporation of the Corporation. The text of the Amended and Restated Certificate of Incorporation is amended to read as herein set forth in full:

ARTICLE I.

The name of the Corporation is: ChartOne, Inc.

ARTICLE II.

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

ARTICLE III.

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV.

The total number of shares of stock which the Corporation shall have authority to issue is 26,631,532, consisting of (i) 7,500,000 shares of Series A Convertible Preferred Stock, par value \$0.01 per share, of the Corporation (the "Series A Preferred Stock"), (ii) 2,130,000 shares of Series B Convertible Preferred Stock, par value \$0.01 per share, of the Corporation (the "Series B Preferred Stock"), (iii) 1,200,000 shares of Series C Convertible Preferred Stock, par value \$0.01 per share, of the Corporation (the "Series C Preferred Stock"), (iv) 400,766 shares of Series D Convertible Preferred stock, par value \$0.01 per share, of the Corporation (the "Series D Preferred Stock," and together with the Series A Preferred Stock, the Series B Preferred Stock and Series C Preferred Stock, the "Preferred Stock") and (v) 15,400,766 shares of Common Stock, \$0.001 par value per share (the "Common Stock").

The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof. Each share of Common Stock shall be equal to each other share of Common Stock. The holders of shares of Common Stock shall be entitled to one vote for each such share upon all questions presented to the stockholders.

The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for any purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share of the part of any other person, whether or not the Corporation shall have notice thereof, except as expressly provided by applicable law.

The designations, powers, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Preferred Stock are as follows:

SECTION 1. DESIGNATION AND AMOUNT.

(a) The shares of the Series A Preferred Stock shall be designated "Series A Convertible Preferred Stock" and the number of shares constituting such series shall be 7,500,000.

(b) The shares of the Series B Preferred Stock shall be designated "Series B Convertible Preferred Stock" and the number of shares constituting such series shall be 2,130,000.

(c) The shares of the Series C Preferred Stock shall be designated "Series C Convertible Preferred Stock" and the number of shares constituting such series shall be 1,200,000.

(d) The shares of the Series D Preferred Stock shall be designated "Series D Convertible Preferred Stock" and the number of shares constituting such series shall be 400,766.

SECTION 2. DIVIDENDS.

(a) The holders of Series A Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors of the Corporation (the "Board of Directors"), out of the net profits of the Corporation, dividends per share equal to the greater of (i) 12% per annum of the Stated Value (as herein defined) of such Series A Preferred Stock before any dividends shall be declared, set apart for or paid upon any other stock ranking on liquidation junior to the Series A Preferred Stock (such stock being referred to hereinafter collectively as "Junior Stock") in any year or (ii) to the extent that a dividend is paid on the Common Stock before any dividends are declared, set apart for or paid upon the Series A Preferred Stock, the amount such holders would have received had such holder converted his or its Series A Preferred Stock into Common Stock immediately prior to the record date for such dividend. All dividends declared upon the Series A Preferred Stock shall be declared pro rata per share and compounded quarterly. For purposes hereof, the term "Stated Value" shall mean (i) \$10.00 per share with respect to the Series A Preferred Stock, the Series B Preferred Stock or the Series C Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, stock distribution or combination of such Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be; and (ii) \$12.50 per share with respect to the Series D Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, stock distribution or combination of such Series D Preferred Stock. Dividends on the Series A Preferred Stock shall be payable solely in additional shares of Series A Preferred Stock. The Series B Preferred Stock and the Series C Preferred Stock shall not be entitled to receive dividends. After paying dividends on the Series A Preferred Stock as provided herein and subject to the other limitations set forth in this Section 2, the holders of Series D Preferred Stock shall be entitled to receive dividends ratably based on the number of shares of Common Stock held by each (assuming conversion of all such Series D Preferred Stock), payable when, as and if any dividend on Common Stock is declared by the Board of Directors.

(b) Dividends on the Series A Preferred Stock shall be cumulative, whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year, so that if in any fiscal year or years, the dividends in whole or in part are not paid upon the Series A Preferred Stock, unpaid dividends shall accumulate as against the holders of the Junior Stock.

(c) The number of shares of Series A Preferred Stock to be issued in payment of the dividend with respect to each outstanding share of Series A Preferred Stock shall be

determined by dividing the amount of the dividend per share that would have been payable had such dividend been paid in cash by the Stated Value. To the extent that any such dividend would result in the issuance of a fractional share of Series A Preferred Stock (which shall be determined with respect to the aggregate number of shares of Series A Preferred Stock held of record by each holder) then the amount of such fraction multiplied by the Stated Value shall be paid in cash (unless there are no legally available funds with which to make such cash payment, in which event such cash payment shall be made as soon as possible).

(d) For so long as the Series A Preferred Stock remains outstanding, without the consent of the holders of a majority of the shares of Series A Preferred Stock, the Corporation shall not pay any dividend upon the Junior Stock, whether in cash or other property (other than shares of Junior Stock), or purchase, redeem or otherwise acquire any such Junior Stock unless, in addition to the payment of the dividend to the holders of the Series A Preferred Stock as described above, the Corporation has redeemed all shares of Series A Preferred Stock which it would theretofore have been required to redeem under Section 8 hereof. Notwithstanding the provisions of this Section 2(d), without declaring or paying dividends on the Series A Preferred Stock, the Corporation may, subject to applicable law, repurchase or redeem shares of capital stock of the Corporation from current or former officers or employees of the Corporation pursuant to the terms of repurchase or similar agreements in effect from time to time, provided that such agreements have been approved by the Board of Directors and the terms of such agreements provide for a repurchase or redemption price not in excess of the price per share paid by such employee for such share.

SECTION 3. LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any other Preferred Stock of the Corporation ranking on liquidation prior and in preference to the Series A Preferred Stock (such Preferred Stock being referred to hereinafter as "Senior Preferred Stock"), if any, upon such liquidation, dissolution or winding up, but before any payment shall be made to the holders of Junior Stock, an amount in cash equal to the greater of (i) the Stated Value per share plus any dividends thereon accrued but unpaid or (ii) assuming conversion of the Series A Preferred Stock pursuant to Section 5, the amount such holder would have received had such holder converted its Series A Preferred Stock into Common Stock immediately prior to such distribution. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of amounts required to be paid or distributed to holders of Senior Preferred Stock shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock, and any class of stock ranking on liquidation on a parity with the Series A Preferred Stock, shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in 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.

(b) The Series B Preferred Stock shall rank on liquidation on a parity with the Series C Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B Preferred Stock and Series C Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of the Series A Preferred Stock and any other Preferred Stock of the Corporation ranking on liquidation prior and in preference to the Series B Preferred Stock and the Series C Preferred Stock, upon such liquidation, dissolution or winding up, but before any payment shall be made to the holders of any other stock ranking on liquidation junior to the Series B Preferred Stock and the Series C Preferred Stock, an amount in cash equal to the greater of (i) the Stated Value per share or (ii) assuming conversion of the Series B Preferred Stock or the Series C Preferred Stock, as the case may be, pursuant to Section 5, the amount such holder would have received had such holder converted its Series B Preferred Stock or Series C Preferred Stock into Common Stock immediately prior to such distribution. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of amounts required to be paid or distributed to holders of Series A Preferred Stock and Senior Preferred Stock shall be insufficient to pay the holders of shares of Series B Preferred Stock or the Series C Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series B Preferred Stock and the holders of shares of Series C Preferred Stock, and any class of stock ranking on liquidation on a parity with the Series B Preferred Stock and the Series C Preferred Stock, shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in 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.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series D Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and any other Preferred Stock of the Corporation ranking on liquidation prior and in preference to the Series D Preferred Stock, upon such liquidation, dissolution or winding up, but before any payment shall be made to the holders of any other stock ranking on liquidation junior to the Series D Preferred Stock, an amount in cash equal to the greater of (i) the Stated Value per share or (ii) assuming conversion of the Series D Preferred Stock pursuant to Section 5, the amount such holder would have received had such holder converted its Series D Preferred Stock immediately prior to such distribution. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of amounts required to be paid or distributed to holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Senior Preferred Stock shall be insufficient to pay the holders of shares of Series D Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series D Preferred Stock, and any class of stock ranking on liquidation on a parity with the Series D Preferred Stock, shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in 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.

(d) After the payment of all preferential amounts required to be paid to the holders of the Series A Preferred Stock, any other Senior Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and any other series of Preferred Stock upon the dissolution, liquidation or winding up of the Corporation, the holders of shares of Common Stock then outstanding shall be entitled to receive the remaining assets and funds of the Corporation available for distribution to its stockholders.

(e) The merger or consolidation of the Corporation into or with another corporation, the merger or consolidation of any other corporation into or with the Corporation, or the sale, conveyance, mortgage, pledge or lease of all or substantially all the assets of the Corporation shall not be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Section 3.

SECTION 4. VOTING.

(a) Except as provided in Section 4(g), each issued and outstanding share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each such share of Preferred Stock is convertible (as adjusted from time to time pursuant to Section 5 hereof), at each meeting of stockholders of the Corporation (or pursuant to any action by written consent) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of this Section 4 or by the provisions establishing any other series of Preferred Stock, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) (i) As provided in and subject to the terms of this Section 4(b), the holders of Series A Preferred Stock shall have the exclusive right, voting separately as a class, to elect up to three directors (herein referred to as the "Series A Directors").

(ii) In addition to the rights of election provided in Section 4(b)(iii), so long as Warburg, Pincus Equity Partners, L.P., a Delaware limited partnership ("Warburg") and its Affiliates (as herein defined) beneficially own shares of Series A Preferred Stock comprising at least fifteen percent (15%) of the outstanding Common Stock (assuming conversion of all Preferred Stock), Warburg and its Affiliates shall have the exclusive right to elect two Series A Directors. In the event Warburg and its Affiliates beneficially own shares of Series A Preferred Stock comprising at least five percent (5%) but less than fifteen percent (15%) of the outstanding Common Stock (assuming conversion of all Preferred Stock), then Warburg and its Affiliates shall have the exclusive right to elect one Series A Director. In the event Warburg and its Affiliates beneficially own shares of Series A Preferred Stock comprising less than five percent (5%) of the outstanding Common Stock (assuming conversion of all Preferred Stock), then Warburg and its Affiliates shall have no right to elect a Series A Director. For purposes hereof, the term "Affiliate" with respect to any given person shall mean persons controlling, controlled by or under common control with the given person

(iii) In addition to the rights of election provided in Section 4(b)(ii), so long as Prudential Securities Group, Inc., a Delaware corporation ("PSGI"), and its Affiliates and Transferees (as herein defined) own shares of Series A Preferred Stock comprising, in the aggregate, at least five percent (5%) of the outstanding Common Stock (assuming conversion of all Preferred Stock), PSGI or its Affiliates or Transferees, as the case may be, shall have the exclusive right to elect one Series A Director. In the event PSGI and its Affiliates and Transferees beneficially own shares of Series A Preferred Stock comprising, in the aggregate, less than five percent (5%) of the outstanding Common Stock (assuming conversion of all Preferred Stock), then PSGI and its Affiliates and Transferees shall have no right to elect a Series A Director. For purposes of this Section 4(b)(iii) "Transferees" shall mean the transferees of Series A Preferred Stock pursuant to Section 6.9 of that certain Securities Purchase Agreement, dated as of May 5, 2000, by and among the Corporation, QuadraMed Corporation, QuadraMed Operating Corporation and the investors named therein.

(iv) All Series A Directors provided pursuant to Sections 4(b)(ii) and 4(b)(iii) shall be elected by the affirmative vote of the holders of record of a majority of the outstanding shares of Series A Preferred Stock either at meetings of stockholders at which directors are elected, a special meeting of holders of Series A Preferred Stock or by written consent without a meeting in accordance with the General Corporation Law of Delaware. Each Series A Director so elected shall serve for a term of one year and until his successor is elected and qualified. Any vacancy in the position of a Series A Director may be filled only by the holders of the Series A Preferred Stock. Each Series A Director may, during his or her term of office, be removed at any time, with or without cause, by and only by the affirmative vote, at a special meeting of holders of Series A Preferred Stock called for such purpose, or the written consent, of the holders of record of a majority of the outstanding shares of Series A Preferred Stock. Any vacancy created by such removal may also be filled at such meeting or by such consent.

(c) [Intentionally omitted.]

(d) So long as Warburg and its Affiliates beneficially own shares of Series A Preferred Stock comprising at least ten percent (10%) of the outstanding Common Stock (assuming conversion of all Preferred Stock), in addition to any other rights provided by law, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock:

(i) amend or repeal any provision of the Corporation's Certificate of Incorporation or By-Laws in a manner adversely affecting the holders of Series A Preferred Stock;

(ii) authorize or effect the payment of dividends or the redemption or repurchase of any capital stock of the Corporation or rights to acquire capital stock of the Corporation (other than the repurchase of stock from employees of the Corporation or its subsidiaries pursuant to repurchase rights under vesting provisions related to the length of period of employment of such employees at purchase prices initially paid by such employees for such shares);

(iii) enter into any transaction, other than employment agreements on a basis consistent with past practice, with any officer, director or beneficial owner of five percent (5%) or more of the Common Stock or any Affiliate of any of the foregoing;

(iv) amend, alter or repeal the preferences, special rights or other powers of the Series A Preferred Stock so as to affect adversely the Series A Preferred Stock. For this purpose, the authorization or issuance of any series of Preferred Stock with preference or priority over, or being on a parity with the Series A Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall be deemed so to affect adversely the Series A Preferred Stock;

(v) distribute money or other property in respect of any stock other than Series A Preferred Stock; issue debt that is convertible into stock of the Corporation; or issue stock that enjoys a priority as to dividends or on liquidation;

(vi) authorize or effect the issuance by the Corporation of any shares of capital stock or rights to acquire capital stock other than (x) pursuant to options, warrants, conversion or subscription rights in existence on the initial date of issuance of the Series A Preferred Stock or (y) pursuant to stock option, stock bonus or other employee stock plans for the benefit of the employees of the Corporation or its subsidiaries in existence as of such date or thereafter approved with the consent of the holders of a majority of the then outstanding shares of Series A Preferred Stock;

(vii) authorize or effect (a) any sale, lease, transfer or other disposition of all or substantially all the assets of the Corporation; (b) any merger or consolidation or other reorganization of the Corporation with or into another corporation, (c) the acquisition by the Corporation of another corporation by means of a purchase of all or substantially all of the capital stock or assets of such corporation, or (d) a liquidation, winding up, dissolution or adoption of any plan for the same; or

(viii) authorize or effect the election or removal of any officer of the Corporation.

(c) [Intentionally omitted.]

(f) [Intentionally omitted.]

(g) Except as provided by law, (i) the holders of Series C Preferred Stock shall have no voting rights and (ii) any reference in this Section 4 to voting rights of holders of Preferred Stock, to holders of Preferred Stock voting separately as a class, or to holders of Preferred Stock voting together with the holders of Common Stock as a single class shall be construed as excluding the holders of the shares of Series C Preferred Stock from any such vote.

SECTION 5. OPTIONAL CONVERSION.

Each share of Preferred Stock may be converted at any time, at the option of the holder thereof, into the number of fully-paid and nonassessable shares of Common Stock

obtained by dividing the Stated Value by the Conversion Price then in effect (the "Conversion Rate"), provided, however, that on any redemption of any Preferred Stock or any liquidation of the Corporation, the right of conversion shall terminate at the close of business on the full business day next preceding the date fixed for such redemption or for the payment of any amounts distributable on liquidation to the holders of such Preferred Stock.

(a) The initial conversion price, subject to adjustment as provided herein, is equal to \$10.00 with respect to the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and \$12.50 with respect to the Series D Preferred Stock (the "Conversion Price"). The initial Conversion Rate for the Preferred Stock shall be one share of Common Stock for each one share of Preferred Stock surrendered for conversion. The applicable Conversion Rate and Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(b) The Corporation shall not issue fractions of shares of Commons Stock upon conversion of Preferred Stock or scrip in lieu thereof. If any fraction of a share of Common Stock would, except for the provisions of this Section 5(b), be issuable upon conversion of Preferred Stock, the Corporation shall in lieu thereof pay to the person entitled thereto an amount in cash equal to the current value of such fraction, calculated to the nearest one-hundredth (1/100) of a share, to be computed (i) if the Common Stock is listed on any national securities exchange, on the basis of the latest sales price of the Common Stock on such exchange (or the quoted closing bid price if there shall have been no sales) on the date of conversion, or (ii) if the Common Stock shall not be listed, on the basis of the mean between the closing bid and asked prices for the Common Stock on the date of conversion as reported by NASDAQ, or its successor, and if there are not such closing bid and asked prices, on the basis of the fair market value per share as determined by the Board of Directors.

(c) Whenever the Conversion Rate and Conversion Price shall be adjusted as provided in Section 6 hereof, the Corporation shall forthwith file at each office designated for the conversion of Preferred Stock, a statement, signed by the Chairman of the Board, the President, any Vice President or Treasurer of the Corporation, showing in reasonable detail the facts requiring such adjustment and the Conversion Rate that will be effective after such adjustment. The Corporation shall also cause a notice setting forth any such adjustments to be sent by mail, first class, postage prepaid, to each record holder of Preferred Stock at his or its address appearing on the stock register. If such notice relates to an adjustment resulting from an event referred to in Section 6(g) hereof, such notice shall be included as part of the notice required to be mailed and published under the provisions of Section 6(g) hereof.

(d) In order to exercise the conversion privilege, the holder of Preferred Stock to be converted shall surrender his or its certificate or certificates therefore to the principal office of the transfer agent for the Preferred Stock (or if no transfer agent be at the time appointed, then the Corporation at its principal office), and shall give written notice to the Corporation at such office that the holder elects to convert the Preferred Stock represented by such certificates, or any number thereof. Such notice shall also state the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, subject to any restrictions on transfer relating to shares of the Preferred Stock or shares of Common Stock upon conversion thereof. If so required by the Corporation, certificates

surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly authorized in writing. The date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of the certificates and notice shall be the conversion date. As soon as practicable after receipt of such notice and the surrender of the certificate or certificates for Preferred Stock as aforesaid, the Corporation shall cause to be issued and delivered at such office to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, cash as provided in Section 5(b) hereof in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion and, if less than all shares of Preferred Stock represented by the certificate or certificates so surrendered are being converted, a residual certificate or certificates representing the shares of Preferred Stock not converted.

(c) The Corporation shall at all times when the Preferred Stock shall be outstanding reserve and keep available out of its authorized but unissued stock, for the purposes of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. Before taking any action that would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action that may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully-paid and nonassessable shares of such Common Stock at such Common Stock at such adjusted conversion price.

(f) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor and, with respect to shares of Preferred Stock that surrendered for conversion, payment of any accrued and unpaid dividends thereon. Any shares of Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Preferred Stock accordingly.

SECTION 6. ANTI-DILUTION PROVISIONS.

(a) In order to prevent dilution of the right granted hereunder, the Conversion Price shall be subject to adjustment from time to time in accordance with this Section 6(a). For purposes of this Section 6, the term "Number of Common Shares Deemed Outstanding" at any given time shall mean the sum of (x) the number of shares of Common Stock outstanding at such time, (y) the number of shares of Common Stock issuable assuming conversion at such time of the Preferred Stock and (z) the number of shares of the Common Stock deemed to be outstanding under paragraphs 6(b)(1) to (9), inclusive, at such time.

(b) Except as provided in Section 6(c) through 6(f) hereof, if and whenever on or after the date of initial issuance of the Series A Preferred Stock (the "Initial Issuance Date"), the Corporation shall issue or sell, or shall in accordance with paragraphs 6(b)(1) to (9),

inclusive, be deemed to have issued or sold any shares of its Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then forthwith upon such issue or sale (the "Triggering Transaction"), the Conversion Price of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (but not the Series D Preferred Stock) shall, subject to paragraphs (1) to (9) of this Section 6(b), be reduced to the Conversion Price (calculated to the nearest tenth of a cent) determined by dividing:

(i) an amount equal to the sum of (x) the product derived by multiplying the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction by the Conversion Price then in effect, plus (y) the consideration, if any, received by the Corporation upon consummation of such Triggering Transaction, by

(ii) an amount equal to the sum of (x) the Number of Common Shares Deemed Outstanding immediately prior to such Triggering Transaction plus (y) the number of shares of Common Stock issued (or deemed to be issued in accordance with paragraphs 6(b)(1) to (9)) in connection with the Triggering Transaction.

For purposes of determining the adjusted Conversion Price under this Section 6(b), the following paragraphs (1) to (9), inclusive, shall be applicable:

(1) In case the Corporation at any time shall in any manner grant (whether directly or by assumption in a merger or otherwise) any rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or other securities convertible into or exchangeable for Common Stock (such rights or options being herein called "Options" and such convertible or exchangeable stock or securities being herein called "Convertible Securities"), whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable and the price per share for which the Common Stock is issuable upon exercise, conversion or exchange (determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Option, then the total maximum amount of Common Stock issuable upon the exercise of such Options or in the case of Options for Convertible Securities, upon the conversion or exchange of such Convertible Securities shall (as of the date of granting of such Options) be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such shares of Common Stock or such Convertible Securities upon the exercise of such Options, except as otherwise provided in paragraph (3) below.

(2) In case the Corporation at any time shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities,

whether or not the rights to exchange or convert thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (x) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall (as of the date of the issue or sale of such Convertible Securities) be deemed to be outstanding and to have been issued and sold by the Corporation for such price per share. No adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon exercise of the rights to exchange or convert under such Convertible Securities, except as otherwise provide in paragraph (3) below.

(3) If the purchase price provided for in any Options referred to in paragraph (1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in paragraphs (1) or (2), or the rate at which any Convertible Securities referred to in paragraphs (1) or (2) are convertible into or exchangeable for Common Stock shall change at any time (other than under or by reason of provisions designed to protect against dilution of the type set forth in Sections 6(b) or 6(d)), the Conversion Price in effect at the time of such change shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding providing for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold. If the purchase price provided for in any Option referred to in paragraph (1) or the rate at which any Convertible Securities referred to in paragraphs (1) or (2) are convertible into or exchangeable for Common Stock, shall be reduced at any time under or by reason of provisions with respect thereto designed to protect against dilution, then in case of the delivery of Common Stock upon the exercise of any such Option or upon conversion or exchange of any such Convertible Security, the Conversion Price then in effect hereunder shall forthwith be adjusted to such respective amount as would have been obtained had such Option or Convertible Security never been issued as to such Common Stock and had adjustments been made upon the issuance of the shares of Common Stock delivered as aforesaid, but only if as a result of such adjustment the Conversion Price then in effect hereunder is hereby reduced.

(4) On the expiration of any Option or the termination of any right to convert to exchange any Convertible Securities, the Conversion Price then in effect hereunder shall forthwith be increased to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued.

(5) In case any Options shall be issued in connection with the issue or sale of other securities or the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration.

(6) In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold or deemed to have been issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration as determined in good faith by the Board of Directors. In case any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the nonsurviving corporation as shall be attributable to such Common Stock, Options or Convertible Securities, as the case may be.

(7) 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 shares so owned or held shall be considered an issue or sale of Common Stock for the purpose of this Section 6(b).

(8) In case the Corporation shall declare a dividend or make any other distribution upon the stock of the Corporation payable in Options or Convertible Securities, then in such case any Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

(9) For purposes of this Section 6(b), in case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (x) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities, or (y) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right or subscription or purchase, as the case may be.

(c) In the event the Corporation shall declare a dividend upon the Common Stock (other than a dividend payable in Common Stock) payable otherwise than out of earnings or earned surplus, determined in accordance with generally accepted accounting principles, including the making of appropriate deductions for minority interests, if any, in subsidiaries (herein referred to as "Liquidating Dividends"), then, as soon as possible after the conversion of any shares of Preferred Stock, the Corporation shall pay to the person converting such shares of Preferred Stock an amount equal to the aggregate value at the time of such exercise of all Liquidating Dividends (including but not limited to the Common Stock which would have been issued at the time of such earlier exercise and all other securities which would have been issued with respect to such Common Stock by reason of stock splits, stock dividends, mergers or reorganizations, or for any other reason). For the purposes of this Section 6(c), a dividend other than in cash shall be considered payable out of earnings or earned surplus only to the extent that such earnings or earned surplus are charged an amount equal to the fair value of such dividend as determined in good faith by the Board of Directors.

(d) In case the Corporation shall at any time (i) subdivide the outstanding Common Stock or (ii) issue a dividend on its outstanding Common Stock payable in shares of Common Stock, the number of shares of Common Stock issuable upon conversion of the Preferred Stock shall be proportionately increased by the same ratio as the subdivision or dividend (with appropriate adjustments to the Conversion Price in effect immediately prior to such subdivision or dividend). In case the Corporation shall at any time combine its outstanding Common Stock, the number of shares issuable upon conversion of the Preferred Stock immediately prior to such combination shall be proportionately decreased by the same ratio as the combination (with appropriate adjustments to the Conversion Price in effect immediately prior to such combination).

(e) If any capital reorganization or reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with another corporation, or the sale of all or substantially all of its assets to another corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities, cash or other property with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision shall be made whereby the holders of the Preferred Stock shall have the right to acquire and receive upon conversion of the Preferred Stock, which right shall be, in the case of any series of Preferred Stock, prior to the rights of the holders of any other stock of the Corporation ranking on liquidation junior to such series (but after and subject to the rights of holders of any Preferred Stock of the Corporation ranking on liquidation prior and in preference to such series, if any), such shares of stock, securities, cash or other property issuable or payable (as part of the reorganization, reclassification, consolidation, merger or sale) with respect to or in exchange for such number of outstanding shares of Common Stock as would have been received upon conversion of the Preferred Stock at the Conversion Price then in effect. The Corporation will not effect any such consolidation, merger or sale, unless prior to the consummation thereof the successor corporation (if other than the Corporation) resulting from such consolidation or merger or the corporation purchasing such assets shall assume by written instrument mailed or delivered to the holders of the Preferred Stock at the last address of each such holder appearing on the books of the Corporation, the obligation to deliver to each such holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holder may be entitled to purchase. If a purchase, tender or exchange offer is made to and accepted by the holders of more than 50% of the outstanding shares of Common Stock, the Corporation shall not effect any consolidation, merger or sale with the person having made such offer or with any Affiliate of such person, unless prior to the consummation of such consolidation, merger or sale the holders of the Preferred Stock shall have been given a reasonable opportunity to then elect to receive upon conversion of the Preferred Stock either the stock, securities or assets then issuable with respect to the Common Stock or the stock, securities or assets, or the equivalent, issued to previous holders of the Common Stock in accordance with such offer.

(f) The provisions of this Section 6 shall not apply to any Common Stock issued, issuable or deemed outstanding under paragraphs (6)(b)(1) to (9) inclusive: (i) to any person pursuant to any stock option, stock purchase or similar plan or arrangement for the benefit of employees of the Corporation or its subsidiaries in effect on the Initial Issuance Date or thereafter adopted by the Board of Directors and a majority of the Series A Directors, (ii) pursuant to options, warrants and conversion rights in existence on the Initial Issuance Date,

or (iii) on conversion of the Preferred Stock or the sale of any additional shares of Preferred Stock.

(g) In the event that:

(1) the Corporation shall declare any cash dividend upon its Common Stock, or

(2) the Corporation shall declare any dividend upon its Common Stock payable in stock or made any special dividend or other distribution to the holders of its Common Stock, or

(3) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights, or

(4) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, including any subdivision or combination of its outstanding shares of Common Stock, or consolidation or merger of the Corporation with, or sale of all or substantially all of its assets to, another corporation, or

(5) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in connection with such event, the Corporation shall give to the holders of the Preferred Stock:

- i) at least twenty (20) days prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up; and
- ii) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least twenty (20) days prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (i) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing clause (ii) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be. Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of the Preferred Stock at the address of each such holder as shown on the books of the Corporation.