

UNIT CORP

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On April 19, 2001, the Company's Board of Directors approved certain amendments to the Company's Amended and Restated Certificate of Incorporation, By-laws, the Rights Agreement, dated May 19, 1995, between the Company and Chemical Bank, Rights Agent, as well as the form of Indemnification Agreement entered into between the Company and its executive officers and directors. Copies of these various documents and agreements, as amended, are attached as exhibits hereto and incorporated herein by reference.

EM 7. FINANCIAL STATEMENTS AND EXHIBITS.

(c) The Company files the following exhibits as part of this report:

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Correction of the Amended and Restated Certificate of Incorporation of Unit Corporation
3.2	By-laws of Unit Corporation
4	First Amendment of Rights Agreement dated May 19, 1995, between the Company and Mellon Shareholder Services LLC, as Rights Agent
10	Form of Indemnification Agreement entered into between the Company and its executive officers and directors

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: August 23, 2001

UNIT CORPORATION

By: /s/ John G. Nikkel

John G. Nikkel
President

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OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
UNIT CORPORATION

Unit Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), **DOES HEREBY CERTIFY:**

The Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on May 16, 2000 and said Amended and Restated Certificate of Incorporation requires correction as permitted by Section (f) of Section 103 of the General Corporation Law of the State of Delaware.

The inaccuracy or defect of said Amended and Restated Certificate of Incorporation to be corrected is that the terms of Series A Participating Cumulative Preferred Stock of the Corporation, as set forth in the Certificate of Designation of the Corporation as filed with the Secretary of State of the State of Delaware on September 16, 1999, were inadvertently omitted from said Amended and Restated Certificate of Incorporation and should be included therein.

Said Amended and Restated Certificate of Incorporation is corrected by inserting the following at the end of Article Four and attaching thereto Annex 1 attached hereto:

Pursuant to authority conferred by this Article Four upon the Board of Directors of the Corporation, the Board of Directors created a series of 250,000 shares of Preferred Stock designated as Series A Participating Cumulative Preferred Stock by filing a Certificate of Designation of the Corporation with the Secretary of State of the State of Delaware on September 16, 1999 and the voting powers, designations, preferences and relative, participating and other special rights, and the qualifications and restrictions thereof, of the Series A Participating Cumulative Preferred Stock of the Corporation are as set forth in Annex 1 hereto and are incorporated herein by reference.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be executed by its duly authorized officer this 19th day of April, 2001.

UNIT CORPORATION

By: _____ Name: John G. Nikkel
Title: President

SECTION 1. Designation and Number of Shares. The shares of such series shall be designated as "Series A Participating Cumulative Preferred Stock" (the "Series A Preferred Stock"), par value \$1.00 per share. The number of shares constituting the Series A Preferred Stock shall be 250,000; provided, however, that, if more than a total of 250,000 shares of Series A Preferred Stock shall be issuable upon the exercise of Rights (the "Rights") issued pursuant to the Rights Agreement entered into as of May 19, 1995, between the Corporation and Chemical Bank, a New York banking corporation, as Rights Agent (the "Rights Agreement"), the Board of Directors of the Corporation, pursuant to Section 151(g) of the General Corporation Law of the State of Delaware, shall direct by resolution or resolutions that a certificate be properly executed, acknowledged, filed and recorded, in accordance with the provisions of Section 103 thereof, providing for the total number of shares of Series A Preferred Stock authorized to be issued to be increased (to the extent that the Certificate of Incorporation then permits) to the largest number of whole shares (rounded up to the nearest whole number) issuable upon exercise of such Rights.

SECTION 2. Dividends or Distributions. (a) Subject to the prior and superior rights of the holders of shares of any other class of Preferred Stock or other class of capital stock of the Corporation ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, the holders of shares of the Series A Preferred Stock shall be entitled to receive, when and if declared by the Board of Directors, out of the assets of the Corporation legally available therefor, (1) quarterly dividends payable in cash on the last day of each fiscal quarter in each year, or such other dates as the Board of Directors of the Corporation shall approve (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 a fraction of a share of Series A Preferred Stock, in an amount of \$1.00 per whole share (rounded to the nearest cent) less the amount of all cash dividends declared on the Series A Preferred Stock pursuant to the following clause (2) since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock (the total of which shall not, in any event, be less than zero) and (2) dividends payable in cash on the payment date for each cash dividend declared on the Common Stock in an amount per whole share (rounded to the nearest cent) equal to the Formula Number (as hereinafter defined) then in effect times the cash dividends then to be paid on each share of Common Stock. In addition, if the Corporation shall pay any dividend or make any distribution on the Common Stock payable in assets, securities or other forms of noncash consideration (other than dividends or distributions solely in shares of Common Stock), then in each such case, the Corporation shall simultaneously pay or make on each outstanding whole share of Series A Preferred Stock a dividend or distribution in like kind equal to the Formula Number then in effect times such dividend or distribution on each share of the Common Stock. As used herein, the "Formula Number" shall be 100; provided, however, that, if at any time after May 19, 1995 the Corporation shall (i) declare or pay any dividend on the Common Stock payable in shares of Common Stock or make any distribution on the Common Stock in shares of Common Stock, (ii) subdivide (by a stock split or otherwise) the outstanding shares of Common Stock into a larger number of shares of Common Stock or (iii) combine (by a reverse stock split or otherwise) the outstanding shares of Common Stock into a smaller number of shares of Common Stock, then in each such event the Formula Number shall be adjusted to a number determined by multiplying the Formula Number in effect immediately prior to such event 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 are outstanding immediately prior to such event (and rounding the result to the nearest whole number); and provided further, that, if at any time after May 19, 1995, the Corporation shall issue any shares of its capital stock in a merger, reclassification, or change of the outstanding shares of Common Stock, then in each such event the Formula Number shall be appropriately adjusted to reflect such merger, reclassification or change so that each share of Preferred Stock continues to be the economic equivalent of a Formula Number of shares of Common Stock prior to such merger, reclassification or change.

(b) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in Section 2(a) immediately prior to or at the same time it declares a dividend or

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it, in the event no dividend or distribution (other than a dividend or distribution in shares of Common Stock) 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, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on each subsequent Quarterly Dividend Payment Date. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a dividend or distribution declared thereon, which record date shall be the same as the record date for any corresponding dividend or distribution on the Common Stock.

(c) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from and after the next Quarterly Dividend Payment Date next preceding the date of original issue of such shares of Series A Preferred Stock. Provided, however, that dividends on such shares which are originally issued after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and on or prior to the next succeeding Quarterly Dividend Payment Date shall begin to accrue and be cumulative from and after such Quarterly Dividend Payment Date. Notwithstanding the foregoing, dividends on shares of Series A Preferred Stock which are originally issued prior to the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend on the next Quarterly Dividend Payment Date shall be calculated as if cumulative from and after the last day of the fiscal quarter next preceding the date of original issuance of such shares. Accrued but unpaid dividends shall not bear interest. Dividends paid on 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.

(d) So long as any shares of the Series A Preferred Stock are outstanding, no dividends or other distributions shall be declared, paid or distributed, or set aside for payment or distribution, on the Common Stock unless, in each case, the dividend required by this Section 2 to be declared on the Series A Preferred Stock shall have been declared.

(e) The holders of the shares of Series A Preferred Stock shall not be entitled to receive any dividends or other distributions except as provided herein.

SECTION 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(a) Each holder of Series A Preferred Stock shall be entitled to a number of votes equal to the Formula Number then in effect, for each share of Series A Preferred Stock held of record on each matter on which holders of the Common Stock or stockholders generally are entitled to vote, multiplied by the maximum number of votes per share which any holder of Common Stock or stockholders generally then have with respect to such matter (assuming any holding period or other requirement to vote a greater number of shares is satisfied).

(b) Except as otherwise provided herein or by applicable law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one class for the election of directors of the Corporation and on all other matters submitted to a vote of stockholders of the Corporation.

(c) Except as provided herein, in Section 11 or by applicable law, holders of Series A Preferred Stock shall have 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 authorizing or taking any corporate action.

SECTION 4. Certain Restrictions. (a) Whenever quarterly dividends or other dividends or distributions payable on shares of Series A Preferred Stock as provided in Section 2 are in arrears, thereafter

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tstanding 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 (either as to dividends or upon dissolution, liquidation or winding up) to 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 subsidiary of 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.

SECTION 5. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, no distribution shall be made (1) 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 an amount equal to the accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, plus an amount equal to the greater of (x) \$1.00 per whole share or (y) an aggregate amount per share equal to the Formula Number then in effect times the aggregate amount to be distributed per share to holders of Common Stock or (2) to the holders 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.

SECTION 6. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock, securities, cash or any other property, then in any such case the then outstanding shares of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share equal to the Formula Number then in effect times the aggregate amount of stock, securities, cash or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is exchanged or changed. In the event both this Section 6 and Section 2 appear to apply to the same transaction, this Section 6 will control.

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redemption by the Corporation or at the option of any holder of Series A Preferred Stock; provided, however, that the Corporation may purchase or otherwise acquire outstanding shares of Series A Preferred Stock in the open market or by offer to any holders of shares of Series A Preferred Stock.

(b) The shares of Series A Preferred Stock shall not be subject to or entitled to the operation of a retirement or sinking fund.

SECTION 8. Ranking. The Series A Preferred Stock shall rank junior to all other series of Preferred Stock of the Corporation, unless the Board of Directors shall specifically determine otherwise in fixing the powers, preferences and relative participating, optional and other special rights of the shares of such series and the qualifications, limitations and restrictions thereof.

SECTION 9. Fractional Shares. The Series A Preferred Stock shall be issuable upon exercise of the Rights pursuant to the Rights Agreement in whole shares or in any fraction of a share that is one one-hundredth (1/100th) of a share or any integral multiple of such fraction which shall entitle the holder, in proportion to such holder's fractional shares, to receive dividends, exercise voting rights, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock. In lieu of fractional shares, the Corporation, prior to the first issuance of a share or a fraction of a share of Series A Preferred Stock, may elect (1) to make a cash payment as provided in the Rights Agreement for fractions of a share other than one-hundredth (1/100th) of a share or any integral multiple thereof or (2) to issue depository receipts evidencing such authorized fraction of a share of Series A Preferred Stock pursuant to an appropriate agreement between the Corporation and a depository selected by the Corporation; provided that such agreement shall provide that the holders of such depository receipts shall have all the rights, privileges and preferences to which they are entitled as holders of the Series A Preferred Stock.

SECTION 10. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall, upon their cancellation, become authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board of Directors pursuant to the provisions of Section 2 of Article IV of the Certificate of Incorporation.

SECTION 11. Amendment. None of the powers, preferences and relative, participating, optional and other special rights of the Series A Preferred Stock as provided herein or in the Certificate of Incorporation shall be amended in any manner which would alter or change the powers, preferences, rights or privileges of the holders of Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least 66-2/3% of the outstanding shares of Series A Preferred Stock voting as a separate class; provided, however, that no such amendment approved by the holders of at least 66-2/3% of the outstanding shares of Series A Preferred Stock shall be deemed to apply to the powers, preferences, rights or privileges of a holder of shares of Series A Preferred Stock originally issued upon exercise of the Rights after the time of such approval without the approval of such holder.

OF

UNIT CORPORATION

a Delaware Corporation

**ARTICLE I
STOCKHOLDERS' MEETINGS**

Section 1. Annual Meeting. The annual meeting of stockholders shall be held at such date and at such hour as may be designated by the Board of Directors. If the date is a legal holiday, then the meeting shall be held on the next succeeding business day. The purpose of the meeting shall be to elect directors. Any business may be transacted at the annual meeting, except as otherwise provided by law or by these By-laws.

Section 2. Special Meeting. A special meeting of stockholders may be called any time by the Board of Directors or by the President. Only such business shall be transacted at a special meeting as may be authorized or indicated in the Notice of such meeting.

Section 3. Place. The annual meeting of stockholders may be held by remote communication or at any place within or without the State of Delaware designated by the Board of Directors. Special meetings of stockholders may be held by remote communication or at any place within or without the State of Delaware designated by the Chairman of the Board, if he shall call the meeting, or by the Board of Directors, if they shall call the meeting. Any meeting may be held by remote communication or at any place within or without the State of Delaware designated in a waiver of notice of meeting signed by all stockholders. Meetings of Stockholders shall be held at the principal office of the corporation unless another place is designated for meetings in the manner provided herein.

Section 4. Notice. Written or printed notice stating the place, day and hour of each meeting of stockholders and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally, in writing or by other lawful means to each stockholder of record entitled to vote at such meeting.

Section 5. Quorum. The holders of at least a majority of the outstanding stock entitled to vote thereat and present in person or by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by the General Corporation Law of the State of Delaware or by the Certificate of Incorporation of the corporation. At all meetings of stockholders for the election of directors a plurality of the votes cast shall be sufficient to elect. All other elections and questions shall, unless otherwise provided by the Certificate of Incorporation, these By-Laws, the rules or regulations of any stock exchange applicable to the corporation, or applicable law or regulation pursuant to any regulation applicable to the corporation or its securities,

resent in person or by proxy and entitled to vote thereon.

Section 6. Proxies. At all meetings of stockholders, a stockholder may vote either in person or by proxy executed in writing by the stockholder or by his duly authorized attorney-in-fact. Such proxies shall be filed with the Secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided to be irrevocable, and in no event shall it remain irrevocable for a period of more than eleven (11) months.

Section 7. Voting of Shares. Each outstanding share of common stock shall be entitled to one vote upon each matter submitted to a vote at a meeting of the stockholders.

Section 8. Officers. The Chairman of the Board shall preside at and the Secretary shall keep the records of each meeting of stockholders, and in the absence of either such officer, some person appointed at the meeting shall perform his duties.

Section 9. List of Stockholders. A complete list of stockholders entitled to vote at each stockholders' meeting, arranged in alphabetical order, with the address of and showing the number of shares held by each, shall be prepared by the Secretary and filed at the registered office of the corporation, and shall be subject to inspection by any stockholder for any purpose germane to the meetings as required by applicable law.

Section 10. Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders. (1) Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this Section 10 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 10.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 10, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation and any such proposed business other than the nominations of persons for election to the Board of Directors must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that

seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposes to nominate for election as a director (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-laws of the corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of capital stock of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (iv) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (B) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the corporation of his or her intention to present a proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such annual meeting. The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the corporation.

this Section 10 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation at an annual meeting is increased and there is no public announcement by the corporation naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 10 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (1) by or at the direction of the Board of Directors or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 10 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 10. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by paragraph (a)(2) of this Section 10 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later than the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General. (1) Only such persons who are nominated in accordance with the procedures set forth in this Section 10 shall be eligible to be elected at an annual or special meeting of stockholders of the corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 10. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (A) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as

Section 10 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (a)(2)(C)(iv) of this Section 10) and (B) if any proposed nomination or business was not made or proposed in compliance with this Section 10, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 10, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(2) For purposes of this Section 10, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 10, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 10. Nothing in this Section 10 shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (B) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the certificate of incorporation.

Section 11. Conduct of Meeting. Meetings of stockholders shall be presided over by the Chairman of the Board or by another chair designated by the Board of Directors. The date and time of meeting and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be determined by the chair of the meeting and announced at the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chair of any meeting of stockholders shall have the exclusive right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chair, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chair of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) invitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized representatives, constituted proxies or such other persons as the chair of the meeting shall determine; (iv) restrictions on entry to the meeting at a time fixed for the commencement thereof, and (v) limitations on the time allotted to

meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 12. Fixing Date for Determination of Stockholders of Record. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of a dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten (10) days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting shall be determined in accordance with Section 13 of this Article I; and (3) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 13. Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Section 13). If no record date has been fixed by the Board of Directors pursuant to the first sentence of this Section 13 or otherwise within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing shall be the date on which the request is received.

ned written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to registered office in Delaware, its principal place of business, or to any officer or agent of the corporation having custody of a book in which proceedings of meetings of stockholders are recorded. Delivery shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors pursuant to the first sentence of this Section, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting if prior action by the Board of Directors is required by law shall be at the close of business on the date on which the Board of Directors adopts a resolution taking such prior action.

Section 14. **Inspectors of Written Consent.** In the event of the delivery, in the manner provided by Section 13 of this Article, to the corporation of written consent or consents to take corporate action and/or any related revocation or revocations, the corporation shall engage independent inspectors of elections for the purpose of performing promptly a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the corporation that the consents delivered to the corporation in accordance with Section 13 of this Article I represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this Section 14 shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

Section 15. **Effectiveness of Written Consent.** Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take corporate action referred to therein unless, within sixty (60) days of the earliest dated written consent received in accordance with Section 13 of this Article I, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the corporation in the manner prescribed in Section 13 of this Article I.

Section 16. **Adjournment of Meeting.** Any meeting of stockholders, annual or special, may be adjourned by the chair of the meeting from time to time to reconvene at the same or some other time, date and place. Notice need not be given of any such adjourned meeting if the time, date and place thereof are announced at the meeting at which the adjournment is taken. If after the adjournment a new record date is fixed for the adjourned meeting or if the adjournment is for more than thirty days, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting.

cheduled annual or special meeting of the stockholders may be postponed, and any previously scheduled annual or special meeting of the stockholders called by the Board of Directors may be canceled, by resolution of the Board upon public notice given prior to the time previously scheduled for such meeting of stockholders.

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number and Term of Office. The business and affairs of the corporation shall be managed and controlled by or under direction of Board of Directors, and subject to the restrictions imposed by Law, by the Certificate of Incorporation, or by these By-Laws, they may exercise all powers of the corporation.

Commencing at the Annual Meeting of Stockholders held in 1987, the Board of Directors shall be divided into three classes, Class I, Class II and Class III, with respect to their terms of office. All classes shall be as nearly equal in number as possible subject to such limitations, when the number of directors is changed, any newly created directorships or any decrease in directorships shall be apportioned among the classes by action of the Board of Directors.

The terms of office of the directors initially classified shall be as follows: that of Class I shall expire at the annual meeting of Stockholders to be held in 1988; that of Class II shall expire at the annual meeting of Stockholders to be held in 1989; that of Class III shall expire at the annual meeting of Stockholders to be held in 1990. At each annual meeting of Stockholders after such initial classification, directors to replace those whose terms expire at such annual meeting shall be elected to hold office until the next succeeding Annual Meeting.

Each director shall hold office for the term of which he is elected and until his successor shall have been elected and qualified.

Any vacancy or newly-created directorship occurring in the Board of Directors may only be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 2. Meeting of Directors. The directors may hold their meetings in any place. The directors may also have an office and keep the books of the corporation, except as otherwise provided by statute, in such place or places as may be determined by the Board of Directors, in or outside the State of Delaware, or outside the State of Delaware as the Board of Directors may from time to time determine.

Section 3. First Meeting. Each newly elected Board of Directors may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after a meeting held at the same place as the annual meeting of the stockholders, and no notice of such meeting shall be necessary.

rectors in each year at which a quorum shall be present, held next after the annual meeting of stockholders, the Board of Directors shall proceed to the election of the officers of the corporation.

Section 5. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place within or without the State of Delaware as shall be designated, from time to time, by resolution of the Board of Directors. Notice of such regular meetings shall not be required.

Such meetings may be conducted by use of long distance conference calls.

Section 6. Special Meetings. Special meetings of the Board of Directors shall be held at any time or place within or without the State of Delaware whenever called by the Chairman of the Board by a majority of the directors at the time being in office.

Section 7. Notice. The Secretary shall give notice of each special meeting in person, or by mail, telegraph or other lawful means at least five (5) days before the meeting, to each director. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

At any such meeting at which every director shall be present, even though without any notice, any business may be transacted.

Section 8. Quorum. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors, there be less than a quorum present, a majority of those present or any director solely present may adjourn the meeting from time to time without further notice. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall be the act of the Board of Directors, unless the act of a greater number is required by the Certificate of Incorporation or by these By-laws; however, if the Board of Directors consists of only three members, all three members of the Board shall constitute a quorum.

Section 9. Order of Business. At meetings of the Board of Directors, business shall be transacted in such order as from time to time the Board may determine.

At all meetings of the Board of Directors, the Chairman of the Board shall preside as Chairman, and in the absence of the Chairman of the Board, a Chairman shall be chosen by the Board from among the directors present.

The Secretary of the Company shall act as Secretary of all meetings of the Board of Directors, but in the absence of the Secretary, the presiding officer may appoint any

member of the Board to act as Secretary of that particular meeting.

Section 10. Compensation. Directors as such shall not receive any fixed salary for their service, but by resolution of the Board a fixed sum and expense of attendance, if any, may be allowed for attendance at such regular or special meetings of the Board; provided that nothing contained herein shall be construed to preclude any director from serving the corporation in any other capacity or receiving compensation therefor.

Section 11. Presumption of Assent. A director of the corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right of dissent shall not apply to a director who voted in favor of such action.

ARTICLE III OFFICERS

Section 1. Number, Titles and Term of Office. The officers of the corporation shall be a Chairman of the Board, a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may from time to time elect or appoint. Each officer shall hold office until his successor shall have been duly elected and qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. One person may hold more than one office, except that the President shall not hold the office of Secretary. No officer of the officers need be a director.

Section 2. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 3. Vacancies. A vacancy in the office of any officer may be filled by vote of a majority of the directors for the unexpired portion of the term.

Section 4. Powers and Duties of the Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders and of the Board of Directors. During the absence or disability of the President, the Chairman of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board of Directors shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-laws or by the Board of Directors.

ject to the control of the Board of Directors have general supervision of the business of the corporation and shall see that orders and resolutions of the Board of Directors are carried into effect. The President, subject to a contrary designation by the Board of Directors, shall be the Chief Executive Officer of the corporation. The President shall execute all bonds, mortgages, contracts and other instruments of the corporation requiring a seal, under the seal of the corporation, except where required by law to be otherwise signed and executed and except that the other officers of the corporation may sign and execute documents when so authorized by these By-laws, the Board of Directors or the President. In the absence or disability of the Chairman of the Board of Directors, the President shall preside at all meetings of the stockholders and the Board of Directors. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-laws or by the Board of Directors.

Section 6. Vice Presidents. Each Vice President shall have such powers and duties as may be assigned to him by the Board of Directors and shall exercise the powers of the President during that officer's absence or inability to act. Any action taken by a Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken.

Section 7. Treasurer. The Treasurer shall have custody of all the moneys and securities of the corporation that come into his hands. When necessary or proper, he may endorse, on behalf of the corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board of Directors; he may sign all received vouchers for payments made to the corporation, either alone or jointly with such other officer as is designated by the Board of Directors. Whenever required by the Board of Directors, he shall render a statement of his cash account; he shall enter or cause to be entered regularly in the books of the corporation to be kept by him for that purpose, full and accurate accounts of all moneys received and paid out on account of the corporation; he shall perform all acts incident to the position of Treasurer subject to the control of the Board of Directors; and he shall, if required by the Board of Directors, give such bond for the faithful discharge of his duties in such form as the Board of Directors may require.

Section 8. Assistant Treasurer. Each Assistant Treasurer, if any, shall have the usual powers and duties pertaining to his office, together with such other powers and duties as may be assigned to him by the Board of Directors. The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability to act.

Section 9. Secretary. The Secretary shall keep the minutes of all meetings of the stockholders, in books provided for that purpose; he shall attend to the giving and serving of all notices; he may, in the name of the corporation, execute all contracts of the corporation and affix the seal of the corporation thereon; he may sign with the Chairman of the Board or the President all certificates for shares of the capital stock of the corporation.

the Board of Directors may direct, all of which shall at all reasonable times be open to the inspection of any director upon application at the office of the corporation during business hours, and he shall in general perform all duties incident to the office of secretary subject to the control of the Board of Directors.

Section 10. Assistant Secretaries. Each Assistant Secretary, if any, shall have the usual powers and duties pertaining to his office, together with such other powers and duties as may be assigned by the Board of Directors or the Secretary. The Assistant Secretary shall exercise the powers of the Secretary during the officer's absence or inability to act.

ARTICLE IV INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Indemnification.

(a) The corporation shall indemnify any person who has or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he, or a person for whom he is the legal representative, is or was the director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good

best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or a defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made, with respect to a person who is a director, officer, employee or agent at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

(e) Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding 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 is not entitled to be indemnified by the corporation as authorized in this Section. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Section.

(h) For purposes of this Section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this Section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(k) Notwithstanding the foregoing, the rights of indemnification shall be deemed to extend to the fullest limits allowed by the General Corporation Law of the State of Delaware, in its current form or as hereinafter amended, or any successor law.

Section 2. General. The foregoing rights shall not be exclusive of other rights to which any director or officer may otherwise be entitled, and in the event of his death,

a director or officer at the time of incurring or becoming subject to such loss, expenses, costs and counsel fees, and whether the claim asserted against him is a matter which antedates the adoption of this Article IV.

ARTICLE V CAPITAL STOCK

Section 1. Certificates of Shares. The certificates for shares of the capital stock of the corporation shall be in such form as shall be approved by the Board of Directors. The certificates shall be signed by the Chairman of the Board, President or a Vice President, and also by the Secretary or an Assistant Secretary and shall be sealed by the seal of this corporation or a facsimile thereof. Where any such certificate is countersigned by a transfer agent, registered by a registrar, either of which is other than the corporation itself or an employee of the corporation, the signatures of the Chairman of the Board, President or Vice President and Secretary or Assistant Secretary, may be facsimiles. They shall be consecutively numbered and shall be entered in the books of the corporation as they are issued and shall exhibit the holder's name and the number of shares.

Section 2. Transfer of Shares. The shares of stock of the corporation shall be transferable only on the books of the corporation by the holders thereof in person or by their duly authorized attorneys or legal representatives upon surrender and cancellation of certificates for a like number of shares.

Section 3. Regulations. The Board of Directors shall have power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration or replacement of certificates for shares of the capital stock of the corporation.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 1. Offices. The registered office of the corporation required by the General Corporation Law of the State of Delaware shall be maintained in the State of Delaware, but the Board of Directors may, from time to time, designate the principal office and place of business of the corporation, which may be out of the State of Delaware.

Section 2. Fiscal Year. The fiscal year of the corporation shall be such as the Board of Directors shall, by resolution, establish.

Section 3. Seal. The seal of the corporation shall be such as from time to time may be approved by the Board of Directors.

Section 4. Notice and Waiver of Notice. Whenever any notice whatever is required to be given under the provisions of these By-laws, said notice shall be deemed to be sufficient if given by depositing the same in a post office in a sealed postpaid wrapper.

all be deemed to have been given on the day of such mailing. A waiver of notice in writing or by electronic transmission either before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 5. Resignations. Any director or officer may resign at any time. Such resignations shall be made in writing or by electronic transmission and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 6. Interested Directors: Quorum:

(a) No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

(1) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(2) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee that authorizes the contract or transaction.

AMENDMENTS

These By-laws may be altered, amended, or repealed by the affirmative vote of the holders of a majority of the outstanding stock at any annual meeting, or at any special meeting if notice of the proposed amendment be contained in the notice of special meeting, or by the affirmative vote of a majority of the full Board of Directors at any regular or special meeting, provided notice of said proposed amendment be contained in the notice of the meeting.

RIGHTS AGREEMENT

THIS AMENDMENT (this "Amendment") of the Rights Agreement (as defined below) is made and entered into as of the 1st day of June 2001, by and between Unit Corporation, a Delaware corporation (the "Company"), and Mellon Shareholder Services L.L.C., successor to Chemical Bank as "Rights Agent" under the Rights Agreement.

RECITALS:

WHEREAS, on May 19, 1995, the Board of Directors of the Company declared a dividend of one stock purchase right (the "Right") for each outstanding share of common stock, \$.20 par value (the "Common Stock") of the Company to the stockholder record at the close of business on May 31, 1995, with each Right entitling the registered holder to purchase from the Company one-hundredth of a share of the Series A Junior Preferred Stock of the Company (the "Preferred Stock"), or a combination of cash, securities and assets of equivalent value, at a purchase price of \$12.00 per Right, subject to adjustment (the description and terms of the Rights are set forth in a Rights Agreement, dated as of May 19, 1995 (the "Rights Agreement") between the Company and Chemical Bank as Rights Agent; and

WHEREAS, in light of subsequent developments in connection with the Company and also in connection with rights agreements generally, the Board of Directors deems it advisable and in the best interests of the Company and its stockholders to amend certain provisions of the Rights Agreement; and

WHEREAS, no Person (as such term is defined in the Rights Agreement) has become an Acquiring Person, and

WHEREAS, the Company desires to amend the Rights Agreement as set forth below;

NOW, THEREFORE, the undersigned, in consideration of the premises, covenants and agreements contained herein and the Rights Agreement, and other good, sufficient and valuable consideration, the receipt and sufficiency of which are here acknowledged, do hereby agree as follows:

Each of the following sections or provisions of the Rights Agreement is hereby amended and restated in its entirety to read as follows:

A). The definition of Rights Agent is amended to reflect Mellon Shareholder Services L.L.C. to be the Rights Agent.

B). The definition of an "Acquiring Person", as defined in Section 1, is amended to read as follows:

"Acquiring Person" shall mean any Person who or which, alone or together with all Affiliates and Associates of such Person, shall be the Beneficial Owner of more than 15% of the Common Shares then outstanding, but shall not include the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any of its Subsidiaries, or any Person holding Common Shares for or pursuant to the terms of any such employee benefit plan;

determines in good faith that a Person who would otherwise be an "Acquiring Person" became the Beneficial Owner of a number of Common Shares such that the Person would otherwise qualify as an "Acquiring Person" inadvertently (including, without limitation, because (A) such Person was unaware that it beneficially owned a percentage of Common Shares that would otherwise cause such Person to be an "Acquiring Person" or (B) such Person was aware of the extent of its Beneficial Ownership of Common Shares but had no actual knowledge of the consequences of such Beneficial Ownership under this Agreement) and without any intention of changing or influencing control of the Company, then such Person shall not be deemed to be or to have become an "Acquiring Person" for any purposes of this Agreement unless and until such Person shall have failed to divest itself, as soon as practicable (as determined, in good faith, by the Board of Directors of the Company), of Beneficial Ownership of a sufficient number of Common Shares so that such Person would no longer otherwise qualify as an "Acquiring Person"; and (ii) no Person shall become an "Acquiring Person" as the result of an acquisition of Common Shares by the Company which, by reducing the number of shares outstanding, increases the proportionate number of Common Shares beneficially owned by such Person to more than 15% of the Common Shares then outstanding, provided, however, that if a Person shall become the Beneficial Owner of more than 15% of the Common Shares then outstanding by reason of such share acquisitions by the Company and shall thereafter become the Beneficial Owner of any additional Common Shares (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Shares or pursuant to a split or subdivision of the outstanding Common Shares), then such Person shall be deemed to be an "Acquiring Person" unless upon becoming the Beneficial Owner of such additional Common Shares such Person dies and does not beneficially own more than 15% of the Common Shares then outstanding.

C). The definition of "Purchase Price", as defined in Section 1, is amended to read as follows:

"Purchase Price" with respect to each Right shall mean \$70.00, as such amount may from time to time be adjusted as provided herein, and shall be payable in lawful money of the United States of America. All references herein to the Purchase Price shall mean the Purchase Price as in effect at the time in question.

D). Section 21(j) is amended by inserting the word "Rights" before the word "Agent" each time the word "Agent" appears in the second sentence thereof.

E). Section 24(a) is amended to read as follows:

SECTION 24. Redemption and Termination. (a) The Board of Directors of the Company may, at its option, at any time prior to the earlier of (i) the time a Person has become an Acquiring Person and (ii) the Expiration Date, order the redemption of all, but not fewer than all, the then outstanding Rights at the Redemption Price (the date of such redemption being the "Redemption Date"), and the Company, at its option, may pay the Redemption Price either in cash or Common Shares or other securities of the Company deemed by the Board of Directors of the Company, in the exercise of its sole discretion, to be at least equivalent in value to the Redemption Price.

F). Section 26 is amended to read as follows:

Distribution Date and subject to the last sentence of this Section 26, the Company may, and the Rights Agent shall if the Company so directs, supplement or amend any provision of this Rights Agreement (including, without limitation, the date on which the Distribution Date shall occur, the time during which the Rights may be redeemed pursuant to Section 24 or any provision of the Certificate of Designation) without the approval of any holder of the Rights. Without limiting the foregoing, the Company may at any time prior to such time as any Person becomes an Acquiring Person amend this agreement to (a) specifically exempt any Person from being or being deemed to be an Acquiring Person, subject to such terms and conditions as the Company deems appropriate, (b) fix an expiration date later than the date set forth in Section 7 hereof or (c) increase the Purchase Price. From and after the Distribution Date and subject to applicable law, the Company may, and the Rights Agent shall if the Company so directs, amend this Rights Agreement without the approval of any holders of Right Certificates (i) to cure any ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provision of this Rights Agreement or (ii) to make any other provisions in regard to matters or questions arising hereunder which the Company may deem necessary or desirable and which shall not adversely affect the interests of the holders of Right Certificates (other than an Acquiring Person or an Affiliate or Associate of an Acquiring Person). Any supplement or amendment adopted during any period after any Person has become an Acquiring Person but prior to the Distribution Date shall be null and void unless such supplement or amendment could have been adopted under the prior sentence from and after the Distribution Date. Any supplement or amendment to this Rights Agreement duly approved by the Company that does not amend Sections 19, 20, 21 or 22 in a manner adverse to the Rights Agent shall become effective immediately upon execution by the Company, whether or not also executed by the Rights Agent. In addition, notwithstanding anything to the contrary contained in this Rights Agreement, no supplement or amendment to this Rights Agreement shall be made which (a) reduces the Redemption Price (except as required by Section 12(a)) or (b) provides for an earlier Expiration Date.

G). Section 28(b) is amended to read as follows:

(b) Except as explicitly otherwise provided in this Rights Agreement, the Board of Directors of the Company shall have the exclusive power and authority to administer this Rights Agreement and to exercise all rights and powers specifically granted to the Board of Directors of the Company or to the Company, or as may be necessary or advisable in the administration of this Rights Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Rights Agreement and (ii) make all determinations deemed necessary or advisable for the administration of this Rights Agreement (including, without limitation, a determination to redeem or not redeem the Rights or to amend this Rights Agreement and whether there is an Acquiring Person). All such actions, calculations, determinations and interpretations which are done or made by the Board of Directors of the Company in good faith shall be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights and all other parties.

This Amendment shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Except as hereby amended, the Rights Agreement shall remain in full force and effect.

This Amendment shall be governed by, and interpreted in accordance with, the laws of the State of Delaware, without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the day and year first above written.

Tit Corporation

Mellon Shareholder Services
L.L.C.

By: John G. Nikkel
Its: President

By:
Its:

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this "Agreement") is made as of the 19th day of April, 2001, by and between [redacted] Corporation, a Delaware corporation (the "Company"), and _____ ("Indemnitee").

WHEREAS, the Company and Indemnitee recognize the increasing difficulty in obtaining directors' and officers' liability insurance, the significant increases in the cost of such insurance and the general reduction in the coverage of such insurance; and

WHEREAS, the Company acknowledges Indemnitee has agreed to serve the Company as a director, officer, key employee or agent with the assurance that adequate liability indemnification is and will continue to be provided; and

WHEREAS, the Company desires to attract and retain the services of Indemnitee and to provide Indemnitee with adequate liability indemnification; and

WHEREAS, the Company has been advised that it may provide such indemnification under and in accordance with Delaware law by entering into an agreement providing for broad indemnification of Indemnitee by the Company; and

WHEREAS, the Company desires to enter into this Agreement with Indemnitee to provide Indemnitee the maximum protection permitted by such Delaware law;

NOW, THEREFORE, the Company hereby agrees as follows:

ARTICLE 1 Indemnification

Section 1.01 Except as otherwise provided herein, the Company hereby agrees to hold harmless and indemnify Indemnitee from and against all claims and all threatened, pending or completed actions, suits or proceedings, whether civil, criminal, administrative or investigative (including an action by or in the right of the Company), involving Indemnitee by reason of the fact that he is or was a director of the Company, including all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, to the broadest and maximum extent permitted by Delaware law.

Section 1.02 Except as otherwise provided herein, the Company agrees to hold harmless and indemnify Indemnitee from and against all claims and all threatened, pending or completed actions, suits or proceedings, whether civil, criminal, administrative or investigative (including an action by or in the right of the Company), involving Indemnitee by reason of the fact that he is or was an officer, employee or agent of the Company (or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise), including all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, to the broadest and maximum extent permitted by Delaware law and in accordance with Section 145(d) of the Delaware General Corporation Law.

all:

(a) extend to and fully cover any Loss (as hereinafter defined) arising from any Claim (as hereinafter defined), whether such Claim is made against Indemnitee individually or jointly with others, by reason of any Wrongful Act (as hereinafter defined) made in Indemnitee's capacity as a director, officer, employee or agent of the Company (or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise),

(b) include all rights of indemnification provided to Indemnitee under the provisions of the Certificate of Incorporation and/or the By-laws of the Company, and

(c) include all such additional rights of indemnification as might possibly be provided to Indemnitee under Section 145 of the General Corporation Law of the State of Delaware, to the extent such rights are not violative of Section 145 of the Delaware General Corporation Law or contrary to the public policy of the State of Delaware.

Section 1.04 If the Indemnitee is not wholly successful with respect to any Claim, but is successful, on the merits otherwise, as to one or more but less than all issues under any Claim, the Company shall indemnify the Indemnitee against expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved issue. Termination of any issue under any Claim or of any Claim by dismissal, with or without prejudice, shall be deemed a success as to such issue or Claim.

Section 1.05 Nothing in this Section 1 shall be deemed to provide any indemnity by the Company to Indemnitee on account of any matter:

(a) with respect to remuneration paid to Indemnitee if it shall be determined by a final judgment or other final adjudication of any court having jurisdiction over the matter that such remuneration was in violation of law; or

(b) for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any federal, state or local statutory law; or

(c) brought about or contributed to by the dishonesty of Indemnitee if a final judgment or other final adjudication adverse to Indemnitee establishes that acts of active and deliberate dishonesty were committed or attempted by Indemnitee with actual dishonest purpose and intent and were material to the adjudication; or

(d) which is based on or attributable to Indemnitee having gained any personal profit or advantage to which he was not entitled, if a final judgment or other final adjudication adverse to Indemnitee establishes that Indemnitee in fact gained such personal profit or other advantage to which he was not entitled; or

and collectible insurance policy, except in respect to any excess beyond the amount of payment under such insurance.

(f) in respect of which any final decision by a court having jurisdiction of the matter shall determine that indemnification is not lawful.

Section 1.06 The Company shall pay the expenses incurred by Indemnitee in defending against all Claims (including Claims or in the right of the Company) in advance of the final disposition of such Claims, provided that the Company receives satisfactory evidence by or on behalf of Indemnitee to repay such amounts advanced if it is ultimately determined by a court of competent jurisdiction over the matter that he is not entitled to be indemnified by the Company as authorized under this Agreement. The Company shall perform its obligation under this Section 1.6 until such time as it may be determined by final judgment of a court of competent jurisdiction or by final adjudication of a governmental agency having jurisdiction that Indemnitee is not entitled to indemnification by virtue of the exclusions set forth in Section 1.5 hereof.

Section 1.07 Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his status, a person who is or was a director, officer, employee or agent of the Company or of any other corporation, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Company in connection with any action, suit or proceeding to which Indemnitee is not a party, he shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by him or on his behalf in connection therewith.

Section 1.08 The reference in Section 1 hereof to Delaware law is to Delaware law as the same exists from time to time but in the case of any amendments to or change in Delaware law, only to the extent that such amendment or change permits the Company to provide broader or greater rights of indemnification than is permitted to the Company prior to such amendment or change.

ARTICLE 2

Procedure for Determination of Entitlement to Indemnification.

Section 2.01 To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification.

Section 2.02 Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 2.1 hereof, the Board of Directors, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (i) if a Change in Control (as hereinafter defined) shall have occurred, by Independent Counsel (as hereinafter defined) in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee; or (ii) if a Change of Control shall not have occurred,

Disinterested Directors designated by majority vote of the Disinterested Directors, even though less than a quorum, or (C) if there are no such Disinterested Directors or if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Board of Directors, by the stockholders of the Company; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

Section 2.03 In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 2.2 hereof, the Independent Counsel shall be selected as provided in this Section 2.3. If a Change of Control shall have occurred, the Independent Counsel shall be selected by the Board of Directors, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board of Directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, within 10 days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 5.7 of the Agreement, and the objection shall set forth with particularity the factual basis of such assertion. If such written objection is made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 2.1 hereof, no Independent Counsel shall have been selected and unobjected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Company or by such other person as the Court shall designate, and the person with respect to whom all objections are so resolved or to whom so appointed shall act as Independent Counsel under Section 2.2 hereof. The Company shall pay any and all reasonable costs and expenses of

Company shall pay all reasonable fees and expenses incident to the procedures of this Section 2.3, regardless of the manner in which such Independent Counsel was selected or appointed. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 4.1(iii) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

ARTICLE 3

Presumptions and Effect of Certain Proceedings.

Section 3.01 If a Change of Control shall have occurred, in making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnatee is entitled to indemnification under this Agreement if Indemnatee has submitted a request of indemnification in accordance with Section 2.1 of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making of such determination by any person, persons or entity of any determination contrary to that presumption.

Section 3.02 The termination of any Claim or of any issue therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnatee to indemnification or create a presumption that Indemnatee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Claim, that Indemnatee had reasonable cause to believe that his conduct was unlawful.

ARTICLE 4

Remedies of Indemnatee.

Section 4.01 In the event that (i) a determination is made pursuant to Section 2 of this Agreement that Indemnatee is entitled to indemnification under this Agreement, (ii) advancement of expenses is not timely made pursuant to this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 2.2 of this Agreement within ten (10) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor, or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnatee is entitled to indemnification, Indemnatee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, to enforce its entitlement to such indemnification or advancement of expenses. Alternatively, Indemnatee, at his option, may seek an award of arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnatee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnatee first has the right to commence such proceeding pursuant to

force his rights under Section 1.4 of this Agreement.

Section 4.02 In the event that a determination shall have been made pursuant to Section 2.2 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 4 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of the adverse determination. If a Change of Control shall have occurred, in any judicial proceeding or arbitration commenced pursuant to Section 4 the Company shall have the burden of proving that Indemnitee is not entitled to indemnification or advancement of expenses, as the case may be.

Section 4.03 If a determination shall have been made pursuant to Section 2.2 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 4, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

Section 4.04 In the event that Indemnitee, pursuant to this Section 4, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee shall be entitled to recover from the Company, and shall be indemnified by the Company against, any and all expenses actually and reasonably incurred in such judicial adjudication or arbitration in accordance with Section 14.1 of this Agreement. If it shall be determined in such judicial adjudication or arbitration that Indemnitee is entitled to receive part but not all of the indemnification or advancement of expenses sought, the expenses incurred by Indemnitee in connection with such judicial adjudication or arbitration shall be appropriately prorated.

ARTICLE 5

Definitions.

Section 5.01 The term "Loss" shall mean any amount Indemnitee is obligated or asserted to be obligated to pay in respect of legal liability, whether actual or asserted, for a Wrongful Act, and shall include damages, judgments, settlements and attorneys' fees, charges and expenses incurred in the defense of Claims.

Section 5.02 Wrongful Act. The term "Wrongful Act" shall mean any breach of duty, neglect, error, misstatement or misleading statement, omission or other act done or wrongfully attempted by Indemnitee as alleged by any claimant or any other person claimed against Indemnitee by reason of Indemnitee being a director, officer, consultant, employee or agent of the Company (or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise).

Section 5.03 Subsidiary. The term "Subsidiary" shall mean any corporation of which at least 50% of the stock is owned by the Company or by another Subsidiary.

ending or completed, whether civil, criminal, administrative or investigative, made or instituted against or with respect to the person or the property of Indemnitee either by or in the right of the Company or by or in the right of a party other than the Company.

Section 5.05 Change in Control. The term "Change in Control" means a change in control of the Company occurring after August 23, 1994 of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934 (the "Act"), whether or not the Company is then subject to such reporting requirement; provided, however, that, without limitation, a Change in Control shall be deemed to have occurred if after August 23, 1994 (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Act) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 15% or more of the combined voting power of the Company's then outstanding securities without the prior approval of at least three-fourths of the members of the Board of Directors in effect immediately prior to such person attaining such percentage interest; (ii) there occurs a proxy contest, or the Company is a party to a merger, consolidation, sale of assets, plan of liquidation or other reorganization not approved by at least three-fourths of the members of the Board of Directors then in office, as a consequence of which members of the Board of Directors in effect immediately prior to such transaction or event constitute less than a majority of the Board of Directors thereafter; or (iii) during any period of two consecutive years, other than as a result of an event described in clause (ii) of Section 5.2 hereof, individuals who at the beginning of such period constituted the Board of Directors (including for this purpose any new director whose election or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the Board of Directors. **Section 5.06 Disinterested Director.** The term "Disinterested Director" means a director of the Company who is not a party to the Claim in respect of which indemnification is sought by Indemnitee.

Section 5.07 Independent Counsel. The term "Independent Counsel" means a law firm, or a member of a law firm, that is not experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party, or (ii) any other party to the Claim giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

Scope of Indemnification.

is Agreement and the indemnification provided herein:

Section 6.01 Shall apply to Indemnitee in his capacity as a director, officer, employee or agent, or the like, of (i) the Company, (ii) any Subsidiary or former Subsidiary, or any Subsidiary which is hereafter acquired or created by the Company and its corporations, partnerships, associations and entities other than the Company and its Subsidiaries where Indemnitee is directly requested to serve by the Company;

Section 6.02 Shall be irrevocable and perpetual and, subject to Section 1.4 hereof, shall apply to any Claim arising or occurring after the date hereof, whether made or incurred prior to or after the termination of Indemnitee's services to the Company as a director, officer, employee or agent; and

Section 6.03 Subject to Section 1.4 hereof, shall cover Losses arising from any Claims made against the estate, heirs or legal representatives of Indemnitee.

ARTICLE 7

Agreement to be Construed Liberally.

Section 7.01 The purpose of this Agreement is to induce Indemnitee either to serve the Company in one or more of the capacities described in Section 6.1 hereof, or to induce Indemnitee to continue to serve in one or more such capacities. The Company acknowledges that but for this Agreement and the expectation by Indemnitee that the Company will perform each of the obligations hereunder, Indemnitee may not consent to serve or to continue to serve the Company in such capacities. Therefore, the intention of the Company and Indemnitee that this Agreement be construed liberally so as to achieve its purpose, subject to Section 1.4 hereof, of protecting Indemnitee from and against Losses arising from Wrongful Acts. The Company agrees that it will not do or fail to do any act which would or might prevent or hinder the performance by the Company of its obligations under this Agreement.

ARTICLE 8

Agreement Not Exclusive.

Section 8.01 The rights and benefits of Indemnitee and the obligations of the Company under this Agreement shall be in addition to, and shall not supersede or be in lieu of, the provisions (if any) relating to the indemnification of Indemnitee by the Company in the Certificate of Incorporation, By-laws or resolutions of the Board of Directors of the Company; the provisions of policies of insurance or indemnification arrangements provided by persons or entities other than the Company; or applicable law. Notwithstanding anything to the contrary in this Agreement, the Company agrees to defend (subject to Indemnitee's right to retain its own legal counsel independent of any legal counsel retained by the Company with respect to any Claim), indemnify and hold harmless Indemnitee to the fullest extent permitted from time to time by applicable law.

Severability.

Section 9.01 Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail any act in violation of applicable law. In the event any provision of this Agreement is finally determined by the courts require the Company to do or fail to do such an act, such provision shall be limited or modified in its application to the minimum necessary to avoid a violation of law, and as so limited or modified such provision and the balance of this Agreement shall be enforceable in accordance with their terms.

**ARTICLE 10
CHOICE OF LAW.**

Section 10.01 THIS AGREEMENT IS MADE AND ENTERED INTO PURSUANT TO SECTION 145(f) OF THE DELAWARE GENERAL CORPORATION LAW, AND THIS AGREEMENT SHALL BE GOVERNED BY, AND ITS PROVISIONS CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE.

**ARTICLE 11
Choice of Forum.**

Section 11.01 The Company agrees (i) that any action instituted by or on behalf of the Company under this Agreement or to enforce or interpret any provision of this Agreement shall be brought only in the state courts of the State of Delaware and in no other court and (ii) that if any action is instituted in any court by Indemnitee under this Agreement or to enforce or interpret any terms, the Company hereby agrees, and will at such time agree, to the exclusive jurisdiction and exclusive venue of such court and to personal service upon the Company by such court for the purpose of such action, and will not attempt to transfer or remove such action to another court.

**ARTICLE 12
Limitations.**

Section 12.01 To the extent that a cause of action asserted against the Indemnitee is not explicitly governed by applicable law with regard to a statute of limitations, no legal action can be brought by or on behalf of the Company against the Indemnitee unless the action is asserted by the timely filing of legal action within two (2) years from the date of accrual of such cause of action.

**ARTICLE 13
Successors and Assigns.**

Section 13.01 This Agreement shall be binding upon the Company and its successors and assigns, and shall inure to the benefit of Indemnitee and Indemnitee's estate, heirs and legal representatives.

Attorneys' Fees.

Section 14.01 In the event that any action is instituted by Indemnitee under this Agreement or to enforce or interpret any terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action the court determines that each of the material assertions made by Indemnitee as a basis for such action was not made in good faith or was frivolous. In the event any action is instituted in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and crossclaims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action was made in bad faith or was frivolous.

WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

WIT CORPORATION

:

Tim G. Nikkel, President

**AGREED TO AND ACCEPTED
BY INDEMNITEE:**
