
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): **May 1, 2006**

PROGRESS SOFTWARE CORPORATION

(Exact Name of Registrant as Specified in Charter)

Massachusetts

(State or other jurisdiction
of incorporation)

033-41752

(Commission
File Number)

04-2746201

(IRS Employer
Identification Number)

14 Oak Park, Bedford, MA

(Address of principal executive offices)

01730

(Zip code)

Registrant's telephone number, including area code **(781) 280-4000**

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01 Other Events

We are amending Item 1, "Description of Registrant's Securities to be Registered," in our registration statement on Form 8-A filed under the Securities Exchange Act of 1934, as amended, on July 22, 1991, as follows:

DESCRIPTION OF CAPITAL STOCK

The following summary description of our capital stock is subject to, and qualified in its entirety by reference to, applicable provisions of Massachusetts law, our restated articles of organization, as amended, the complete text of which is filed as Exhibit 3.1 to this report and incorporated herein by reference, and our by-laws, as amended, the complete text of which is filed as Exhibit 3.2 to this report and incorporated herein by reference.

Authorized capital stock

Our authorized capital stock consists of 100,000,000 shares of common stock and 1,000,000 shares of preferred stock.

Common stock

Holders of our common stock are entitled to one vote per share for each share held of record on all matters submitted to a vote of our shareholders. Subject to preferences that may be applicable to the holders of outstanding preferred stock, if any, the holders of common stock are entitled to receive ratably whatever lawful dividends the board of directors may declare. In the event of a liquidation, dissolution, or winding up of our affairs, whether voluntary or involuntary, and subject to the rights of the holders of outstanding preferred stock, if any, the holders of common stock will be entitled to receive pro rata all of our remaining assets available for distribution to our shareholders. Our common stock has no preemptive, redemption, conversion, or subscription rights.

Preferred stock

Our articles of organization authorizes our board of directors, subject to any limitations prescribed by Massachusetts law, to issue preferred stock in one or more series, to establish from time to time the number of shares in each series, and to fix the preferences, voting powers, qualifications, and special or relative rights or privileges of the preferred stock. Our board of directors may issue preferred stock with voting, conversion, and other rights and preferences that could adversely affect the voting power or other rights of the holders of our common stock. The issuance of preferred stock or of rights to purchase preferred stock could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, a majority of our outstanding common stock.

Anti-takeover effects of provisions of our articles of organization and by-laws and of Massachusetts law

Our articles of organization and by-laws and Massachusetts law contain provisions that could have anti-takeover effects and that could discourage, delay or prevent a change in our

control, or our acquisition, at a price that many shareholders may find attractive. These provisions may also discourage proxy contests and make it more difficult for our shareholders to effect some corporate actions, including the election of directors. The existence of these provisions could limit the price that investors might be willing to pay in the future for shares of our common stock.

Articles and by-laws

Our by-laws provide that, in order to nominate any person for election as a director at any annual meeting of shareholders or any special meeting held in lieu of an annual meeting, a shareholder must notify us of the nomination in writing not less than 60 and not more than 90 days before the date of the meeting. However, if we give notice of or publicly disclose the meeting less than 70 days before the date of the meeting, the shareholder may notify us of the nomination within ten days of the earlier of our having mailed notice of or publicly disclosed the date of the meeting. The shareholder's notice of nomination must include particular information about the shareholder, the nominee and any beneficial owner on whose behalf the nomination is made. We may require any proposed nominee to provide additional information reasonably necessary to determine the nominee's eligibility.

Similarly, our by-laws provide that, in order to bring any business before any annual meeting of shareholders or any special meeting held in lieu of an annual meeting, a shareholder must notify us in writing not less than 60 and not more than 90 days before the date of the meeting. However, if we give notice of or publicly disclose the meeting less than 70 days before the date of the meeting, the shareholder may notify us within ten days of the earlier of our having mailed notice of or publicly disclosed the meeting. In order to bring any business before any special meeting of shareholders not held in lieu of an annual meeting, a shareholder must notify us in writing within ten days of the earlier of our having mailed notice of or publicly disclosed the meeting. The shareholder's notice must describe the proposed business to be brought before the meeting and include information about the shareholder making the proposal, any beneficial owner on whose behalf the proposal is made, and any other shareholder known to be supporting the proposal.

Our by-laws require us to call a special meeting of shareholders only at the request of shareholders holding at least 40% of our voting stock. Our by-laws also permit our shareholders to remove directors only for cause, and only with the approval of shareholders holding at least 80% of our voting stock. Our by-laws define cause to mean only (1) conviction of a felony, (2) declaration of unsound mind by order of court, (3) gross dereliction of duty, (4) commission of an action involving moral turpitude or (5) commission of an action which constitutes intentional misconduct or a knowing violation of law if such action in either event results both in an improper substantial personal benefit and a material injury to us. A director may be removed with or without cause by the affirmative vote of three-fourths of the directors then serving.

Our articles of organization provide that the following by-law provisions may not be altered, amended or repealed by the shareholders, and no provision inconsistent with them may be adopted by the shareholders, without the approval of shareholders holding at least 80% of our voting stock: any provision pertaining to meetings of our shareholders, our directors, indemnification of our directors and others, and amending our bylaws, including those described

above pertaining to nominations, the presentation of business before meeting of the shareholders, the removal of directors and the rights of shareholders to remove directors. In addition, our directors may not alter, amend or repeal, nor adopt any provision inconsistent with, provisions of our by-laws relating to the resignation or removal of directors or officers or any vacancies, without the affirmative vote of at least three-fourths of the directors then serving.

Our articles of organization provide that certain transactions, such as the sale, lease or exchange of all or substantially all of our property and assets or our merger or consolidation into or with any other corporation, may be authorized by the approval of the holders of a majority of the shares of each class of stock entitled to vote on the matter, rather than by two-thirds as otherwise provided by statute, but only if a majority of the directors has authorized the transaction and all other applicable requirements of our articles of organization have been met.

Our articles of organization contain a "fair price" provision which provides that certain "business combinations" with any "interested shareholder" or "affiliate" of any interested shareholder, as those terms are defined in the fair price provision, may not be consummated without the approval of the holders of at least 80% of our voting stock, unless (1) our shareholders do not receive any cash or other consideration in the business combination solely in their capacity as shareholders and the combination is approved by at least a majority of the "disinterested directors," as defined in the fair price provision, or (2) for any other business combination, it is approved by at least a majority of the disinterested directors and certain minimum price and procedural requirements are met.

The term interested shareholder includes any individual or entity who or which (1) beneficially owns more than 15% of our voting stock, (2) is one of our affiliates and beneficially owned more than 15% of our voting stock at some point during the immediately preceding two years, or (3) beneficially owns any shares of our voting stock which were beneficially owned by an interested shareholder at some point during the immediately preceding two years and were not the subject of a public offering in the interim. The term business combination includes (1) a merger or consolidation, (2) the sale or other disposition of 10% or more of our combined assets, (3) the issuance of securities in exchange for property having a value in excess of 10% of our combined assets, (4) any reclassification, recapitalization or other transaction, whether involving an interested shareholder or not, which increases the proportionate share holdings of an interested shareholder or its affiliate, or (5) the adoption of a plan of liquidation or dissolution proposed by or on behalf of an interested shareholder or its affiliate.

A significant purpose of the fair price provision is to deter a purchaser from using two-tiered pricing and similar unfair or discriminatory tactics in an attempt to acquire control of us. The affirmative vote of the holders of 80% of our voting stock is required to amend or repeal the fair price provision or adopt any provision inconsistent with it.

These provisions of our articles of organization and by-laws would make more difficult and could thereby discourage a proxy contest, the assumption of control by a holder of a substantial portion of our capital stock or the removal of our directors. These provisions could have the effect of discouraging a third party from making a tender offer or otherwise attempting to obtain control of us, even though the attempt might benefit us and our shareholders. In addition, we designed our articles of organization and by-laws to discourage the accumulation of

large blocks of our stock with the intent of having us repurchase the stock at a premium. Consequently, these provisions could tend to reduce the temporary fluctuations in the market price of our stock which are caused by such accumulations and thereby deprive our shareholders of certain opportunities to sell their stock at a temporarily higher market price.

Massachusetts law

We are subject to Chapter 110F of the Massachusetts General Laws, an anti-takeover law. In general, this statute prohibits a Massachusetts corporation from engaging in a “business combination” with an “interested shareholder,” as those terms are defined in the statute, for three years after the date of the transaction in which the person becomes an interested shareholder, unless:

- before that date, the board of directors approved either the business combination or the transaction in which the person became an interested shareholder;
- the interested shareholder acquires 90% of the outstanding voting stock of the corporation (excluding shares held by directors who are also officers and certain employee stock plans) at the time it becomes an interested shareholder; or
- the business combination is approved by the board of directors and by the holders of two-thirds of the outstanding voting stock of the corporation (excluding shares held by the interested shareholder) voting at a meeting.

In general, an “interested shareholder” under the statute is a person who owns 5% or more of the outstanding voting stock of the corporation, or 15% or more in the case of a person eligible to file a Schedule 13G under the Exchange Act with respect to that voting stock, or a person who is an affiliate or associate of the corporation and within the previous three years was the owner of 5% or more of the outstanding voting stock of the corporation, or 15% or more in the case of a person eligible to file a Schedule 13G with respect to that voting stock. A “business combination” under the statute generally includes mergers, consolidations, stock and asset sales, and other transactions with the interested shareholder resulting in a financial benefit to the interested shareholder, except proportionately as a shareholder of the corporation. We may at any time amend our articles of organization or by-laws to elect not to be governed by Chapter 110F by the affirmative vote of a majority of our voting stock entitled to vote. Such an amendment would not be effective for 12 months and would not apply to a business combination with any person who became an interested shareholder on or before the date of the amendment.

Our by-laws exempt us from Chapter 110D of the Massachusetts General Laws, entitled “Regulation of Control Share Acquisitions.” In general, this statute provides that any shareholder who acquires 20% or more of the outstanding voting stock of a corporation subject to this statute may not vote that stock unless the disinterested shareholders of the corporation so authorize. In addition, Chapter 110D permits a corporation to provide in its articles of organization or by-laws that the corporation may redeem, for fair value, all of the shares acquired in a control share acquisition if the interested shareholder does not deliver a control share acquisition statement or if the interested shareholder delivers a control share acquisition statement but the disinterested shareholders of the corporation do not authorize voting rights for those shares. If the

disinterested shareholders authorize voting rights and after a control share acquisition the acquiring shareholder beneficially owns shares entitling the acquiring shareholder to vote, or direct the voting of, shares having a majority or more of all voting power in the election of directors, each shareholder who did not vote in favor of authorizing the voting rights may demand payment for its shares and appraisal rights. We may amend our articles of organization or by-laws at any time to subject us to this statute prospectively.

Section 8.06 of Chapter 156D of the Massachusetts General Laws requires that each publicly held Massachusetts corporation have a classified, or staggered, board of directors, unless the corporation opts out of the statute's coverage by vote of the board of directors or two-thirds of each class of stock at a meeting. Section 8.06 further provides that directors may be removed only for cause, as defined in the statute. We have elected to opt out of this statute's coverage by vote of our board of directors. We can change this election at any time by vote of our board of directors.

Section 7.04 of Chapter 156D of the Massachusetts General Laws allows shareholders to approve actions by unanimous written consent or, to the extent permitted by a corporation's articles of organization, by written consent of shareholders having not less than the minimum number of votes necessary to take the action at a meeting at which all shareholders entitled to vote on the action are present and voting. Our articles of organization do not currently permit shareholder action by less than unanimous written consent, but we may amend them at any time to provide such permission.

Limitation of liability and indemnification

Section 2.02(b)(4) of Chapter 156D of the Massachusetts General Laws provides that the articles of organization of a corporation may state a provision eliminating or limiting the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except that the provision will not eliminate or limit liability:

- for any breach of the director's duty of loyalty to the corporation or its shareholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- for improper distributions to shareholders; or
- for any transaction from which the director derived an improper personal benefit.

Our articles of organization include a provision eliminating or limiting such liability to the maximum extent permitted by Massachusetts law.

We are subject to various provisions of Chapter 156D of the Massachusetts General Laws relating to indemnification of our directors and officers. Section 8.51 generally allows a corporation to indemnify a director only if the director:

- conducted himself in good faith; and

- reasonably believed that his conduct was in the best interests of the corporation or that his conduct was at least not opposed to the best interests of the corporation; and
- in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful; or
- he engaged in conduct for which he will not be liable under a provision of the corporation's articles of organization authorized by Section 2.02(b)(4) of Chapter 156D.

However, under Section 8.55 of Chapter 156D, a corporation may not indemnify a director unless a determination has been made that the director has met the standard of conduct set forth in Section 8.51. The determination must be made by:

- a majority vote of the disinterested directors or a committee of two or more disinterested directors, provided, in each case, that there are two or more disinterested directors;
- by special legal counsel selected by the disinterested directors set forth in the previous clause or by the board of directors if there are fewer than two disinterested directors; or
- by the shareholders, excluding shares controlled by directors who are not disinterested.

Section 8.52 of Chapter 156D of the Massachusetts General Laws requires a corporation to indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he was a director against reasonable expenses incurred by him. In addition, under Section 8.53 of Chapter 156D, a corporation may advance before the final disposition of a proceeding the reasonable expenses incurred by a director if he affirms in writing his good faith belief that he has met the relevant standard of conduct or that the proceeding involves conduct for which his liability has been eliminated and the director undertakes to repay the amounts advanced to him if he is not entitled to mandatory indemnification under Section 8.52 and it is ultimately determined that he has not met the relevant standard of conduct.

Section 8.56 of Chapter 156D of the Massachusetts General Laws allows a corporation to indemnify and advance expenses to officers to the same extent as directors or, in the case of officers who are not directors, to a greater extent than directors except for liability arising out of acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.

Our by-laws require us to indemnify any person who was, is or is threatened to be made a party to any form of proceeding because the person is or was one of our directors or officers, or serving at our request as a director, officer, employee or agent of another entity, including service in connection with an employee benefit plan, to the fullest extent authorized by Massachusetts law. This indemnification right covers against all expense, liability and loss,

including, but not limited to, attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement reasonably incurred by the indemnified person. This indemnification right also requires us to pay the expenses the person incurs in defending a proceeding before the proceeding's final disposition, as long as the person agrees to reimburse us for these expenses if it is ultimately determined that the person was not entitled to be indemnified by us.

Our board of directors may also authorize the grant of rights of indemnification and the advancement of expenses, as described above, to any of our employees or agents, to the fullest extent allowed by our by-laws.

Notwithstanding the provisions of our articles of organization and by-laws, under Section 8.54 of Chapter 156D of the Massachusetts General Laws a court has the power to order indemnification and advancement of expenses if the court determines that it is fair and reasonable to do so. Section 8.59 of Chapter 156D provides that the rights of indemnification and advancement of expenses afforded by Chapter 156D are not exclusive of any other rights which those seeking indemnification or advancement of expenses may have.

The effect of these provisions would be to permit indemnification by us for, among other liabilities, liabilities arising out of the Securities Act of 1933, as amended.

Section 8.57 of Chapter 156D of the Massachusetts General Laws affords a corporation the power to obtain insurance on behalf of individuals who are directors or officers of the corporation or who, while a director or officer, serve at the request of the corporation as a director, officer, partner, trustee, employee or agent of another entity, including service with an employee benefit plan, for liabilities incurred in any such capacity or arising from his status as a director or officer. We have procured a directors and officers liability and company reimbursement liability insurance policy that (a) insures our directors and officers against losses arising from certain claims made against them by reason of certain acts or omissions of such directors or officers in their capacities as directors or officers and (b) insures us against losses (above a deductible amount) arising from any such claims, but only if we are required or permitted to indemnify such directors or officers for such losses under statutory or common law or under provisions of our articles of organization or by-laws.

Stock transfer agent

The transfer agent and registrar for our common stock is American Stock Transfer and Trust Company.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Restated Articles of Organization, as amended
3.2	By-laws, as amended
4.1	Specimen certificate for the common stock

SIGNATURES

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

PROGRESS SOFTWARE CORPORATION

Dated: May 1, 2006

By: /s/ Norman R. Robertson
Norman R. Robertson
Senior Vice President, Finance and
Administration and Chief Financial Officer

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
3.1	Restated Articles of Organization, as amended
3.2	By-laws, as amended
4.1	Specimen certificate for the common stock

The Commonwealth of Massachusetts
MICHAEL JOSEPH CONNOLLY
Secretary of State
One Ashburton Place, Boston, Massachusetts 02108

FEDERAL IDENTIFICATION NO.
04-2746021

RESTATED ARTICLES OF ORGANIZATION
(General Laws, Chapter 156B, Section 74)

This certificate must be submitted to the Secretary of the Commonwealth within sixty days after the date of the vote of stockholders adopting the restated articles of organization. The fee for filing this certificate is prescribed by General Laws, Chapter 156B, Section 114. Make check payable to the Commonwealth of Massachusetts.

We, Joseph W. Alsop
and Robert L. Birnbaum

, President, and
, Assistant Clerk of

Progress Software Corporation
(Name of Corporation)

located at 5 Oak Park, Bedford, Massachusetts 01730

do hereby certify that the following restatement of the articles of organization of the corporation was duly adopted at a
meeting held on July 1, 1991 by vote of

1,754,838 shares of common stock out of 1,905,060 shares outstanding,

719,875 shares of Series A Convertible Preferred Stock out of 755,500 shares outstanding and

520,000 shares of Series B Convertible Preferred Stock out of 520,000 shares outstanding.

being at least two-thirds of each class of stock outstanding and entitled to vote and of each class or series of stock adversely affected thereby:

1. The name by which the corporation shall be known is:

Progress Software Corporation

2. The purposes for which the corporation is formed are as follows:

See Attachment 2A

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch for binding. Additions to more than one article may be made continued on a single sheet so long as each article requiring each such addition is clearly indicated.

3. The total number of shares and the par value, if any, of each class of stock which the corporation is authorized to issue is as follows:

	<u>WITHOUT PAR VALUE</u>	<u>WITH PAR VALUE</u>	
<u>CLASS OF STOCK</u>	<u>NUMBER OF SHARES</u>	<u>NUMBER OF SHARES</u>	<u>PAR VALUE</u>
Preferred :		1,000,000	\$.01
Common :		8,500,000	\$.01

*4. If more than one class is authorized, a description of each of the different classes of stock with, if any, the preferences, voting powers, qualifications, special or relative rights or privileges as to each class thereof and any series now established:

See Attachment 4A attached hereto and incorporated herein by reference.

*5. The restrictions, if any, imposed by the articles of organization upon the transfer of shares of stock of any class are as follows:

None.

*6. Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders:

See Attachments 6A-6G.

* If there are no such provisions, state "None".

2A. PURPOSES

To build, construct, design, develop, purchase, lease, or otherwise acquire, and to hold, use, lease, manage, operate, equip, maintain, sell, mortgage, pledge, deal in or with any and all kinds of properties, real, personal, or mixed, tangible or intangible, and generally to engage in a manufacturing and merchandising, designing, developing and evaluating business in the field of computer information systems, computer systems and programming services.

To acquire, and pay for in cash, stock or bonds of the corporation, or otherwise, the good will, rights, assets and properties and to undertake, guarantee or assume the whole or any part of the obligations or liabilities, of any person, firm, association or corporation.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, formulae, inventions, improvements and processes, trade secrets, trade-marks, and trade names relating to or useful in connection with any business of the Corporation.

To incur liabilities and borrow money and to insure notes, bonds or other evidences of indebtedness and to secure the same by mortgage or pledge of any part or all of the properties of any and every kind of the Corporation.

To purchase, subscribe for or otherwise acquire, register, hold, sell, assign, transfer, pledge or otherwise dispose of shares of stock, bonds, notes and other securities and evidences of interest in or indebtedness of any government or political subdivisions thereof and of any person, firm or corporation of this or any other state or country, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, in the same manner that an individual might do.

To purchase, hold, sell and transfer the shares of its own capital stock or any other securities issued by it; provided (1) it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital, unless otherwise permitted by law, (2) such purchase, sale or transfer is not otherwise prohibited by law, and (3) shares of its own capital stock belonging to it shall not be voted on directly or indirectly.

To have one or more offices and to carry on any or all of its operations and business in any of the states, districts, territories or colonies of the United States, in the Provinces of Canada, and in any and all foreign countries, subject to the laws of such state, district, territory, colony, province or country.

To carry on business incidental to and in connection with the forgoing and to have and exercise all the powers conferred by the laws of Massachusetts upon corporations formed under the General Law of Massachusetts and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from, the terms of any other clause, but the objects and powers specified in each of the foregoing clauses of this article shall be regarded as independent purposes.

To carry on any business or other activity which may be lawfully carried on by a corporation organized under the Business Corporation Law of The Commonwealth of Massachusetts, whether or not related to those preferred to in the foregoing paragraphs.

4A. PREFERRED STOCK

A. DESIGNATION OF CLASSES.

The authorized classes of capital stock of the Corporation shall be designated, respectively, the Common Stock and the Preferred Stock.

Any and all shares of stock issued, and for which the full consideration has been paid or delivered, shall be deemed fully paid stock; and the holder of such shares shall not be liable for any further call or assessment of any other payment thereon.

B. COMMON STOCK.

Each holder of Common Stock shall at every meeting of stockholders be entitled to one vote in person or by proxy for each share of Common Stock held by him. The holders of the Common Stock shall be entitled to such dividends as may from time to time be declared by the Board of Directors out of any funds legally available for the declaration of dividends, subject to any provisions of these Articles of Organization, as amended from time to time, and subject to the relative rights and preferences of any shares of Preferred Stock authorized and issued hereunder. No share of Common Stock shall entitle its holder to have any preemptive right in or preemptive right to subscribe to any additional shares of Common Stock or any shares of any other class of stock which may at any time be authorized or issued, or any bonds, debentures or other securities convertible into shares of stock of any class of the Corporation, or options or warrants carrying rights to purchase such shares or securities. Subject to the relative rights and preferences of any shares of Preferred Stock authorized and issued hereunder, upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, the holders of shares of Common Stock shall be entitled to receive all assets of the Corporation available for distribution to its stockholders.

C. PREFERRED STOCK.

1. The Board of Directors is authorized, subject to limitations prescribed by law and the provisions of this Article 4, to provide for the issuance of the shares of Preferred Stock, with or without series, and, by filing a certificate pursuant to the applicable law of The Commonwealth of Massachusetts (the "Certificate of Designation"), to establish from time to time the number of shares to be included in each such series and to fix the designation, preferences, voting powers, qualifications and special or relative rights or privileges of the shares of each such series. In the event that at any time the Board of Directors shall have established and designated one or more series of Preferred Stock consisting of a number of shares less than all of the authorized number of shares of Preferred Stock,

the remaining authorized shares of Preferred Stock shall be deemed to be shares of an undesignated series of Preferred Stock until designated by the Board of Directors as being a part of a series previously established or a new series then being established by the Board of Directors. Notwithstanding the fixing of the number of shares constituting a particular series, the board of Directors may at any time thereafter authorize the issuance of additional shares of the same series except as set forth in the Certificate of Designation.

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

- (i) the number of shares constituting that series, which number may be increased or decreased (but not below the number of shares of such series then outstanding) from time to time by the Board of Directors, and the distinctive designation of that series;
- (ii) whether any dividends shall be paid on shares of that series, and, if so, the dividend rate on the shares of that series; whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
- (iii) whether shares of that series shall have voting rights in addition to the voting rights provided by law and, if so, the terms of such voting rights;
- (iv) whether shares of that series shall be convertible into shares of Common Stock or another security and, if so, the terms and conditions of such conversion, including provisions for adjustment of the conversion rate in such events as the Board of Directors shall determine;
- (v) whether or not the shares of that series shall be redeemable and, if so the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; and whether that series shall have a sinking fund for the redemption or purchase of shares of that series and, if so, the terms and amount of such sinking fund;

- (vi) whether, in the event of purchase or redemption of the shares of that series, any shares of that series shall be restored to the status of authorized but unissued shares or shall have such other status as shall be set forth in the Certificate of Designation;
- (vii) the rights of the shares of that series in the event of the sale, conveyance, exchange or transfer of all or substantially all of the property and assets of the Corporation, or the merger or consolidation of the Corporation into or with any other corporation, or the merger of any other corporation into it, or the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of shares of that series to payment in any such event;
- (viii) whether the shares of that series shall carry any preemptive right in or preemptive right to subscribe to any additional shares of Preferred Stock or any shares of any other class of stock which may at any time be authorized or issued, or any bonds, debentures or other securities convertible into shares of stock of any class of the Corporation, or options or warrants carrying rights to purchase such shares or securities; and
- (ix) any other designation, preferences, voting powers, qualifications, and special or relative rights or privileges of the shares of that series.

6A. CERTAIN BUSINESS COMBINATIONS

(a) Vote Required for certain Business Combinations.

(1) Higher Vote for Certain Business Combinations. In addition to any affirmative vote required by law or these Articles of Organization, and except as otherwise expressly provided in paragraph (b) of this Article 6A:

(i) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (a) any Interested Stockholder (as hereinafter defined) or (b) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or

(ii) any sale, lease, license, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value (as hereinafter defined) equal to or greater than ten percent (10%) of the combined assets of the Corporation and its Subsidiaries; or

(iii) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value equal to or greater than ten percent (10%) of the combined assets of the Corporation and its Subsidiaries, except pursuant to an employee benefit plan of the Corporation or any Subsidiary thereof; or

(iv) any reclassification of securities of the Corporation (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which are directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder; or

(v) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of any Interested Stockholder or any Affiliate of any Interested Stockholder

shall require the affirmative vote of the holders of at least eighty percent (80%) of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote in the election of directors (the "Voting Stock"), voting together as a single class (it being understood that for purposes of this Article 6A, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article 4 of these Articles of Organization). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified by law or by any other provisions of these Articles of Organization or any Certificate of Designation (as defined in Article 4 of these Articles of Organization), or in any agreement with any national securities exchange or otherwise.

(2) Definition of "Business Combination". The term "Business Combination" as used in this Article 6A shall mean any transaction which is referred to in any one or more of clauses (i) through (v) of subparagraph (1) of this paragraph (a).

(b) When Higher Vote Is Not Required. The provisions of paragraph (a) of this Article 6A shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provisions of these Articles of Organization, if, in the case of any Business Combination that does not involve any cash or other consideration being received by the stockholders of the Corporation solely in their capacity as stockholders of the Corporation, the condition specified in the following subparagraph (b)(1) is met, or, in the case of any other Business Combination, all of the conditions specified in the following subparagraphs (b)(1) and (b)(2) are met:

(1) Approval by Disinterested Directors. The Business Combination shall have been approved by a majority of the members of the Board of Directors (the "Board") who are Disinterested Directors (as hereinafter defined), it being understood that this condition shall not be capable of satisfaction unless there is at least one Disinterested Director.

(2) Price and Procedural Requirements. All of the following conditions shall have been met:

(i) The aggregate amount of the cash, and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash, to be received per share by the holders of Common Stock of the Corporation in such Business Combination shall be at least equal to the higher of the following:

- (A) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers fees) paid by the Interested Stockholder or any of its Affiliates for any shares of

Common Stock of the Corporation acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (2) in the transaction in which it became an Interested Stockholder, whichever is higher; or

(B) the Fair Market Value per share of Common Stock of the Corporation on the Announcement Date or on the date on which the Interested Stockholder became an Interested Stockholder (the "Determination Date"), whichever is higher.

(ii) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business combination of consideration other than cash to be received per share by holders of shares of any class of outstanding Voting Stock other than Common Stock shall be at least equal to the highest of the following (it being intended that the requirements of this subparagraph (b)(2)(ii) shall be required to be met with respect to every class of outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):

(A) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers fees) paid by the Interested Stockholder or any of its Affiliates for any shares of such class of Voting Stock acquired or beneficially owned by it that were acquired (1) within the two-year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Stockholder, whichever is higher; or,

(B) (if applicable) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary liquidation, dissolution or winding up of the Corporation; or

(C) the Fair Market Value per share of such class of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher.

(iii) The price determined in accordance with subparagraphs (i) and (ii) of this subparagraph (b)(2) shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination of shares or similar event.

(iv) The holders of all outstanding shares of Voting Stock not beneficially owned by the Interested Stockholder immediately prior to the consummation of any Business Combination shall be entitled to receive in such Business Combination cash or other consideration for their shares meeting all of the terms and

conditions of this paragraph (2) (provided, however, that the failure of any stockholders who are exercising their statutory rights to dissent from such Business Combination and receive payment of the fair value of their shares to exchange their shares in such Business Combination shall not be deemed to have prevented the condition set forth in this subparagraph (2)(iv) from being satisfied).

(v) The consideration to be received by holders of any particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration to be received per share by holders of such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by the Interested Stockholder.

(vi) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (A) except as approved by a majority of the Disinterested Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on any outstanding Preferred Stock of the Corporation; (B) there shall have been (I) no reduction in the annual rate of dividends paid on the Common Stock of the Corporation (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Disinterested Directors, and (II) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Disinterested Directors; and (C) neither such Interested Stockholder nor any of its Affiliates shall have become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.

(vii) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(viii) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the rules and regulations thereunder (or any subsequent provisions replacing the Exchange Act or such rules or regulations) shall be mailed to stockholders of the Corporation at least thirty (30) days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to the Exchange Act or subsequent provisions). Such proxy or information statement shall contain, if a majority of the Disinterested Directors so requests, an opinion of a reputable investment banking firm which shall be selected by a majority of the Disinterested Directors, furnished with all information such investment banking firm reasonably requests and paid a reasonable fee for its services by the Corporation upon the Corporation’s receipt of such opinion, as to the fairness (or lack of fairness) of the terms of the proposed Business Combination from the point of view of the holders of shares of Voting Stock (other than the Interested Stockholder).

(c) Certain Definitions. For the purposes of this Article 6A:

(1) A “person” shall include any individual, group acting in concert, corporation, partnership, association, joint venture, pool, joint stock company, trust, unincorporated organization or similar company, syndicate, or any group formed for the purpose of acquiring, holding or disposing of securities.

(2) “Interested Stockholder” shall mean any person (other than the Corporation or any Subsidiary) who or which:

(i) is the beneficial owner, directly or indirectly, of more than fifteen percent (15%) of the voting power of the then outstanding Voting Stock; or

(ii) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of fifteen percent (15%) or more of the voting power of the then outstanding Voting Stock; or

(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the 1933 Act.

(3) A person shall be a “beneficial owner” of any shares of Voting Stock:

(i) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly, within the meaning of Rule 13d-3 of the Exchange Act, as in effect on June 30, 1991; or

(ii) which such person or any of its Affiliates or Associates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to an agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's Affiliates or Associates until such tendered securities are accepted for purchase; or (B) the right to vote pursuant to any agreement, arrangement, understanding or otherwise; provided, however, that a person shall not be deemed the beneficial owner of any security if the agreement, arrangement or understanding to vote such security (I) arises solely from a revocable proxy or consent solicitation made pursuant to, and in accordance with, the Exchange Act and (II) is not also then reportable on Schedule 13D under the Exchange Act (or a comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly within the meaning of Rule 13d-3 under the Exchange Act, as in effect on June 30, 1991, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except to the extent permitted by the provision of subparagraph (c)(3)(ii)(B) above) or disposing of any shares of Voting Stock;

provided, however, that in the case of any employee stock ownership or similar plan of the Corporation or of any Subsidiary in which the beneficiaries thereof possess the right to vote any shares of Voting Stock held by such plan, no such plan nor any trustee with respect thereto (nor any Affiliate of such trustee), solely by reason of such capacity of such trustee, shall be deemed, for any purpose hereof, to beneficially own any shares of Voting Stock held under any such plan.

(4) For the purposes of determining whether a person is an Interested Stockholder pursuant to subparagraph (c)(2), the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of subparagraph (c)(3), but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(5) “Affiliate” and “Associate” shall have the meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on June 30, 1991.

(6) “Subsidiary” means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation.

(7) “Disinterested Director” means any Director of the Corporation who is not an Affiliate or Associate of the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any Director who is thereafter chosen to fill any vacancy on the Board or who is elected and who, in either event, is not an Affiliate or Associate of the Interested Stockholder and in connection with his or her initial assumption of office is recommended for appointment or election by a majority of Disinterested Directors then serving on the Board.

(8) “Fair Market Value” means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding and including the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Exchange Act on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding and including the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or, if no such quotations are available, the fair market value on the date in question of a share of such stock as determined in good faith by a majority of the Disinterested Directors; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined in good faith by a majority of the Disinterested Directors.

(9) In the event of any Business Combination in which the Corporation survives, the phrase “consideration other than cash to be received” as used in subparagraphs (b)(2)(i) and (ii) of this Article 6A shall include the shares of Common Stock of the Corporation and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

(10) For the purposes of determining the “Announcement Date,” in the event that the first public announcement of the proposal of the Business Combination is made after the close on such date of any securities exchange registered under the Exchange Act on which any shares of the Voting Stock of the Corporation are traded, or of the National Association

of Securities Dealers, Inc. Automated Quotations System or any other system on which any shares of the Voting Stock of the Corporation are listed, then the Announcement Date shall be deemed to be the next day on which such exchange or quotations system is open.

(d) Powers of the Board of Directors. A majority of the Board shall have the power and duty to determine for the purposes of this Article 6A, on the basis of information known to them after reasonable inquiry, whether a person is an Interested Stockholder, which determination shall be conclusive. Once the Board has made a determination, pursuant to the preceding sentence, that a person is an Interested Stockholder, then a majority of Disinterested Directors, shall have the power and duty to determine for the purposes of this Article 6A, on the basis of information known to them after reasonable inquiry, (i) the number of shares of Voting Stock beneficially, owned by any person, (ii) whether a person is an Affiliate or Associate of another, (iii) whether the assets which may be the subject of any Business Combination have, or the consideration which may be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value equal to or greater than ten percent (10%) of the combined assets of the Corporation and its Subsidiaries and (iv) whether all of the applicable conditions set forth in subsection (b)(2) shall have been met with respect to any Business Combination, any of which determinations by a majority of the Disinterested Directors shall be conclusive. A majority of the Disinterested Directors shall have the further power to interpret all of the terms and provisions of this Article 6A, which interpretation shall be conclusive.

(e) No Effect on Fiduciary Obligations of Interested Stockholders. Nothing contained in this Article 6A shall be construed to relieve any Interested Stockholder of any fiduciary obligation imposed by law.

(f) Amendment, Repeal, etc. Notwithstanding any other provisions of these Articles of Organization or the By-Laws of the Corporation (and notwithstanding the fact that a lesser percentage or no vote may be specified by law, these Articles of Organization or the By-Laws of the Corporation), and in addition to any affirmative vote of the holders of Preferred Stock or any other class of capital stock of the Corporation or any series of the foregoing then outstanding which is required by law or by or pursuant to these Articles of Organization, the affirmative vote of the holders of eighty percent (80%) or more of the outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent with, this Article 6A.

6B. CERTAIN TRANSACTIONS APPROVED BY THE BOARD OF DIRECTORS

Except as provided in Article 6A of, or as otherwise provided in, these Articles of Organization, the Corporation may authorize, by a vote of a majority of the shares of each class of stock outstanding and entitled to vote thereon, (a) the sale, lease or exchange of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions as it deems expedient, and (b) the merger or consolidation of the Corporation or any Subsidiary (as defined in Section (c)(6) of Article 6A of these Articles of Organization) into any other corporation, provided, however, that such sale, lease, exchange, merger or consolidation shall have been approved by a majority of the members of the Board of Directors.

6C. LIMITATION OF LIABILITY OF DIRECTORS

No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director notwithstanding any provision of law imposing such liability; provided, however, that this Article shall not eliminate or limit any liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 61 and 62 of the Massachusetts Business Corporation Law, or (iv) with respect to any transaction from which the director derived an improper personal benefit.

The provisions of this Article shall not eliminate or limit the liability of a director of this Corporation for any act or omission occurring prior to the date on which this Article became effective, provided, however, that neither any provision of this Article nor the adoption of this Article shall affect the effectiveness of any predecessor provision of these Articles of Organization pertaining to the elimination or limitation of the liability of a director of this Corporation for any act or omission occurring prior to the date on which this Article became effective. No amendment or repeal of this Article shall adversely affect the rights and protection afforded to a director of this Corporation under this Article for acts or omissions occurring prior to such amendment or repeal.

If the Massachusetts Business Corporation Law is subsequently amended to further eliminate or limit the personal liability of directors or to authorize corporate action to further eliminate or limit such liability, then the liability of the directors of this Corporation shall, without any further action of the Board of Directors or the stockholders of this Corporation, be eliminated or limited to the fullest extent permitted by the Massachusetts Business Corporation Law as so amended.

6D. MAKING AND AMENDING BY-LAWS

The directors of the Corporation shall have power to make, alter, amend and repeal the By-Laws of the Corporation in whole or in part, except with respect to any provision thereof which by law or these Articles of Organization or such By-Laws requires action by the stockholders, who shall also have power to make, alter, amend and repeal the By-Laws of the Corporation. Any By-Laws made by the directors under the powers conferred hereby may be altered, amended, or repealed by the directors or the stockholders. Notwithstanding the foregoing and anything contained in these Articles of Organization to the contrary, Articles III, IV, VII and X of the By-Laws, and this Article 6D, shall not be altered, amended or repealed by the stockholders, and no provision inconsistent therewith or herewith shall be adopted by the stockholders, without the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class. In addition, notwithstanding the foregoing and anything contained in these Articles of Organization to the contrary, Article VI of the By-Laws may not be altered, amended or repealed, in whole or in part, and no provision inconsistent therewith shall be adopted, by the Board of Directors unless approved by the affirmative vote of at least three-fourths (3/4) of the directors then serving.

6E. PLACES OF MEETINGS OF STOCKHOLDERS

Meetings of the stockholders may be held anywhere in the United States.

6F. PARTNERSHIP IN ANY BUSINESS ENTERPRISE

The Corporation may be a partner in any business enterprise it would have power to conduct by itself.

6G. TRANSACTIONS WITH AFFILIATED PERSONS

The Corporation may enter into contracts or transact business with one or more of its directors, officers or stockholders or with any corporation, organization or other concern in which one or more of its directors, officers or stockholders are directors, officers, stockholders or are otherwise interested and may enter into other contracts or transactions in which one or more of its directors, officers or stockholders are in any way interested. In the absence of fraud, no such contract or transaction shall be invalidated or in any way affected by the fact that such one or more of the directors, officers or stockholders of the Corporation have or may have any interest which is or might be adverse to the interest of the Corporation even though the vote or action of directors, officers or stockholder having such adverse interest may have been necessary to obligate the Corporation upon such contract or transaction.

At any meeting of the Board of Directors of the Corporation (or of any duly authorized committee thereof) at which any such contract or transaction shall be authorized or ratified, any such directors or directors may vote or act thereat with like force and effect as if he had not such interest, provided in such case that the nature of such interest (though not necessarily the extent or details thereof) shall be disclosed or shall have been known to the directors. A general notice that a director or officer is interested in any corporation or other concern of any kind referred to above shall be a sufficient disclosure as to the interest of such director or officer with respect to all contracts and transactions with such corporation or other concern. No director shall be disqualified from holding office as a director or an officer of the Corporation by reason of any such adverse interest, unless the Board of Directors shall determine that such adverse interest is detrimental to the Corporation. In the absence of fraud, no director, officer or stockholder having such adverse interest shall be liable on account of such adverse interest to the Corporation or to any stockholder or creditor thereof or to any other person for any loss incurred by it under or by reason of such contract or transaction, nor shall any such director, officer or stockholder be accountable on such ground for any gains or profits realized thereon.

* We further certify that the foregoing restated articles of organization effect no amendments to the articles of organization of the corporation as heretofore amended, except amendments to the following articles

Article 3 and Article 4

(*If there are not such amendments, state "None".)

Briefly describe amendments in space below
See page 20 attached hereto

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY, we have hereunto signed our names this 16th day of August, in the year 1991.

/s/ Joseph W. Alsop President

/s/ Robert L. Birnbaum Assistant Clerk

BRIEF DESCRIPTION OF AMENDMENTS

Article 3: Article 3 has been amended by deleting from the Corporation's authorized capital stock the shares of Series A Convertible Preferred Stock, par value \$.01 per share, and Series B Convertible Preferred Stock, par value \$.01 per share.

Article 4: Article 4 has been amended to eliminate the description of, and references to, the Series A Convertible Preferred Stock and the Series B Convertible Preferred Stock.

THE COMMONWEALTH OF MASSACHUSETTS

**Restated Articles of Organization
(General Laws, Chapter 156B, Section 74)**

I hereby approve the within restated articles of organization and, the filing fee in the amount of \$400 having been paid, said articles are deemed to have been filed with me this 23rd day of August, 1991.

/s/ Michael J. Connolly

Michael Joseph Connolly
Secretary of State

**TO BE FILLED IN BY CORPORATION
PHOTO COPY OF RESTATED ARTICLES OF ORGANIZATION TO BE SENT TO:**

Robert L. Birnbaum, Esquire

Foley, Hoag & Eliot

One Post Office Sq., Boston, MA 02109

Telephone: (617) 482-1390

Copy Mailed

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108

Articles of Amendment
General Laws, Chapter 156B, Section 72

We, Joseph W. Alsop, President, and
and James D. Freedman, Assistant Clerk of

Progress Software Corporation

located at 14 Oak Park, Bedford, Massachusetts 01730

do hereby certify that ARTICLES OF AMENDMENT affecting Articles NUMBERED: 3

(Number those articles 1,2,3,4,5 and/or 6 being amended)

of the Articles of Organization was duly adopted at a meeting held on August 19, 1994 by vote of:

<u>4,691,137</u>	shares of	<u>Common Stock</u>	out of	<u>6,161,971</u> shares outstanding,
		<i>(type of class & series, if any)</i>		
	shares of	<u></u>	out of	<u></u> shares outstanding, and
		<i>(type of class & series, if any)</i>		
	shares of	<u></u>	out of	<u></u> shares outstanding,
		<i>(type of class & series, if any)</i>		

CROSS OUT INAPPLICABLE CLAUSE being at least a majority of each type, class or series outstanding and entitled to vote thereon¹:

- C
 - P
 - M
 - R.A.
- ¹ For amendments adopted pursuant to Chapter 156B, Section 70.
² For amendments adopted pursuant to Chapter 156B, Section 71.

Note: If the space provided under any Amendment or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one Amendment may be made on a single sheet so long as each Amendment requiring each addition is clearly indicated.

To change the number of shares and the par value (if any) of any type, class or series of stock which the corporation is authorized to issue, fill in the following:

The total presently authorized is:

WITHOUT PAR VALUE

WITH PAR VALUE

TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON		COMMON	8,500,000	\$.01
PREFERRED		PREFERRED	1,000,000	\$.01

Change the total authorized to:

WITHOUT PAR VALUE

WITH PAR VALUE

TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON		COMMON	20,000,000	\$.01
PREFERRED		PREFERRED	1,000,000	\$.01

The foregoing Amendment will become effective when these Articles of Amendment are Filed in accordance with Chapter 156B, Section 6 of The General Laws unless these articles specify, in accordance with the vote adopting the amendment, a later effective date not more than thirty days after such Filing, in which event the amendment will become effective on such later date. LATER EFFECTIVE DATE: _____

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY, we have hereunto signed our names this 3rd day of January, in the year 1995.

/s/ Joseph W. Alsop _____ President
 /s/ James D. Freedman _____ Assistant Clerk



THE COMMONWEALTH OF MASSACHUSETTS

**Articles of Amendment
General Laws, Chapter 156B, Section 72**

I hereby approve the within Articles of Amendment and, the filing fee in the amount of \$11,500 having been paid, said articles are deemed to have been filed with me this 19th day of January, 1995.

/s/ William Francis Galvin

**William Francis Galvin
Secretary of the Commonwealth**

**TO BE FILLED IN BY CORPORATION
PHOTOCOPY OF ARTICLES OF AMENDMENT TO BE SENT**

Ms. Sheila P. Kelley, Associate Counsel

Progress Software Corporation

14 Oak Park, Bedford, Massachusetts 01730

Telephone: (617) 280-4976

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108

Articles of Amendment
General Laws, Chapter 156B, Section 72

We, Joseph W. Alsop, _____, President, and
and James D. Freedman _____, Assistant Clerk of

Progress Software Corporation
(Exact name of corporation)

located at 14 Oak Park, Bedford, Massachusetts 01730
(Street address of corporation in Massachusetts)

certify that Articles Of Amendment affecting Articles numbered:

3
(Number those articles 1,2,3,4,5 and/or 6 being amended)

of the Articles of Organization was duly adopted at a meeting held on August 25, 1997 by vote of:

<u>9,091,013</u>	shares of	<u>Common Stock</u>	out of	<u>12,397,249</u> shares outstanding,
		<i>(type of class & series, if any)</i>		
_____	shares of	_____	out of	_____ shares outstanding and,
		<i>(type of class & series, if any)</i>		
_____	shares of	_____	out of	_____ shares outstanding,
		<i>(type of class & series, if any)</i>		

C ¹**being at least a majority of each type, class or series outstanding and entitled to vote thereon:
P
M
R.A.

*Delete the inapplicable words. ** Delete the inapplicable clause.

- 1 For amendments adopted pursuant to Chapter 156B, Section 70.
- 2 For amendments adopted pursuant to Chapter 156B, Section 71.

Note: If the space provided under any Amendment or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one Amendment may be made on a single sheet so long as each Amendment requiring each addition is clearly indicated.

To change the number of shares and the par value (if any) of any type, class or series of stock which the corporation is authorized to issue, fill in the following:

The total presently authorized is:

WITHOUT PAR VALUE

WITH PAR VALUE

TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON		COMMON	20,000,000	\$.01
PREFERRED		PREFERRED	1,000,000	\$.01

Change the total authorized to:

WITHOUT PAR VALUE

WITH PAR VALUE

TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON		COMMON	50,000,000	\$.01
PREFERRED		PREFERRED	1,000,000	\$.01

The foregoing amendment(s) will become effective when these Articles of Amendment are filed in accordance with General Laws, Chapter 156B, Section 6 unless these articles specify, in accordance with the vote adopting the amendment, a *later* effective date not more than *thirty days* after such filing, in which event the amendment will become effective on such later date. LATER EFFECTIVE DATE: _____

SIGNED UNDER THE PENALTIES OF PERJURY, this 17th day of November, 1997.

/s/ Joseph W. Alsop _____ President
Joseph W. Alsop

/s/ James D. Freedman _____ Assistant Clerk
James D. Freedman

THE COMMONWEALTH OF MASSACHUSETTS

Articles of Amendment
(General Laws, Chapter 156B, Section 72)

I hereby approve the within Articles of Amendment and, the filing fee in the amount of \$30,000 having been paid, said articles are deemed to have been filed with me this 17th day of November 1997.

/s/ William Francis Galvin

William Francis Galvin
Secretary of the Commonwealth

TO BE FILLED IN BY CORPORATION
Photocopy of document to be sent to:

James D. Freedman, Vice President and General Counsel

Progress Software Corporation

14 Oak Park, Bedford, MA 01730

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108

Articles of Amendment
General Laws, Chapter 156B, Section 72

We, Joseph W. Alsop
and James D. Freedman

, President, and
, Clerk of

Progress Software Corporation
(Exact name of corporation)

located at 14 Oak Park, Bedford, Massachusetts 01730

(Street address of corporation in Massachusetts)

certify that Articles Of Amendment affecting Articles numbered:

3

(Number those articles 1,2,3,4,5 and/or 6 being amended)

of the Articles of Organization was duly adopted at a meeting held on April 23, 1999 by vote of:

<u>11,725,870</u>	shares of	<u>Common Stock</u>	out of	<u>17,269,526</u>	shares outstanding,
		<i>(type of class & series, if any)</i>			
<u> </u>	shares of	<u> </u>	out of	<u> </u>	shares outstanding and,
		<i>(type of class & series, if any)</i>			
<u> </u>	shares of	<u> </u>	out of	<u> </u>	shares outstanding,
		<i>(type of class & series, if any)</i>			

C ¹**being at least a majority of each type, class or series outstanding and entitled to vote thereon:
P
M
R.A.

*Delete the inapplicable words. ** Delete the inapplicable clause.
1 For amendments adopted pursuant to Chapter 156B, Section 70.
2 For amendments adopted pursuant to Chapter 156B, Section 71.

Note: If the space provided under any Amendment or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one Amendment may be made on a single sheet so long as each Amendment requiring each addition is clearly indicated.

To change the number of shares and the par value (if any) of any type, class or series of stock which the corporation is authorized to issue, fill in the following:

The total presently authorized is:

WITHOUT PAR VALUE

WITH PAR VALUE

TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON		COMMON	50,000,000	\$.01
PREFERRED		PREFERRED	1,000,000	\$.01

Change the total authorized to:

WITHOUT PAR VALUE

WITH PAR VALUE

TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON		COMMON	75,000,000	\$.01
PREFERRED		PREFERRED	1,000,000	\$.01

The foregoing amendment(s) will become effective when these Articles of Amendment are filed in accordance with General Laws, Chapter 156B, Section 6 unless these articles specify, in accordance with the vote adopting the amendment, a *later* effective date not more than *thirty days* after such filing, in which event the amendment will become effective on such later date. LATER EFFECTIVE DATE: _____

SIGNED UNDER THE PENALTIES OF PERJURY, this 5th day of May, 1999.

/s/ Joseph W. Alsop _____ President
Joseph W. Alsop

/s/ James D. Freedman _____ Clerk
James D. Freedman

THE COMMONWEALTH OF MASSACHUSETTS

**Articles of Amendment
(General Laws, Chapter 156B, Section 72)**

I hereby approve the within Articles of Amendment and, the filing fee in the amount of \$25,000 having been paid, said articles are deemed to have been filed with me this 6th day of May 1999.

/s/ William Francis Galvin

**William Francis Galvin
Secretary of the Commonwealth**

**TO BE FILLED IN BY CORPORATION
Photocopy of document to be sent to:**

James W. Romeo, Counsel

Progress Software Corporation

14 Oak Park, Bedford, MA 01730

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108

Articles of Amendment
General Laws, Chapter 156B, Section 72

We, Norman R. Robertson
and James D. Freedman

, Vice President,
, Clerk of

Progress Software Corporation
(Exact name of corporation)

located at 14 Oak Park, Bedford, Massachusetts 01730
(Street address of corporation in Massachusetts)

certify that Articles Of Amendment affecting Articles numbered:

3
(Number those articles 1,2,3,4,5 and/or 6 being amended)

of the Articles of Organization was duly adopted at a meeting held on April 20, 2000 by vote of:

<u>28,427,333</u>	shares of	<u>Common Stock</u>	out of	<u>35,686,598</u>	shares outstanding,
		<i>(type of class & series, if any)</i>			
<u> </u>	shares of	<u> </u>	out of	<u> </u>	shares outstanding and,
		<i>(type of class & series, if any)</i>			
<u> </u>	shares of	<u> </u>	out of	<u> </u>	shares outstanding,
		<i>(type of class & series, if any)</i>			

C ¹**being at least a majority of each type, class or series outstanding and entitled to vote thereon:
P
M
R.A.

*Delete the inapplicable words. ** Delete the inapplicable clause.

1 For amendments adopted pursuant to Chapter 156B, Section 70.

2 For amendments adopted pursuant to Chapter 156B, Section 71.

Note: If the space provided under any Amendment or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one Amendment may be made on a single sheet so long as each Amendment requiring each addition is clearly indicated.

To change the number of shares and the par value (if any) of any type, class or series of stock which the corporation is authorized to issue, fill in the following:

The total presently authorized is:

WITHOUT PAR VALUE

WITH PAR VALUE

TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON		COMMON	75,000,000	\$.01
PREFERRED		PREFERRED	1,000,000	\$.01

Change the total authorized to:

WITHOUT PAR VALUE

WITH PAR VALUE

TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON		COMMON	100,000,000	\$.01
PREFERRED		PREFERRED	1,000,000	\$.01

The foregoing amendment(s) will become effective when these Articles of Amendment are filed in accordance with General Laws, Chapter 156B, Section 6 unless these articles specify, in accordance with the vote adopting the amendment, a *later* effective date not more than *thirty days* after such filing, in which event the amendment will become effective on such later date. LATER EFFECTIVE DATE: _____

SIGNED UNDER THE PENALTIES OF PERJURY, this 17th day of June, 2000.

/s/ Norman R. Robertson Vice President
 Norman R. Robertson

/s/ James D. Freedman Clerk
 James D. Freedman

THE COMMONWEALTH OF MASSACHUSETTS

**Articles of Amendment
General Laws, Chapter 156B, Section 72**

I hereby approve the within Articles of Amendment and, the filing fee in the amount of \$25,000 having been paid, said articles are deemed to have been filed with me this 18th day of July 2000.

/s/ William Francis Galvin

William Francis Galvin
Secretary of the Commonwealth

TO BE FILLED IN BY CORPORATION
Photocopy of document to be sent to:

James W. Romeo, Counsel

Progress Software Corporation

14 Oak Park, Bedford, MA 01730

Telephone: (781) 280-4000

BY-LAWS
of
PROGRESS SOFTWARE CORPORATION

ARTICLE I — ARTICLES OF ORGANIZATION

The name and purposes of the Corporation shall be as set forth in the Articles of Organization. These By-Laws, the powers of the Corporation and its Directors and Stockholders, and all matters concerning the conduct and regulation of the business of the Corporation, shall be subject to such provisions in regard thereto, if any, as are set forth in the Articles of Organization. All references in these By-Laws to the Articles of Organization shall be construed to mean the Articles of Organization of the Corporation as from time to time amended or restated.

ARTICLE II — FISCAL YEAR

Except as from time to time otherwise determined by the Directors, the fiscal year of the Corporation shall in each year end on the date specified in the Articles of Organization.

ARTICLE III — MEETINGS OF STOCKHOLDERS

Section 3.1 Annual Meetings.

The annual meeting of Stockholders shall be held each year on the date specified in the Articles of Organization (or if that be a legal holiday in the place where the meeting is to be held, on the next succeeding full business day) at 10:00 A.M. unless a different hour is fixed by the Board of Directors or the President. The purposes for which the annual meeting is to be held, in addition to those prescribed by law, by the Articles of Organization or these By-Laws, may be specified by the Board of Directors or the President. If no annual meeting has been held on the date fixed above, or by adjournment therefrom, a special meeting in lieu thereof may be held and any action taken at such special meeting shall have the same force and effect as if taken at the annual meeting.

Notwithstanding any other provision in these By-Laws, the Board of Directors may change the date, time and location of any annual or special meeting of the Stockholders (other than a special meeting called upon the written application of Stockholders (a "Meeting Requested by Stockholders")) prior to the time for such meeting, including, without limitation, by postponing or deferring the date of any such annual or special meeting (other than a Meeting Requested by Stockholders) previously called or by canceling any special meeting previously called (other than a Meeting Requested by Stockholders).

Section 3.2 Special Meetings.

(a) Subject to the rights of the holders of any class or series of preferred stock of the Corporation, special meetings of the Stockholders entitled to vote may be called by the Board of Directors or the Chairman of the Board of Directors or the President.

(b) If the Corporation shall not have a class of voting stock registered under the Securities Exchange Act of 1934, as amended, special meetings of the Stockholders entitled to vote shall be called by the Clerk, or in case of the death, absence, incapacity or refusal of the Clerk, by any other officer, upon written application of one or more Stockholders who are entitled to vote and who hold at least ten percent (10%) in interest of the capital stock entitled to vote at the meeting.

(c) If the Corporation shall have a class of voting stock registered under the Securities Exchange Act of 1934, as amended, special meetings of the Stockholders entitled to vote shall be called by the Clerk, or in case of the death, absence, incapacity or refusal of the Clerk, by any other officer, upon written application of one or more Stockholders who are entitled to vote and who hold at least forty percent (40%) in interest of the capital stock entitled to vote at the meeting.

Section 3.3 Place of Meetings.

All meetings of the Stockholders shall be held at the principal office of the Corporation in Massachusetts, unless a different place within Massachusetts or, if permitted by the Articles of Organization, elsewhere within the United States as is designated by the President or by a majority of the Directors acting by vote or by written instrument or instruments signed by them. Any adjourned session of any meeting of the Stockholders shall be held at such place within Massachusetts or, if permitted by the Articles of Organization, elsewhere within the United States as is designated in the vote of adjournment.

Section 3.4 Notice of Meetings.

A written notice of the place, date and hour of all meetings of Stockholders stating the purposes of the meeting shall be given at least seven (7) days before the meeting to each Stockholder entitled to vote thereat and to each Stockholder who is otherwise entitled by law, the Articles of Organization or these By-Laws to such notice, by leaving such notice with him or at his residence or usual place of business, or by mailing it, postage prepaid, and addressed to such Stockholder at his address as it appears in the records of the Corporation. Such notice shall be given by the Clerk, or in case of the death, absence, incapacity, or refusal of the Clerk, by any other officer or by a person designated either by the Clerk, by the person or persons calling the meeting or by the Board of Directors. If notice is given by mail, such notice shall be deemed given when dispatched. If notice is not given by mail and is given by leaving such notice at the Stockholder's residence or usual place of business, it shall be deemed given when so left. Whenever notice of a meeting is required to be given a Stockholder under any provision of law, of the Articles of Organization, or of these By-laws, a written waiver thereof, executed before or after the meeting by such Stockholder or his attorney thereunto authorized, and filed with the records of the meeting, shall be deemed equivalent to such notice. Every Stockholder who is present at a meeting (whether in person or by proxy) shall be deemed to have waived notice thereof. A waiver of notice of any meeting need not specify the purposes of such meeting.

Section 3.5 Notice of Stockholder Business at a Meeting of the Stockholders.

The following provisions of this Section 3.5 shall apply to the conduct of business at any meeting of the Stockholders. (As used in this Section 3.5, the term annual meeting shall include a special meeting in lieu of an annual meeting.)

(a) At any meeting of the Stockholders, only such business shall be conducted as shall have been brought before the meeting (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any Stockholder of the Corporation who is a Stockholder of record at the time of giving of the notice provided for in paragraph (b) of this Section 3.5, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in paragraph (b) of this Section 3.5.

(b) For business to be properly brought before any meeting of the Stockholders by a Stockholder pursuant to clause (iii) of paragraph (a) of this By-law, the Stockholder must have given timely notice thereof in writing to the Clerk of the Corporation. To be timely, a Stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than sixty (60) days nor more than ninety (90) days prior to the scheduled annual meeting, regardless of any postponements, deferrals or adjournments of that meeting to a later date; provided, however, that if less than seventy (70) days' notice or prior public disclosure of the date of the scheduled annual meeting is given or made, notice by the Stockholder to be timely must be so delivered or received not later than the close of business on the tenth (10th) day following the earlier of the date on which notice of the date of the scheduled meeting was mailed or the day on which public disclosure was made of the date of the scheduled meeting; and (ii) in the case of a special meeting (other than a special meeting in lieu of an annual meeting), not later than the tenth (10th) day following the earlier of the day on which notice of the date of the scheduled meeting was mailed or the day on which public disclosure was made of the date of the scheduled meeting. A Stockholder's notice to the Clerk shall set forth as to each matter the Stockholder proposes to bring before the meeting (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (ii) the name and address, as they appear on the Corporation's books, of the Stockholder proposing such business, the name and address of the beneficial owner, if any, on whose behalf the proposal is made, and the name and address of any other Stockholders or beneficial owners known by such Stockholder to be supporting such proposal, (iii) the class and number of shares of the Corporation which are owned beneficially and of record by such Stockholder of record, by the beneficial owner, if any, on whose behalf the proposal is made and by any other Stockholders or beneficial owners known by such Stockholder to be supporting such proposal, and (iv) any material interest of such Stockholder of record and/or of the beneficial owner, if any, on whose behalf the proposal is made, in such proposed business and any material interest of any other Stockholders or beneficial owners known by such Stockholder to be supporting such proposal in such proposed business, to the extent known by such Stockholder.

(c) Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this By-law. The person presiding at the meeting shall, if the facts warrant, determine that business was not properly brought before the meeting and in accordance with the procedures prescribed by these

By-laws, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this By-law, a Stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended (or any successor provision), and the rules and regulations thereunder with respect to the matters set forth in this By-law.

(d) This provision shall not prevent the consideration and approval or disapproval at the meeting of reports of officers, Directors and committees of the Board of Directors, but, in connection with such reports, no new business shall be acted upon at such meeting unless properly brought before the meeting as herein provided.

Section 3.6 Quorum.

At any meeting of the Stockholders, a quorum shall consist of a majority in interest of all stock issued and outstanding and entitled to vote at the meeting; except that if two or more classes or series of stock are outstanding and entitled to vote on any matter as separate classes or series, then in case of each such class or series a quorum for that matter shall consist of a majority in interest of all stock of that class or series issued, outstanding and entitled to vote, except when a larger quorum is required by law, by the Articles of Organization or by these By-Laws. Stock owned directly or indirectly by the Corporation, if any, shall not be deemed outstanding for this purpose. Any meeting of the Stockholders may be adjourned from time to time to any other time and to any other place by a majority of the votes properly cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice. Any business which could have been transacted at any meeting of the Stockholders as originally called may be transacted at any adjournment thereof.

Section 3.7 Action by Vote.

When a quorum is present at any meeting, a plurality of the votes properly cast for election to any office shall elect to such office, and a majority of the votes properly cast (or if there are two or more classes of stock entitled to vote as separate classes, then in the case of each such class, a majority of the stock of that class present or represented and entitled to vote and voting) upon any question other than an election to an office shall decide the question, except when a larger vote is required by law, by the Articles of Organization or by these By-Laws. No ballot shall be required for any election unless requested by a Stockholder present or represented at the meeting and entitled to vote in the election. The Corporation shall not directly or indirectly vote any share of its stock. Nothing in this section shall be construed to limit the right of the Corporation to vote any shares of stock held directly or indirectly by it in a fiduciary capacity.

Section 3.8 Voting.

Stockholders entitled to vote shall have one vote for each share of stock entitled to vote held by them of record according to the records of the Corporation and a proportionate vote for a fractional share, unless otherwise provided or required by law, the Articles of Organization or these By-laws. The vote for each share of jointly-held stock shall be cast in accordance with the decision of a majority of the Stockholders jointly holding said share. The Corporation shall not, directly or indirectly, vote any share of its own stock.

Section 3.9 Action by Consent.

Any action required or permitted to be taken at any meeting of the Stockholders may be taken without a meeting if all Stockholders entitled to vote on the matter consent to the action in writing and the written consents are filed with the records of the meetings of Stockholders. Such consents shall be treated for all purposes as a vote at a meeting.

Section 3.10 Proxies.

Stockholders entitled to vote may vote either in person or by proxy in writing dated not more than six (6) months before the meeting named therein, which proxies shall be filed with the Clerk or other person responsible to record the proceedings of the meeting before being voted. Unless otherwise specifically limited by their terms, such proxies shall entitle the holders thereof to vote at any adjournment of such meeting but shall not be valid after the final adjournment of such meeting. Proxies need not be sealed or attested. Notwithstanding the foregoing, a proxy coupled with an interest sufficient in law to support an irrevocable power, including, without limitation, an interest in the stock or in the Corporation generally, may be made irrevocable if it so provides, need not specify the meeting to which it relates, and shall be valid and enforceable until the interest terminates, or for such shorter period as may be specified in the proxy. A proxy with respect to stock held in the name of two or more persons shall be valid if executed by any one of them unless at or prior to exercise of the proxy the Corporation receives a specific written notice to the contrary from any one of them. A proxy purporting to be executed by or on behalf of a Stockholder shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger.

Section 3.11 Conduct of Business.

The Chairman of the Board of Directors or his designee, or, if there is no Chairman of the Board or such designee, then the President or his designee, or, if the office of President shall be vacant, then a person appointed by a majority of the Board of Directors, shall preside at any meeting of Stockholders as the chairman of the meeting. In addition to his powers pursuant to Section 3.5(c), the person presiding at any meeting of Stockholders shall determine the order of business and the procedures at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

ARTICLE IV — DIRECTORS

Section 4.1 Powers.

The business of the Corporation shall be managed by a Board of Directors who shall have and may exercise all the powers of the Corporation except as otherwise reserved to the Stockholders by law, by the Articles of Organization or by these By-Laws. In the event of a vacancy in the Board of Directors, the remaining Directors, except as otherwise provided by law, may exercise the powers of the full Board until the vacancy is filled. Without limiting the generality of the foregoing, the Board of Directors shall have the power, unless otherwise provided by law, to purchase and to lease, pledge, mortgage and sell all property of the Corporation (including to issue or sell the stock of the Corporation) and to make such contracts and agreements as they deem advantageous, to fix the price to be paid for or in connection with

any property or rights purchased, sold, or otherwise dealt with by the Corporation, to borrow money, issue bonds, notes and other obligations of the Corporation, and to secure payment thereof by mortgage or pledge of all or any part of the property of the Corporation. The Board of Directors may determine the compensation of Directors. The Board of Directors or such officer or committee as the Board of Directors may designate, may determine the compensation and duties, in addition to those prescribed by these By-Laws, of all officers, agents and employees of the Corporation.

Section 4.2 Enumeration, Election and Term of Office.

The Board of Directors shall consist of not less than three Directors, except that whenever there shall be only two Stockholders, the number of Directors shall be not less than two, and whenever there shall be only one Stockholder, the number of Directors shall be not less than one. The number of Directors shall be as determined from time to time by the Stockholders and may be enlarged or reduced at any time by vote of a majority of the Directors then in office. The Directors shall be chosen at the annual meeting of the Stockholders by such Stockholders as have the right to vote thereon, and each shall hold office until the next annual election of Directors and until his successor is chosen and qualified or until he sooner dies, resigns, is removed, or becomes disqualified. No Director need be a Stockholder.

Section 4.3 Nomination of Directors.

The following provisions of this Section 4.3 shall apply to the nomination of persons for election to the Board of Directors.

(a) Nominations of persons for election to the Board of Directors of the Corporation may be made (i) by or at the direction of the Board of Directors or (ii) by any Stockholder of the Corporation who is a Stockholder of record at the time of giving of notice provided for in paragraph (b) of this Section 4.3, who shall be entitled to vote for the election of Directors at the meeting and who complies with the notice procedures set forth in paragraph (b) of this Section 4.3.

(b) Nominations by Stockholders shall be made pursuant to timely notice in writing to the Clerk of the Corporation. To be timely, a Stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation, not less than sixty (60) days nor more than ninety (90) days prior to the scheduled meeting date, regardless of any postponements, deferrals or adjournments of that meeting to a later date; provided, however, that if less than seventy (70) days' notice or prior public disclosure of the date of the scheduled meeting is given or made, notice by the Stockholder to be timely must be so delivered or received not later than the close of business on the tenth (10th) day following the earlier of the day on which notice of the date of the scheduled meeting was mailed or the day on which public disclosure was made of the date of the scheduled meeting. Such Stockholder's notice shall set forth (x) as to each person whom the Stockholder proposes to nominate for election or reelection as a Director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, or pursuant to any other then existing statute, rule or regulation applicable thereto (including such person's written consent to

being named in the proxy statement as a nominee and to serving as a Director if elected); (y) as to the Stockholder giving the notice (1) the name and address, as they appear on the Corporation's books, of such Stockholder and (2) the class and number of shares of the Corporation which are beneficially owned by such Stockholder and also which are owned of record by such Stockholder; and (z) as to the beneficial owner, if any, on whose behalf the nomination is made, (1) the name and address of such person and (2) the class and number of shares of the Corporation which are beneficially owned by such person. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee as a Director. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a Director shall furnish to the Clerk of the Corporation that information required to be set forth in a Stockholder's notice of nomination which pertains to the nominee.

(c) No person shall be eligible to serve as a Director of the Corporation unless nominated in accordance with the procedures set forth in this By-law. The person presiding at the meeting shall, if the facts warrant, determine that a nomination was not made in accordance with the procedures prescribed by these By-laws, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this By-law, a Stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended (or any successor provision), and the rules and regulations thereunder with respect to the matters set forth in this By-law.

Section 4.4 Regular Meetings.

Regular meetings of the Board of Directors may be held at such times and places within or without the Commonwealth of Massachusetts as the Board of Directors may fix from time to time and, when so fixed, no notice thereof need be given, provided that any Director who is absent when such times and places are fixed shall be given notice of the fixing of such times and places. The first meeting of the Board of Directors following the annual meeting of the Stockholders may be held without notice immediately after and at the same place as the annual meeting of the Stockholders or the special meeting held in lieu thereof. If in any year a meeting of the Board of Directors is not held at such time and place, any action to be taken may be taken at any later meeting of the Board of Directors with the same force and effect as if held or transacted at such meeting.

Section 4.5 Special Meetings.

Special meetings of the Directors may be held at any time and at any place designated in the call of the meeting, when called by the President or the Treasurer or by one or more Directors, reasonable notice thereof being given to each Director by the Clerk or an Assistant Clerk, or by the officer or one of the Directors calling the meeting.

Section 4.6 Notice.

It shall be reasonable and sufficient notice to a Director to send notice by mail at least forty-eight (48) hours or by telegram at least twenty-four (24) hours before the meeting addressed to him at his usual or last known business or residence address or to give notice to him

in person or by telephone at least twenty-four (24) hours before the meeting. Notice of a meeting need not be given to any Director if a written waiver of notice, executed by him before or after the meeting, is filed with the records of the meeting, or to any Director who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him. Neither notice of a meeting nor a waiver of a notice need specify the purposes of the meeting.

Section 4.7 Quorum, Action at a Meeting.

At any meeting of the Directors, a quorum for any election or for the consideration of any question shall consist of a majority of the Directors then in office. Whether or not a quorum is present any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting, the votes of a majority of the Directors present shall be requisite and sufficient for election to any office and shall decide any question brought before such meeting, except in any case where a larger vote is required by law, by the Articles of Organization or by these By-Laws.

Section 4.8 Action by Consent.

Any action required or permitted to be taken at any meeting of the Directors may be taken without a meeting if all the Directors consent to the action in writing and the written consents are filed with the records of the meetings of the Directors. Such consent shall be treated for all purposes as a vote of the Directors at a meeting.

Section 4.9 Committees.

The Board of Directors, by vote of a majority of the Directors then in office, may elect from its number an Executive Committee or other committees, composed of such number of its members as it may from time to time determine (but in any event not less than two), and may delegate thereto some or all of its powers except those which by law, by the Articles of Organization, or by these By-Laws may not be delegated. Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but unless otherwise provided by the Board of Directors or in such rules, its business shall be conducted so far as possible in the same manner as is provided by these By-Laws for the Board of Directors. All members of such committees shall hold such offices at the pleasure of the Board of Directors. The Board of Directors may abolish any such committee at any time. Any committee to which the Board of Directors delegates any of its powers or duties shall keep records of its meetings and shall upon request report its action to the Board of Directors. The Board of Directors shall have power to rescind any action of any committee, but no such rescission shall have retroactive effect.

Section 4.10 Telephone Conference Meetings.

The Board of Directors or any committee thereof may participate in a meeting of such Board of Directors or committee thereof by means of a conference telephone (or similar communications equipment) call, by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

ARTICLE V — OFFICERS AND AGENTS

Section 5.1 Enumeration: Qualification.

The officers of the Corporation shall be a President, a Treasurer, a Clerk, and such other officers, if any, as the incorporators at their initial meeting, or the Directors from time to time, may in their discretion elect or appoint. The Corporation may also have such agents, if any, as the incorporators at their initial meeting, or the Directors from time to time, may in their discretion appoint. None of the officers of the Corporation need be a resident of Massachusetts if the Corporation has a resident agent appointed for the purpose of service of process. Any two or more offices may be held by the same person. Any officer may be required by the Directors to give bond for the faithful performance of his duties to the Corporation in such amount and with such sureties as the Directors may determine. The premiums for such bonds may be paid by the Corporation.

Section 5.2 Powers.

Subject to law, to the Articles of Organization and to the other provisions of these By-Laws, each officer shall have, in addition to the duties and powers herein set forth, such duties and powers as are commonly incident to his office and such duties and powers as the Directors may from time to time designate.

Section 5.3 Election.

The President, the Treasurer and the Clerk shall be elected annually by the Directors at their first meeting following the annual meeting of the Stockholders or special meeting in lieu thereof. Other officers, if any, may be elected or appointed by the Board of Directors at said meeting or at any other time.

Section 5.4 Tenure.

Except as otherwise provided by law or by the Articles of Organization or by these By-Laws, the President, the Treasurer and the Clerk shall hold office until the first meeting of the Directors following the next annual meeting of the Stockholders or special meeting in lieu thereof and until their respective successors are chosen and qualified, and each other officer shall hold office until the first meeting of the Directors following the next annual meeting of the Stockholders and until their respective successors are chosen and qualified, unless a different period shall have been specified by the terms of his election or appointment, or in each case until he sooner dies, resigns, is removed, or becomes disqualified. Each agent shall retain his authority at the pleasure of the Directors.

Section 5.5 President and Vice President.

The President shall, subject to the direction of the Board of Directors, have general supervision and control of its business. Unless otherwise provided by the Board of Directors, he shall preside, when present, at all meetings of Stockholders and of the Board of Directors.

Any Vice President shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

Section 5.6 Treasurer and Assistant Treasurer.

The Treasurer shall, subject to the direction of the Board of Directors, have general charge of the financial affairs of the Corporation and shall cause to be kept accurate books of account. He shall have custody of all funds, securities and valuable documents of the Corporation, except as the Board of Directors may otherwise provide.

Any Assistant Treasurer shall have such powers and perform such duties as the Board of Directors may from time to time designate.

Section 5.7 Clerk and Assistant Clerks.

The Clerk shall keep a record of the meetings of Stockholders. In the event there is no Secretary or he is absent, the Clerk or an Assistant Clerk shall keep a record of the meetings of the Board of Directors. In the absence of the Clerk from any meeting of Stockholders, an Assistant Clerk if one be elected, otherwise a Temporary Clerk designated by the person presiding at the meeting, shall perform the duties of the Clerk.

Section 5.8 Secretary.

The Secretary, if one be elected or appointed, shall keep a record of the meetings of the Board of Directors. In the absence of the Secretary, the Clerk and any Assistant Clerk, a Temporary Secretary shall be designated by the person presiding at such meeting to perform the duties of the Secretary.

ARTICLE VI — RESIGNATIONS, REMOVALS AND VACANCIES

Section 6.1 Resignations.

Any Director or officer may resign at any time by delivering his resignation in writing to the President or the Clerk or to a meeting of the Directors. Such resignation shall take effect at such time as is specified therein, or if no such time is so specified then upon delivery thereof.

Section 6.2 Removals.

(a) Subject to the rights of the holders of any series of Preferred Stock then outstanding, any Director, or the entire Board of Directors, may be removed from office at any time, but only either (a) for cause by the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all of the shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, or (b) by the affirmative vote of at least three-fourths (3/4) of the directors then serving, with or without cause. A director may be removed for cause only after a reasonable notice and opportunity to be heard before the body proposing to remove him. As used in this Section 6.2, "cause" shall mean only (i) conviction of a felony, (ii) declaration of unsound mind by order of court, (iii) gross dereliction of duty, (iv) commission of an action involving moral turpitude, or (v) commission of an action which

constitutes intentional misconduct or a knowing violation of law if such action in either event results both in an improper substantial personal benefit and a material injury to the Corporation.

(b) The Directors may remove any officer from office with or without assignment of cause by vote of a majority of the Directors then in office. If cause is assigned for removal of any officer, such officer may be removed only after a reasonable notice and opportunity to be heard before the body proposing to remove him. The Directors may terminate or modify the authority of any agent or employee.

(c) Except as the Directors may otherwise determine, no Director or officer who resigns or is removed shall have any right to any compensation as such Director or officer for any period following his resignation or removal, or any right to damages on account of such removal whether his compensation be by the month or by the year or otherwise, provided, however, that the foregoing provision shall not prevent such Director or officer from obtaining damages from breach of any contract of employment legally binding upon the Corporation.

Section 6.3 Vacancies.

Subject to the Articles of Organization, any vacancy in the Board of Directors, including a vacancy resulting from an enlargement of the Board, may be filled by vote of a majority of the Directors then in office or, in the absence of such election by the Directors, by the Stockholders at a meeting called for the purpose; provided, however, that any vacancy resulting from action by the Stockholders may be filled by the Stockholders at the same meeting at which such action was taken by them.

If the office of any officer becomes vacant, the Directors may elect or appoint a successor by vote of a majority of the Directors present at the meeting at which such election or appointment is made.

Each such successor shall hold office for the unexpired term of his predecessor and until his successor shall be elected or appointed and qualified, or until he sooner dies, resigns, is removed or becomes disqualified.

ARTICLE VII — INDEMNIFICATION OF DIRECTORS AND OTHERS

Section 7.1 Right to Indemnification.

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (hereinafter a "Proceeding"), by reason of the fact that he or she is or was (a) a Director of the Corporation, (b) an officer of the Corporation elected or appointed by the stockholders or the Board of Directors, or (c) serving, at the request of the Corporation as evidenced by a vote of the Board of Directors prior to the occurrence of the event to which the indemnification relates, as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (such persons described in (a), (b) and (c) are sometimes hereinafter referred to as an "Indemnitee"), whether the basis of such Proceeding is alleged action in an official capacity as such a Director or officer of the Corporation or as such other director, officer, employee or agent

or in any other capacity while serving as such a Director or officer of the Corporation or as such other director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Massachusetts Business Corporation Law, as the same exists or may hereafter be amended (but in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including, but not limited to, attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith and such indemnification shall continue as to an Indemnitee who has ceased to be such a director, officer, employee or agent and shall inure to the benefit of the Indemnitee's heirs, executors and administrators; provided, however, that, except as provided in Section 6.3 with respect to Proceedings to enforce rights to indemnification, the Corporation shall indemnify any such Indemnitee in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized or ratified by the Board of Directors of the Corporation. The right to indemnification conferred in this Article VII shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any Proceeding in advance of its final disposition (hereinafter an "Advancement of Expenses"); provided, however, that, if the Massachusetts Business Corporation Law so requires, an Advancement of Expenses incurred by an Indemnitee shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "Undertaking"), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "Final Adjudication") that such Indemnitee is not entitled to be indemnified for such expenses under this Article VII or otherwise.

Section 7.2 Indemnification of Employees and Agents of the Corporation.

The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to an Advancement of Expenses, to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII.

Section 7.3 Right of Indemnitee to Bring Suit.

If a claim under this Article VII is not paid in full by the Corporation within sixty days after a written claim has been received by the Corporation, except in the case of a claim for an Advancement of Expenses, in which case the applicable period shall be twenty days, the Indemnitee may at any time hereafter bring suit against the Corporation to recover the unpaid amount of the claim. If the Indemnitee is successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an Advancement of Expenses) it shall be a defense that the Indemnitee has not met the applicable standard of conduct set forth in the Massachusetts Business Corporation Law. In addition, in any suit by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Corporation shall be entitled to recover such expenses upon a Final Adjudication that the Indemnitee has not met the applicable standard of conduct set forth in the Massachusetts

Business Corporation Law. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the Massachusetts Business Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an Advancement of Expenses hereunder, or by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such Advancement of Expenses, under this Article VII or otherwise shall be on the Corporation.

Section 7.4 Non-Exclusivity of Rights.

The rights to indemnification and to Advancement of Expenses conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under these By-Laws, the Articles of Organization or any statute, agreement, vote of stockholders or of disinterested directors or otherwise.

Section 7.5 Insurance.

The Corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the Corporation or any director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Massachusetts Business Corporation Law. The Corporation's obligation to provide indemnification under this Article VII shall be offset to the extent of any other source of indemnification or any otherwise applicable insurance coverage under a policy maintained by the Corporation or any other person.

Section 7.6 Amendments.

Without the consent of a person entitled to the indemnification and other rights provided in this Article VII (unless otherwise required by the Massachusetts Business Corporation Law), no amendment modifying or terminating such rights shall adversely affect such person's rights under this Article VII with respect to the period prior to such amendment.

Section 7.7 Savings Clause.

If this Article VII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each indemnitee as to any liabilities and expenses with respect to any proceeding to the fullest extent permitted by any applicable portion of this Article VII that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VIII — STOCK

Section 8.1 Issue of Authorized Unissued Capital Stock.

Any unissued capital stock from time to time authorized under the Articles of Organization may be issued by vote of the Directors. No such stock shall be issued unless the cash, so far as due, or the property, services or expenses for which it was authorized to be issued, has been actually received or incurred by, or conveyed or rendered to, the Corporation, or is in its possession as surplus.

Section 8.2 Certificates of Stock.

Each Stockholder shall be entitled to a certificate in form selected by the Board of Directors stating the number and the class and the designation of the series, if any, of the shares held by him, except that the Board of Directors may provide by resolution that some or all of any or all classes and series of shares of the Corporation shall be uncertificated shares, to the extent permitted by law. Such certificate shall be signed by the President or a Vice President and the Treasurer or an Assistant Treasurer. Such signatures may be facsimiles if the certificate is signed by a transfer agent, or by a registrar, other than a Director, officer or employee of the Corporation. In case any officer who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the time of its issue.

Every certificate for shares of stock subject to any restriction on transfer pursuant to the Articles of Organization, these By-Laws, or any agreement to which the Corporation is a party shall have the restriction noted conspicuously on the certificate and shall also set forth on the face or back either the full text of the restriction or a statement of the existence of such restriction and a statement that the Corporation will furnish a copy thereof to the holder of such certificate upon written request and without charge. Every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall set forth on its face or back either the full text or the preferences, voting powers, qualifications and special and relative rights of the shares of each class and series authorized to be issued or a statement of the existence of such preferences, powers, qualifications, and rights, and a statement that the Corporation will furnish a copy thereof to the holder of such certificate upon written request and without charge.

Section 8.3 Transfers.

Subject to the restrictions, if any, imposed by the Articles of Organization, these By-Laws or any agreement to which the Corporation is a party, shares of stock shall be transferred on the books of the Corporation only by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment of such shares or by a written power of attorney to sell, assign or transfer such shares, properly executed, with necessary transfer stamps affixed, and with such proof that the endorsement, assignment or power of attorney is genuine and effective as the Corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote

with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these By-Laws. It shall be the duty of each Stockholder to notify the Corporation of his post office address.

Section 8.4 Lost, Mutilated or Destroyed Certificates.

Except as otherwise provided by law, the Board of Directors may determine the conditions upon which a new certificate of stock may be issued in place of any certificate alleged to have been lost, mutilated, or destroyed. It may, in its discretion, require the owner of a lost, mutilated or destroyed certificate, or his legal representative, to give a bond, sufficient in its opinion, with or without surety, to indemnify the Corporation against any loss or claim which may arise by reason of the issue of a certificate in place of such lost, mutilated, or destroyed stock certificate.

Section 8.5 Transfer Agent and Registrar.

The Board of Directors may appoint a transfer agent or a registrar or both for its capital stock of any class or series thereof and require all certificates for such stock to bear the signature or facsimile thereof of any such transfer agent or registrar.

Section 8.6 Setting Record Date and Closing Transfer Records.

The Board of Directors may fix in advance a time not more than sixty (60) days before: (i) the date of any meeting of the Stockholders; or (ii) the date for the payment of any dividend or the making of any distribution to Stockholders; or (iii) the last day on which the consent or dissent of Stockholders may be effectively expressed for any purpose, as the record date for determining the Stockholders having the right to notice and to vote at such meeting or any adjournment thereof, or the right to receive such dividend or distribution, or the right to give such consent or dissent. If a record date is set, only Stockholders of record on the record date shall have such right, notwithstanding any transfer of stock on the books of the Corporation after the record date. Without fixing such record date, the Board of Directors may close the transfer records of the Corporation for all or any part of such sixty (60) day period.

If no record date is fixed and the transfer books are not closed, then the record date for determining Stockholders having the right 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, and 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 acts with respect thereto.

ARTICLE IX — MISCELLANEOUS PROVISIONS

Section 9.1 Execution of Papers.

All deeds, leases, transfers, contracts, bonds, notes, releases, checks, drafts and other obligations authorized to be executed on behalf of the Corporation shall be signed by the President or the Treasurer except as the Directors may generally or in particular cases otherwise determine.

Section 9.2 Voting of Securities.

Except as the Directors may generally or in particular cases otherwise specify, the President or the Treasurer may on behalf of the Corporation vote or take any other action with respect to shares of stock or beneficial interest of any other corporation, or of any association, trust or firm, of which any securities are held by this Corporation, and may appoint any person or persons to act as proxy or attorney-in-fact for the Corporation, with or without power of substitution, at any meeting thereof.

Section 9.3 Corporate Seal.

The seal of the Corporation shall be a circular die with the name of the Corporation, the word "Massachusetts" and the year of its incorporation cut or engraved thereon, or shall be in such other form as the Board of Directors may from time to time determine.

Section 9.4 Corporate Records.

The original, or attested copies, of the Articles of Organization, By-Laws and records of all meetings of the incorporators and Stockholders, and the stock and transfer records, which shall contain the names of all Stockholders and the record address and the amount of stock held by each, shall be kept in Massachusetts at the principal office of the Corporation, or at an office of its transfer agent or of its Clerk or of its Resident Agent. Said copies and records need not all be kept in the same office. They shall be available at all reasonable times to the inspection of any Stockholder for any proper purpose but not to secure a list of Stockholders or other information for the purpose of selling said list or information or copies thereof or of using the same for a purpose other than in the interest of the applicant, as a Stockholder, relative to the affairs of the Corporation.

Section 9.5 Evidence of Authority.

A certificate by the Clerk or Secretary or an Assistant or temporary Clerk or Secretary as to any matter relative to the Articles of Organization, By-Laws, records of the proceedings of the incorporators, Stockholders, Board of Directors, or any committee of the Board of Directors, or stock and transfer records or as to any action taken by any person or persons as an officer or agent of the Corporation, shall as to all persons who rely thereon in good faith be conclusive evidence of the matters so certified.

Section 9.6 Right to Repurchase.

Except as otherwise provided by law, the Articles of Organization or by these By-Laws (including any amendments thereto), the Corporation, through its Board of Directors, shall have the right and power to repurchase any of its outstanding shares at such price and upon such terms as may be agreed upon between the Corporation and the selling Shareholder(s), or the predecessor(s) in interest thereof.

Section 9.7 Dividends.

Unless otherwise required by the Massachusetts Business Corporation Law or the Articles of Organization, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, securities of the Corporation or other property.

Section 9.8 Ratification.

Any action taken on behalf of the Corporation by the Directors or any officer or representative of the Corporation which requires authorization by the Stockholders or the Directors of the Corporation shall be deemed to have been authorized if subsequently ratified by the Stockholders entitled to vote or by the Directors, as the case may be, at a meeting held in accordance with these By-laws.

Section 9.9 Reliance upon Books, Records and Reports.

Each Director or officer of the Corporation shall be entitled to rely on information, opinions, reports or records, including financial statements, books of account and other financial records, in each case presented by or prepared by or under the supervision of (i) one or more officers or employees of the Corporation whom the Director or officer reasonably believes to be reliable and competent in the matters presented, or (ii) counsel, public accountants or other persons as to matters which the Director or officer reasonably believes to be within such person's professional or expert competence, or (iii) in the case of a Director, a duly constituted committee of the Board of Directors upon which he does not serve, as to matters within its delegated authority, which committee the Director reasonably believes to merit confidence, but he shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. The fact that a Director or officer so performed his duties shall be a complete defense to any claim asserted against him by reason of his being or having been a Director or officer of the Corporation, except as expressly provided by statute.

Section 9.10 Control Share Acquisition.

Until such time as this section shall be repealed or these By-laws shall be amended to provide otherwise, including, without limitation, during any time that the Corporation shall be an "issuing public Corporation" as defined in Chapter 110D of the Massachusetts General Laws, the provisions of Chapter 110D of the Massachusetts General Laws shall not apply to "control share acquisitions" of the Corporation within the meaning of said Chapter 110D.

ARTICLE X — AMENDMENTS

Except as otherwise provided in the Articles of Organization, these By-Laws may be amended or repealed in whole or in part by the affirmative vote of the holders of a majority of the shares of each class of the capital stock at the time outstanding and entitled to vote at any annual or special meeting of Stockholders, provided that notice of the substance of the proposed amendment is stated in the notice of such meeting. If authorized by the Articles of Organization, the Directors may make, amend or repeal the By-Laws, in whole or in part, except with respect

to any provision thereof which by law, the Articles of Organization or the By-Laws requires action by the Stockholders. Not later than the time of giving notice of the meeting of Stockholders next following the making, amending or repealing by the Directors of any By-Law, notice thereof stating the substance of such change shall be given to all Stockholders entitled to vote on amending the By-Laws. Notwithstanding the foregoing and anything contained in these By-laws to the contrary, Section 6.2(a) of these By-laws may not be altered, amended or repealed, in whole or in part, by the Board of Directors unless approved by the affirmative vote of at least three-fourths (3/4) of the Directors then serving and this sentence of this Article X may not be altered, amended or repealed, in whole or in part, and no provision inconsistent therewith shall be adopted, by the Board of Directors unless approved by the affirmative vote of three-fourths (3/4) of the directors then serving. No change in the date fixed in these By-Laws for the annual meeting of Stockholders may be made within sixty (60) days before the date fixed in these By-Laws, and in case of any change in such date, notice thereof shall be given to each Stockholder in person or by letter mailed to his last known post office address at least twenty (20) days before the new date fixed for such meeting.

Any By-Law adopted, amended or repealed by the Directors may be repealed, amended or reinstated by the Stockholders entitled to vote on amending the By-Laws.

**PROGRESS
SOFTWARE**

SHARES

SEE REVERSE FOR
CERTAIN DEFINITIONS

PS

PROGRESS SOFTWARE CORPORATION
INCORPORATED UNDER THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS
COMMON STOCK, \$.01 PAR VALUE

THIS IS TO CERTIFY THAT CUSIP 743312 10 0
IS THE OWNER OF

FULLY-PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF THE PAR VALUE OF ONE CENT (\$.01) EACH OF

_____ PROGRESS SOFTWARE CORPORATION _____

(Hereinafter called the Corporation), transferable on the books on the Corporation by the holder in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.

WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

Dated:

PROGRESS SOFTWARE CORPORATION

/s/ Norman R. Robertson
TREASURER

INCORPORATED
1981
MASSACHUSETTS

/s/ Joseph W. Alsop
PRESIDENT

THE CORPORATION IS AUTHORIZED TO ISSUE MORE THAN ONE CLASS AND SERIES OF STOCK. THE CORPORATION WILL FURNISH TO THE HOLDER UPON WRITTEN REQUEST AND WITHOUT CHARGE THE PREFERENCES, POWERS, QUALIFICATIONS AND RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM—as tenants in common
TEN ENT—as tenants by the entireties
JT TEN—as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT— _____Custodian _____
(Cust) (Minor)
under Uniform Gifts to Minors Act
(State)

Additional abbreviations may also be used though not in the above list.

For value received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____ shares of the capital stock

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

SIGNATURE(S) GUARANTEED:

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.