

**SECURITIES AND EXCHANGE COMMISSION**  
 Washington, D.C. 20549

**FORM S-4**  
**REGISTRATION STATEMENT**  
 UNDER  
**THE SECURITIES ACT OF 1933**

**SPECTRUM BRANDS, INC.**

(Exact Name of Registrant as Specified in its Charter)

**Wisconsin**  
 (State or Other Jurisdiction of  
 Incorporation or Organization)

**3692**  
 (Primary Standard Industrial  
 Classification Code Number)

**22-2423556**  
 (I.R.S. Employer  
 Identification Number)

**Six Concourse Parkway, Suite 3300**  
**Atlanta, Georgia 30328**  
**(770) 829-6200**

(Address, Including Zip Code, and Telephone Number, Including  
 Area Code, of Registrant's Principal Executive Offices)

**SEE TABLE OF ADDITIONAL REGISTRANTS**

**James T. Lucke, Esq.**  
**Spectrum Brands, Inc.**  
**Six Concourse Parkway, Suite 3300**  
**Atlanta, Georgia 30328**  
**(770) 829-6200**

(Name, Address, Including Zip Code, and Telephone Number,  
 Including Area Code, of Agent For Service)

*Copies of all Communications to:*

**Margaret A. Brown, Esq.**  
**Skadden, Arps, Slate, Meagher & Flom LLP**  
**One Beacon Street**  
**31<sup>st</sup> Floor**  
**Boston, Massachusetts 02108**  
**(617) 573-4800**

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this Registration Statement becomes effective.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box:

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities To Be Registered	Amount To Be Registered	Proposed Maximum Offering Price Per Unit(1)	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
7 <sup>3</sup> / <sub>8</sub> % Senior Subordinated Notes due 2015	\$700,000,000	100%	\$ 700,000,000	\$ 82,390
Guarantees of the 7 <sup>3</sup> / <sub>8</sub> % Senior Subordinated Notes due 2015	—	—	—	— (2)

(1) Estimated pursuant to Rule 457(f) solely for the purpose of calculating the registration fee.

(2) Pursuant to Rule 457(n), no separate fee is payable with respect to the guarantees of the notes being registered.

**The co-registrants hereby amend this registration statement on such date or dates as may be necessary to delay its effective date until the co-registrants shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.**

## TABLE OF ADDITIONAL REGISTRANTS

<u>Exact Name of Additional Registrants</u>	<u>Jurisdiction of Incorporation</u>	<u>Primary Standard Industrial Classification Code Number</u>	<u>I.R.S. Employer Identification Number</u>
ROV Holding, Inc.*	Delaware	551112	22-2423555
Rovcal, Inc.*	California	335900	52-2068284
United Industries Corporation, 2150 Schuetz Road, St. Louis, Missouri 63146, (314) 427-0780	Delaware	325900	43-1025604
AQ Holdings, Inc.**	Delaware	551112	04-3429328
Aquaria, Inc.**	California	339900	95-2556867
Aquarium Systems, Inc.**	Delaware	339900	34-1820457
DB Online, LLC**	Hawaii	N/A	N/A <sup>1</sup>
Ground Zero, Inc.**	Missouri	Inactive	43-1807196
IB Nitrogen, Inc., 10 Craig Street, Brantford, Ontario N3R7J1, (519) 757-0077	Delaware	325300	52-2115627
JungleTalk International, Inc.**	Delaware	321900	34-1839601
Nu-Gro US Holdco Corporation***	Delaware	551112	20-0971051
Nu-Gro America Corp. ***	Delaware	551112	98-0191327
Nu-Gro Technologies, Inc.***	Delaware	325300	14-1817561
Perfecto Holding Corp. **	Delaware	551112	59-3380422
Perfecto Manufacturing, Inc.**	Delaware	339900	59-3380419
Pets 'N People, Inc.**	California	453910	95-3603453
Schultz Company**	Missouri	325300	43-0625762
Southern California Foam, Inc.**	California	339900	95-4236597
Sylorr Plant Corp.**	Delaware	325900	02-0644834
United Pet Group, Inc.**	Delaware	311110	11-2392851
WPC Brands, Inc.**	Wisconsin	325900	39-1786169
Tetra Holding (US), Inc., 3001 Commerce Street, Blacksburg, Virginia 24060, (540) 951-5400	Delaware	311119	42-1560545
Willinger Bros., Inc.****	Delaware	311119	13-2847371

\* Address and telephone number of principal executive offices are the same as those of Spectrum Brands, Inc.

\*\* Address and telephone number of principal executive offices are the same as those of United Industries Corporation.

\*\*\* Address and telephone number of principal executive offices are the same as those of IB Nitrogen, Inc.

\*\*\*\* Address and telephone number of principal executive offices are the same as those of Tetra Holding (US), Inc.

1 Single member LLC disregarded for US tax purposes.

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED JUNE 3, 2005**

PROSPECTUS



## **Spectrum Brands, Inc.**

**Offer to Exchange  
\$700,000,000 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015  
for \$700,000,000 Senior Subordinated Notes due 2015  
that have been registered under the Securities Act of 1933**

We are offering, upon the terms and subject to the conditions set forth in this prospectus and the accompanying letter of transmittal, to exchange an aggregate principal amount of up to \$700,000,000 of our new 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015 (which we refer to as the "exchange notes"), for a like amount of the outstanding 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015 issued by us under our former name, Rayovac Corporation (which we refer to as the "original notes"), in a transaction registered under the Securities Act of 1933, as amended (the "Securities Act"). The exchange offer will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, 2005, unless extended.

Terms of the exchange offer:

- We will exchange all original notes that are validly tendered and not withdrawn prior to the expiration of the exchange offer.
- You may withdraw tenders of original notes at any time prior to the expiration of the exchange offer.
- We believe that the exchange of original notes for exchange notes will not be a taxable event for U.S. federal income tax purposes.
- We will not receive any proceeds from the exchange offer.
- The form and terms of the exchange notes are identical in all material respects to the form and terms of the original notes, except that (i) the exchange notes are registered under the Securities Act; (ii) the transfer restrictions and registration rights applicable to the original notes do not apply to the exchange notes; and (iii) the exchange notes will not contain provisions relating to liquidated damages relating to our registration obligations.
- There is no existing market for the exchange notes to be issued and we do not intend to apply for their listing on any national securities exchange or for quotation on the Nasdaq Stock Market.

**For a discussion of certain factors that should be considered by holders prior to tendering their original notes in the exchange offer, see "[Risk Factors](#)" beginning on page 18.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is \_\_\_\_\_, 2005

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This prospectus incorporates by reference documents that contain important business and financial information about Spectrum Brands, Inc. that is not included in or delivered with this prospectus. These documents are available without charge to holders of the notes upon written or oral request to Spectrum Brands, Inc., Six Concourse Parkway, Suite 3300, Atlanta, Georgia 30328, Attention: James T. Lucke, Senior Vice President, General Counsel and Secretary, telephone number (770) 829-6200. To obtain timely delivery, note holders must request the information no later than five business days before the expiration date. The expiration date is \_\_\_\_\_, 2005.

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You should rely on the information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with any other information. If you receive any other information, you should not rely on it. This prospectus is not an offer to sell, or a solicitation of an offer to buy, any of the securities to any person or by anyone in any jurisdiction where it is unlawful, where the person making the offer is not qualified to do so or to any person who cannot legally be offered the securities. You should not assume that the information included in this prospectus, including any information incorporated by reference, is accurate as of any date other than the date of this prospectus or the date of the document incorporated by reference.

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## MARKET, RANKING AND OTHER DATA

The data included in or incorporated by reference into this prospectus regarding markets and ranking, including the size of certain markets and our position and the position of our competitors within these markets, are based on a variety of sources, including company research, third-party studies and surveys, industry and general publications and estimates based on our management's knowledge and experience in the markets in which we operate. Our estimates have been based on information obtained from our customers, suppliers, trade and business organizations and other contacts in the markets in which we operate. We believe these estimates to be accurate as of the date of this prospectus or the document incorporated by reference, as applicable. However, this information may prove to be inaccurate because of issues relating to the methodology employed in formulating such estimates or because this information cannot always be verified with complete certainty due to the limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties. As a result, you should be aware that market, ranking and other similar data included in or incorporated by reference into this prospectus, and estimates and beliefs based on that data, may not be reliable. We cannot guarantee the accuracy or completeness of such information contained in or incorporated by reference into this prospectus.

Unless otherwise indicated, all our market share estimates are based on these sources of market data and reflect number of units sold, except for United Industries Corporation, where such estimates reflect dollar amounts.

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## INTELLECTUAL PROPERTY

We own or have rights to various trademarks, copyrights and trade names used in our business, including the following: RAYOVAC<sup>®</sup>, VARTA<sup>®</sup>, REMINGTON<sup>®</sup>, MAXIMUM<sup>®</sup>, MAXIMUM PLUS<sup>™</sup>, I-C3<sup>™</sup>, RENEWAL<sup>®</sup>, LOUD 'N CLEAR<sup>®</sup>, PRO LINE<sup>®</sup>, RAYOVAC ULTRA<sup>®</sup>, WORKHORSE<sup>®</sup>, ROUGHNECK<sup>®</sup>, SPORTSMAN<sup>®</sup>, AIR 4000<sup>®</sup>, XCELL<sup>®</sup>, EXTRA<sup>®</sup>, PRODIGY<sup>®</sup>, MICROSCREEN<sup>®</sup>, MICROFLEX<sup>®</sup>, PRECISION<sup>®</sup>, REMINGTON TITANIUM<sup>™</sup>, SMOOTH & SILKY<sup>®</sup>, SPECTRACIDE<sup>®</sup>, TRIAZICIDE<sup>®</sup>, TRIPLESTRIKE<sup>™</sup>, SPECTRACIDE TERMINATE<sup>®</sup>, SPECTRACIDE PRO<sup>®</sup>, HOT SHOT<sup>®</sup>, GARDEN SAFE<sup>®</sup>, SCHULTZ<sup>™</sup>, RID-A-BUG<sup>®</sup>, BAG-A-BUG<sup>®</sup>, REAL-KILL<sup>®</sup>, NO-PEST<sup>®</sup>, REPEL<sup>®</sup>, VIGORO<sup>®</sup>, STA-GREEN<sup>®</sup>, BANDINI<sup>®</sup>, WILSON<sup>®</sup>, SO-GREEN<sup>®</sup>, GREENLEAF<sup>®</sup>, GREEN EARTH<sup>®</sup>, IB NITROGEN<sup>®</sup>, NITROFORM<sup>®</sup>, NUTRALENE<sup>®</sup>, S.C.U.<sup>®</sup>, ORGANIFORM<sup>®</sup>, CUTTER<sup>®</sup>, MARINELAND<sup>®</sup>, PERFECTO<sup>®</sup>, INSTANT OCEAN<sup>®</sup>, REGENT<sup>®</sup>, 8-IN-1<sup>®</sup>, NATURE'S MIRACLE<sup>®</sup>, DINGO<sup>®</sup>, WILD HARVEST<sup>®</sup>, ONE EARTH<sup>®</sup>, LAZY PET<sup>®</sup>, JUNGLETALK<sup>®</sup>, TETRA<sup>®</sup>, TETRAMIN<sup>®</sup>, TETRAFIN<sup>®</sup>, TETRAPOND<sup>®</sup>, WHISPER<sup>®</sup> and AQUASAFE<sup>®</sup>. The Rayovac, Remington, VARTA and Tetra trademarks are also registered in countries outside the U.S., including in Europe, Latin America and Asia. We also license the PETERS and PETERS PROFESSIONAL trademarks from The Scotts Company, CIL trademarks from ICI Canada Inc., PLANT-PROD trademarks from Plant Products Co. Ltd. and PICKSEED trademarks from Pickseed Canada Inc. This prospectus and the documents incorporated by reference also include trademarks, service marks and trade names of other companies.

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## PRESENTATION OF FINANCIAL AND OTHER INFORMATION

We report our consolidated financial statements in U.S. dollars and prepare our consolidated financial statements in accordance with U.S. GAAP. Financial statements and financial and other information concerning United contained or incorporated by reference in this prospectus have been derived from publicly filed annual and interim reports prepared by United or otherwise provided by United in U.S. dollars in accordance with U.S. GAAP. Financial statements and other information concerning Nu-Gro contained or incorporated by reference in this prospectus have been derived from annual and interim reports prepared by Nu-Gro or otherwise provided by Nu-Gro in Canadian dollars in accordance with U.S. GAAP. Financial statements and other information concerning Tetra contained or incorporated by reference in this prospectus have been derived from annual and interim reports prepared by Tetra or otherwise provided by Tetra in euros in accordance with International Financial Reporting Standards.

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In this prospectus and the documents incorporated by reference, except where otherwise indicated, all references to “\$,” “dollars” or “U.S. dollars” are to the lawful currency of the United States, all references to “euro” or “€” are to the common currency of certain participating member countries of the European Union and all references to “Canadian \$” are to Canadian dollars. The noon buying rate in The City of New York for cable transfers as certified for customs purposes by the Federal Reserve Bank of New York on June 2, 2005 was \$1.2266 to €1.00 and \$0.8017 to Canadian \$1.00.

Certain monetary amounts, percentages and other figures included in this prospectus have been subject to rounding adjustments. Accordingly, figures shown as totals in certain tables may not be the arithmetic aggregation of the figures that precede them, and figures expressed as percentages in the text may not total 100% or, as applicable, when aggregated, may not be the arithmetic aggregation of the percentages that precede them.

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### **FORWARD-LOOKING STATEMENTS**

We have made or implied certain forward-looking statements in this prospectus and the documents incorporated by reference in this prospectus. All statements other than statements of historical facts included or incorporated by reference in this prospectus, including the statements under “Prospectus Summary,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business,” regarding our business strategy, future operations, financial position, estimated revenues, projected costs, projected synergies, prospects, plans and objectives of management, as well as information concerning expected actions of third parties, are forward-looking statements. When used in this prospectus the words “anticipate,” “intend,” “plan,” “estimate,” “believe,” “expect,” “project,” “could,” “will,” “should,” “may,” “strategy,” “indicate,” “determine” and similar expressions are also intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words.

Since these forward-looking statements are based upon current expectations of future events and projections and are subject to a number of risks and uncertainties, many of which are beyond our control, actual results or outcomes may differ materially from those expressed or implied herein, and you should not place undue reliance on these statements. Important factors that could cause our actual results to differ materially from those expressed or implied herein include, without limitation:

- competitive promotional activity or spending by competitors or price reductions by competitors;
- the loss of, or a significant reduction in, sales to a significant retail customer;
- difficulties or delays in the integration of operations of acquired businesses and our ability to achieve anticipated synergies and efficiencies with respect to those acquisitions;
- the introduction of new product features or technological developments by competitors and/or the development of new competitors or competitive brands;
- the effects of general economic conditions, including inflation, labor costs and stock market volatility or changes in trade, monetary or fiscal policies in the countries where we do business;
- our ability to develop and successfully introduce new products, protect our intellectual property and avoid infringing the intellectual property of third parties;
- our ability to successfully implement, achieve and sustain manufacturing and distribution cost efficiencies and improvements, and fully realize anticipated cost savings;
- the impact of unusual items resulting from the implementation of new business strategies, acquisitions and divestitures or current and proposed restructuring activities;
- the cost and effect of unanticipated legal, tax or regulatory proceedings or new laws or regulations (including environmental, public health and consumer protection regulations);

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- public perception regarding the safety of our products, including the potential for environmental liabilities, product liability claims, litigation and other claims;
- changes in accounting policies applicable to our business;
- interest rate, exchange rate and raw materials price fluctuations;
- government regulations;
- the seasonal nature of sales of our products;
- weather conditions, primarily during the peak lawn and garden season; and
- the effects of political or economic conditions, terrorist attacks, acts of war or other unrest in international markets.

Some of the above-mentioned factors are described in further detail in “Risk Factors” beginning on page 18. You should assume the information appearing in or incorporated by reference into this prospectus is accurate only as of the date on the front cover of this prospectus or the date of the document incorporated by reference, as applicable, as our business, financial condition, results of operations and prospects may have changed since that date. Except as required by applicable law, including the securities laws of the United States and the rules and regulations of the Securities and Exchange Commission, or SEC, we undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise to reflect actual results or changes in factors or assumptions affecting such forward-looking statement.

## PROSPECTUS SUMMARY

*The following summary highlights selected information about our business and the exchange offer, but it does not include all the information you should consider before deciding whether to exchange your original notes for the exchange notes. You should read this entire prospectus in its entirety, including the documents incorporated by reference, the information set forth under "Risk Factors" and the financial statements and related notes, before you decide whether to exchange your original notes for the exchange notes. Unless specified otherwise or the context requires, information in this prospectus gives effect to our acquisition of all of the equity interests of United Industries Corporation on February 7, 2005 and all of the equity interests of Tetra Holding GmbH on April 29, 2005. Effective May 2, 2005, we changed our corporate name from Rayovac Corporation to Spectrum Brands, Inc. In this prospectus, unless specified otherwise or the context requires, "Spectrum" and "Rayovac" refer to Spectrum Brands, Inc. together with its subsidiaries, "United" refers to United Industries Corporation together with its subsidiaries, "Tetra" refers to Tetra Holding GmbH together with its subsidiaries, and the terms "we," "us," "our" and other similar terms refer to Spectrum and its consolidated subsidiaries, giving effect to the acquisitions of United and Tetra and, therefore, include United and Tetra. While "Rayovac" and "Spectrum" refer to the same entities, Rayovac may be used in this prospectus to refer to the company in relation to periods prior to the name change. The acquisition of Tetra and the amendment of our senior credit facilities (and the borrowing thereunder to finance the acquisition of Tetra as described herein) are collectively referred to in this prospectus as the "Tetra transactions." The description of our business, competitive strengths and strategies gives effect to the Tetra transactions. "You" refers to prospective investors in the exchange notes. "Original notes" refers to our existing 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015; "exchange notes" refers to the 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015 offered for exchange pursuant to this prospectus; and "notes" refers collectively to the exchange notes and the original notes. References to "fiscal" with respect to us refer to the results of operations for the twelve months ended September 30 of the applicable year.*

### Company Overview

We are a global branded consumer products company with leading market positions in our seven major product categories: consumer batteries; pet supplies; lawn and garden; electric shaving and grooming; household insect control; electric personal care products; and portable lighting. We are a leading worldwide manufacturer and marketer of alkaline, zinc carbon and hearing aid batteries, a leading worldwide designer and marketer of rechargeable batteries and battery-powered lighting products and a leading worldwide designer and marketer of electric shavers and accessories, grooming products and hair care appliances. We are also a leading North American manufacturer and marketer of lawn fertilizers, herbicides, aquariums, pet health and beauty aid products and insecticides and repellents and a global leader in water life products and fish foods.

We sell our products in approximately 120 countries through a variety of trade channels, including retailers, wholesalers and distributors, hearing aid professionals, industrial distributors and original equipment manufacturers ("OEMs") and enjoy strong name recognition in our markets under the Rayovac, VARTA and Remington brands, each of which has been in existence for more than 80 years, the Spectracide, Cutter and 8-in-1 brands, which were acquired through our acquisition of United, and various Tetra brands, which were acquired through our acquisition of Tetra. We have 54 manufacturing and product development facilities located in the United States, Europe, China and Latin America. We manufacture alkaline and zinc carbon batteries, zinc air hearing aid batteries, lawn fertilizers, herbicides, pet supplies and insecticides and repellents in our company operated manufacturing facilities. Substantially all of our rechargeable batteries and chargers, electric shaving and grooming products, electric personal care products and portable lighting products are manufactured by third party suppliers, primarily located in China and Japan.

During fiscal 2004, we completed two acquisitions. On March 31, 2004, we completed the acquisition of an 85% equity interest in Ningbo Baowang ("Ningbo"), a Chinese producer of alkaline and zinc carbon batteries,



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thereby gaining a Chinese presence and low-cost manufacturing capabilities. In March 2005, we signed an agreement to purchase the remaining 15% equity interest in Ningbo. On May 28, 2004, we completed the acquisition of 90.1% of the outstanding capital stock of Microlite S.A. ("Microlite"), a Brazilian producer of alkaline and zinc carbon batteries and battery-operated lighting products. As a result, we now own the rights to the Rayovac brand name in each of the countries where we do business.

On February 7, 2005, we completed our acquisition of all of the equity interests of United, which completed its acquisition of The Nu-Gro Corporation ("Nu-Gro"), a Canadian lawn and garden products company, and United Pet Group, Inc. ("United Pet Group"), a privately owned manufacturer and marketer of branded pet supplies, on April 30, 2004 and July 30, 2004, respectively.

On April 29, 2005, we completed our acquisition of all of the equity interests of Tetra, a German manufacturer, distributor and marketer of foods, equipment and care products for fish and reptiles, and accessories for home aquariums and ponds.

Our existing consumer battery, electric shaving and grooming, electric personal care and portable lighting business is organized and managed according to three geographic regions: (i) North America, (ii) Europe/Rest of World ("Europe/ROW") and (iii) Latin America. We currently operate United and Tetra as separate business units.

Spectrum Brands, Inc. is a Wisconsin corporation. Our principal executive offices are located at Six Concourse Parkway, Suite 3300, Atlanta, Georgia, 30328 and our telephone number is (770) 829-6200. Our website address is [www.spectrumbrands.com](http://www.spectrumbrands.com). Information contained on our website, or on any website referred to therein, is not part of this prospectus and is not incorporated by reference into this prospectus.

### **Industry Overview**

We primarily compete in the following seven major consumer product categories:

#### ***Consumer Batteries***

In 2003, the global consumer battery market generated approximately \$24.0 billion in retail sales. Since 1990, the industry's growth percentage has been in the mid-single digits. The consumer battery industry consists of alkaline batteries, zinc carbon batteries and specialty batteries, which include rechargeable batteries, hearing aid batteries, photo batteries and watch/calculator batteries. The majority of battery consumption comes from industrialized nations, with the U.S. accounting for roughly one-third of global consumption. As personal incomes grow, the markets in less industrialized countries continue the gradual transition from zinc carbon batteries, which still account for a majority of unit sales in such markets, to the better performing and higher-priced alkaline batteries, similar to the transition that occurred in North America over the past generation. Most branded consumer batteries are marketed under the following brand names: Rayovac, Duracell (a Gillette brand), Energizer and Panasonic (a Matsushita brand). In addition, batteries are also often marketed under retailers' private label brands, particularly in Europe.

#### ***Pet Supplies***

Within the overall \$30 billion U.S. pet industry, we estimate that the pet supplies segment represented an \$8.0 billion market in 2004 based on retail sales. Within the overall \$20 billion European pet industry, we estimate that the pet supplies segment represented a \$4.0 billion market in 2004 based on retail sales. This highly fragmented segment is comprised of pet treats and pet supplies for dogs, cats, birds, fish and other small

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animals, including stain and odor removal products, grooming aids, bedding and lounging products, medications and vitamin supplements. In addition, pet supplies include aquarium kits, stand-alone tanks and stands, filtration systems, heaters, pumps, sea salt, aquarium hoods and lights and other aquatic supplies and accessories. According to management estimates, the pet supplies segment in the U.S. has grown approximately 6-8% annually since 1994. We believe that the recent market expansion has been driven by increasing pet ownership and the “humanization” of pets, which results in higher levels of spending, and the industry’s relative insensitivity to economic cycles, combined with innovative product development, increased retailer sophistication (i.e., pet superstores) and growth in dedicated retail square footage for pet supplies. We expect comparable market growth over the next several years due to the continuation of these trends. The industry is highly fragmented with, for example, over 500 manufacturers competing in the U.S. market, consisting primarily of small companies with limited product lines. Name brands in the pet supplies market include: Tetra, 8-in-1, Marineland, Nature’s Miracle, Vitakraft and Hartz.

### ***Lawn and Garden***

We estimate that retail sales of consumer lawn and garden products were approximately \$2.9 billion and \$335 million in the U.S. and Canada, respectively, in 2003. Over the next several years, we expect the lawn and garden industry to continue to grow at approximately 4% annually due to favorable demographic trends, including the increasing number of persons over the age of 45, a group that typically engages in more lawn and garden activity than the general population, and the increasing shift in the population to areas more conducive to lawn and gardening activities, such as the southern and western regions of the United States. Approximately 85 million, or 80%, of the households in the United States participate in some form of lawn and garden activity. A significant portion of lawn and garden products are marketed under the following brand names: Spectracide, Vigoro and Sta-Green, and Scotts, Miracle-Gro and Ortho (brands of The Scotts Company).

### ***Electric Shaving and Grooming***

We estimate that retail sales of the global electric shaving and grooming industry exceeded \$3.0 billion in 2003. Industry analysts believe that unit sales in the electric shaving and grooming industry will continue to grow at approximately 3% annually over the next several years due to new product and product feature introductions, which also drive higher selling prices. Electric shavers include men’s rotary and foil shavers and women’s foil shavers and are used with electric shaver accessories, such as shaver replacement parts (primarily foils and cutters), pre-shave products and cleaning agents. Electric grooming products include beard and mustache trimmers, nose and ear trimmers and haircut kits and related accessories. Electric shaving and grooming products are marketed primarily under one of the following brands: Remington, Braun (a Gillette brand) and Philips/Norelco.

### ***Household Insect Control***

According to management estimates, retail sales of household insect control products totaled approximately \$1.0 billion in the United States in 2003. We estimate that the household insect control market has experienced recent historical growth of 4% per year and that it will grow at rates in excess of historical rates over the next several years due to the expected increase in demand for insect control products resulting from general economic growth and increasing awareness of insect-spread illnesses such as the West Nile virus in the United States. A significant portion of household insect control products are marketed under the following brand names: Hot Shot, Cutter and Repel, Raid and OFF! (S.C. Johnson brands), Ortho (a Scotts brand) and Combat.

### ***Electric Personal Care Products***

The electric personal care industry includes hair dryers, hair setters, curling irons, hair crimpers and straighteners, hot air brushes and lighted mirrors. We estimate that retail sales of global electric personal care

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products exceeded \$2.0 billion in 2003 and unit sales are projected to grow at 3% annually over the next several years. This growth rate is consistent with the industry's historical growth rate and is driven by new product and product feature introductions, which result in higher selling prices. A significant portion of electric personal care products are marketed under the following brand names: Remington, Conair, Vidal Sassoon, Revlon and Hot.

### ***Portable Lighting***

We estimate that the global portable lighting market generated approximately \$3.0 billion in retail sales in 2003, of which an estimated 50% is from sales of flashlights. The global portable lighting market is fragmented by region and includes few global branded companies. Recent growth in the portable lighting market has been relatively flat, and we believe that growth opportunities will be driven by product innovation. A few of the brand names in the portable lighting market include Rayovac, Eveready and Maglite.

Across the consumer products industry, recent differentiation among competitors has been based upon strong retailer relationships. Sales within these markets are driven by well-recognized brand names, as well as consistent new product introductions. As major retailers have rapidly expanded over the last 15 years, the concentration of purchasing power for all consumer products categories has increased significantly. We expect the continued growth of major retailers such as Wal-Mart, Carrefour, Target, The Home Depot, Lowe's and Gigante to continue the concentration of industry distribution. Furthermore, as global retailers continue to reduce their number of suppliers, the ability to service these retailers with diverse product offerings and provide products globally through an expansive distribution system is increasingly important.

### **Competitive Strengths**

The following strengths serve as a foundation for our business strategy:

#### ***Strong Diversified Global Brand Portfolio***

We have a global portfolio of well-recognized consumer product brands. In the consumer battery and portable lighting categories, we use the Rayovac brand name principally in North America and Latin America and we primarily market these products in Europe under the VARTA brand. In the electric shaving and grooming and electric personal care products categories, we use the Remington brand in North America, the United Kingdom, Australia and select European countries. United historically marketed its products in the lawn and garden and household insect control segments as Spectrum Brands, which includes brand names such as Spectracide, Vigoro, Hot Shot and Cutter. We also sell our pet supplies under a wide range of brands, including Tetra, 8-in-1, Dingo and Marineland. Our lawn and garden and household insect control brands are marketed primarily in North America. Our pet supply products are marketed primarily in North America and Europe. Many of these brands are well recognized in their categories, with market leading positions, and several of these brands have been used for over 50 years. We believe that each of our major brands generates strong brand awareness. We attribute the longevity and strong consumer awareness of our brand names to the high-quality and consistent value of our products and to the success of our marketing and merchandising initiatives. We believe that the strength of our brands positions us to extend our product lines and provide our retail customers with strong sell-through to consumers.

#### ***Strong Global Retail Relationships***

We have well-established business relationships with many of the top global retailers, distributors and wholesalers, which have enabled us to expand our overall market penetration and promote sales. With the acquisitions of United and Tetra, we have further diversified our customer base and strengthened our existing relationships with important mass merchandisers, home centers and pet superstores, such as Wal-Mart, The

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Home Depot, Lowe's, PETsMART, Canadian Tire and PetCo. We intend to leverage cross-selling opportunities with both our new and existing customers. We have built and maintained strong retailer relationships by providing our customers with global sourcing, high quality and innovative products and attractive margins. In addition, these relationships are reinforced by our exclusive brand arrangements with leading retailers, including our Vigoro brand at The Home Depot and our Sta-Green brand at Lowe's, as well as our position as the exclusive supplier for Wal-Mart's Expert Gardener brand. On a pro forma basis, we rank among the top 50 current suppliers to Wal-Mart in the United States based on consumer purchases.

### ***Expansive Distribution Network and Global Sourcing***

We distribute our products in approximately 120 countries through a variety of trade channels, including retailers, wholesalers and distributors, hearing aid professionals, industrial distributors and OEMs. Our state-of-the-art battery packaging and distribution centers in North America and Europe provide package-to-order capability for our battery products as well as rapid and cost-effective services to retail customers for such products. We have an established global sourcing system for raw materials and product components for our product offerings, including maintaining an Asian sourcing organization located in Hong Kong, which is responsible for purchasing logistics and quality assurance for our products purchased from third party vendors. By moving production to Asia, we have been successful in reducing labor and material costs for consumer battery, electric shaving and grooming, electric personal care and portable lighting products. We distribute our lawn and garden, pet supplies and household insect control products in North America through a variety of trade channels, including retailers, wholesalers and distributors. The distribution network for our lawn and garden, pet supplies and household insect control businesses are designed to provide package-to-order capability. We plan to undertake initiatives to consolidate and streamline the United, Tetra and Spectrum distribution networks to achieve greater customer service capabilities and cost savings.

### ***Innovative New Products, Packaging and Technologies***

We have a long history of product and packaging innovations that have helped position us as an industry leader in each of our seven product categories. We have leading battery technologies in zinc air, consumer rechargeable and lithium coin cells. We have continued to improve the performance of our alkaline batteries, which has enabled us to perform at levels comparable to our major competitors without increasing consumer prices. We also have a diverse portfolio of controlled-release nitrogen technology and have been able to offer customized fertilizer formulas to our leading customers. Our innovative packaging includes the first resealable alkaline battery multi-pack, the easy-open spin-and-lock dial hearing aid battery packaging and a handheld battery-operated spray system for use in lawn and garden, the first in its category. We continually seek to introduce new products both as extensions of existing product lines and as new product categories. For example, we recently introduced the Remington Titanium Smart System shaving system, Spectracide TripleStrike Grass & Weed Killer and the Remington Wet 2 Straight Professional Straightener hair straightener.

### ***World Class Information Technology Platform***

We have invested in an SAP enterprise resource planning system, which enables us to more effectively manage manufacturing planning and execution, demand planning, the supply procurement to payment cycle, the customer order to cash collection cycle and the financial planning and reporting functions. The majority of our businesses utilize this system, which significantly enhances transactional processing and detailed analysis and reporting. The SAP platform provides information system standardization throughout our company, which has allowed for the integration and consolidation of past acquisitions with minimal additional capital investment, and which we expect will similarly assist in our integration of United and Tetra. Our IT system has proved to be an effective and efficient platform to support our business. We anticipate further cost savings and operational synergies from the transition of United to our IT platform.

***Proven Integration Track Record***

We have a long history of successfully integrating significant acquisitions. In 1999, we acquired and successfully assimilated the Latin American operations of ROV Limited, where we reduced costs by closing three zinc carbon manufacturing facilities and implementing new raw material purchasing programs. In fiscal 2003, in conjunction with the acquisition of VARTA, we announced a series of cost savings initiatives. We fully integrated VARTA within 12 months and realized annual cost savings of approximately \$43.7 million. The Remington integration resulted in annual cost savings of approximately \$35 million. These savings were the result of combining sales organizations, consolidating administrative functions and integrating the production and distribution of Remington products into our existing manufacturing facilities and distribution network. The integration plan was substantially completed in nine months. We will continue to apply our experience with previous acquisitions in connection with the integration of United and Tetra.

***Experienced Management Team***

Our management team has substantial consumer products experience and a proven track record of operations success and brand management. On average, senior management has more than 20 years of experience at Spectrum, VARTA, United and other branded consumer product companies such as General Electric, Gillette, Braun, Procter & Gamble and S.C. Johnson. Our management team has grown our business by developing and introducing new products, expanding our distribution channels, improving our operational efficiencies and making strategic acquisitions.

**Business Strategy**

Our long-term strategic plan is to be a diversified global consumer products company that competes in high growth markets. We intend to accomplish this via a combination of organic growth and strategic acquisitions. With our acquisitions of ROV Limited in August 1999, VARTA in October 2002, Ningbo in March 2004 and Microlite in May 2004, we have become a global manufacturer and marketer of consumer batteries. These acquisitions provided us with battery manufacturing capabilities in Europe, Latin America and Asia. The Ningbo acquisition provided us with low-cost manufacturing capacity in China, and access to a growing Chinese market.

The Remington acquisition in September 2003 was the first step in diversifying our consumer product offerings. With this acquisition, we entered the electric shaving and grooming and electric personal care categories. During the current year, we are expanding distribution of these products in Europe and Latin America. Our acquisitions of United and Tetra continued our product diversification and extended our presence into the lawn and garden, pet supplies and household insect control categories. In addition, we expect that the acquisitions of United and Tetra will reduce the seasonality of our historic business, which, prior to the acquisitions, was weighted towards the Christmas season (our first quarter in its fiscal year), while demand for lawn and garden products typically peaks during the first six months of the calendar year. We believe all of these categories are in markets that represent attractive growth opportunities.

To further enhance our position in the branded consumer products market, we plan to implement the following key elements of our business strategy:

***Increase Sales Through Expanded Customer Relationships and Leveraging Our Distribution Network***

We intend to increase our sales as a result of the broader product offering that resulted from the combinations of Spectrum, United and Tetra. We intend to capture incremental sales by leveraging strong customer relationships, which will facilitate the cross-selling of our full line of products. For example, we intend to leverage United's more extensive relationships with home centers and pet stores in North America to increase sales of our branded products through these distribution channels. In addition, we will seek to improve the

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utilization of our existing distribution channels to increase sales of United and Tetra branded products. We believe we will strengthen existing relationships with overlapping customers, such as Wal-Mart, and will be able to serve these customers more efficiently. We also believe that we are well positioned to capitalize on the trend of global retail merchants who are continuing to consolidate their vendor base and focus on a reduced number of suppliers that can (1) provide high-value products, (2) efficiently and consistently fulfill logistical requirements and volume demands and (3) provide comprehensive product support from design to point of sale and after-market customer service.

### ***Continue New Product Development and Packaging Innovation***

We intend to continue our strategy of increasing sales through the introduction of new products and packaging designs in each of our seven product categories. Our research and development strategy is focused on new product development, performance improvements of our existing products and cost reductions in, and enhancements of, our products and packaging. We plan to continue to use our strong brand names, established customer relationships and significant research and development efforts to introduce innovative products that offer enhanced value to consumers through new designs and improved functionality. For example, we introduced over 200 new or improved products in the 2004 calendar year. We recently introduced the Remington Titanium Smart System shaving system, Spectracide TripleStrike Grass & Weed Killer and the Remington Wet 2 Straight Professional Straightener hair straightener. We will continue to focus on identifying new technologies and formulations necessary to meet and create consumer and retailer demand within the marketplace.

### ***Continue to Improve Operating Efficiencies***

We will continue to seek to improve our operational efficiencies and match manufacturing capacity and product costs to market demand. Over the last few years, we have undertaken various initiatives to reduce manufacturing, operating and other costs, such as increasing manufacturing utilization by reducing the number of our facilities, outsourcing the production of certain of our products and updating and centralizing certain packaging and distribution facilities. We believe that we can continue to reduce our cost of goods manufactured with continued focus on cost reduction initiatives. These initiatives include cost reductions through global purchasing, finished goods sourcing arrangements and improved productivity. We continue to lower operating costs as duplicative administrative support and sales and marketing functions are consolidated and overlapping functions are eliminated.

### ***Implement Integration Plan***

We have identified key areas where we expect to achieve cost savings and operational synergies with the acquisitions of United and Tetra. These areas include manufacturing, distribution, sales and marketing, IT systems and administrative functions. We intend to rationalize our existing manufacturing plants, reduce freight costs by maximizing full truckloads and taking advantage of our existing distribution network, transition United and Tetra to our IT platform, consolidate purchasing and increase Asian sourcing, and integrate various selling, general and administrative functions.

### ***Enhance Earnings and Cash Flow***

We have generated high levels of cash flow from operations as a result of our earnings, cost reduction efforts and modest capital expenditure requirements. Through our integration efforts with VARTA and Remington we have streamlined our cost structure while continuing to introduce new high profit margin products. Through our integration efforts with United and Tetra, we anticipate further improvements. We intend to continue to focus on improving the efficiency of our organization to maximize earnings and cash flow from operations.

***Pursue Strategic Acquisitions***

Our acquisition strategy focuses on businesses or brands that will strengthen our current product offerings or enable us to expand into complementary categories and geographic regions. In addition, we intend to pursue acquisitions of additional consumer product brands that can benefit from our extensive distribution network and long-term retailer relationships. In particular, we believe that the pet supplies industry presents consolidation opportunities due to its highly fragmented nature, and we expect to pursue opportunities in this market.

**The United Acquisition**

On February 7, 2005, we acquired all of the equity interests of United for a purchase price, excluding fees and expenses, of \$70 million in cash, 13.75 million shares of our common stock and the assumption of approximately \$911.5 million of outstanding United indebtedness. The acquisition of United followed our long-term strategic plan to diversify our product categories, enter complementary categories and reduce our concentration in existing products categories.

In connection with the acquisition of United, we entered into a credit agreement consisting of a total of \$1.03 billion in senior secured credit facilities, made up of aggregate term loan facilities of \$730 million, of which \$540 million is denominated in dollars, \$140 million is denominated in Euros and \$50 million is denominated in Canadian dollars, and a revolving credit facility of \$300 million denominated in dollars. See “Description of Certain Indebtedness” for a more detailed description of these credit facilities. The proceeds from the offering of the original notes, together with the borrowings under our new senior credit facilities, were used to finance the acquisition, retire United’s existing indebtedness and our then existing senior credit facilities and pay related fees and expenses.

On January 5, 2005, in connection with the acquisition of United, we commenced a tender offer to purchase for cash all outstanding United Notes. As of January 5, 2005, approximately \$231.9 million aggregate principal amount of United Notes were outstanding. In connection with the tender offer, we also solicited consents to amend the indenture governing the United Notes to remove substantially all of the restrictive covenants thereunder. By January 19, 2005, we received the valid tenders and consents from holders representing approximately 94% of the aggregate principal amount of the United Notes, thereby permitting amendment of the indenture governing the United Notes. On April 1, 2005, we redeemed all United Notes not tendered pursuant to the tender offer in accordance with the terms and conditions of the amended indenture governing the United Notes. See “Recent Developments—Retirement of United Notes” for a more detailed description of the retirement of the United Notes and the tender offer and consent solicitation.

In connection with the acquisition of United, we entered into certain ancillary agreements with UIC Holdings, L.L.C. (“Holdings”), the majority stockholder of United as of the date Rayovac entered into the definitive agreement to acquire United, Thomas H. Lee Partners, L.P. (“THL”) and certain of its affiliates and certain other former stockholders of United. Those agreements, subject to certain exceptions, provide that we increase our board of directors from eight to ten members and cause each of the new director positions to be filled by persons designated by Holdings, impose certain obligations on us with respect to the nomination of Holdings’ designees for election to our board for as long as Holdings maintains certain ownership percentages of our common stock outstanding, restrict the ability of Holdings, THL and certain of its affiliates and certain of United’s former stockholders to sell or transfer shares of our common stock they receive in the acquisition of United and restrict the ability of THL and certain of its affiliates to acquire a percentage ownership of our capital stock outstanding in excess of 28% on a fully-diluted basis or engage in certain other activities. In addition, we have agreed to provide the former stockholders of United with certain rights to require us to prepare and file with the SEC a registration statement to permit the public offering and resale under the Securities Act of 1933 of shares of our common stock received by those former stockholders in connection with the acquisition of United. On January

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14, 2005, Holdings merged with and into United. Pursuant to the terms of the applicable ancillary agreement referred to above, Holdings assigned its rights and obligations under that agreement to THL and its affiliates.

### **The Tetra Acquisition**

On April 29, 2005, we acquired all of the equity interests of Tetra for total consideration of approximately \$536 million, including estimated working capital and net of cash acquired as provided under the terms of the acquisition agreement. The acquisition of Tetra reflects our long-term strategic plan to diversify our product categories, enter complementary categories and reduce our concentration in existing product categories. In connection with the acquisition of Tetra, we amended our credit agreement to provide for borrowings of \$500 million under an incremental term facility under the credit agreement.

See “Description of Certain Indebtedness” for a more detailed description of our amended senior credit facilities.

### **The Exchange Offer**

On February 7, 2005, we issued \$700,000,000 principal amount of 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015, the original notes to which the exchange offer applies, to a group of initial purchasers in reliance on exemptions from, or in transactions not subject to, the registration requirements of the Securities Act and applicable securities laws. In connection with the sale of the original notes to the initial purchasers, we entered into a registration rights agreement pursuant to which we agreed, among other things, to deliver this prospectus to you, to commence this exchange offer and to use our commercially reasonable efforts to complete the exchange offer within 270 days of the issuance of the original notes. The summary below describes the principal terms and conditions of the exchange offer. Some of the terms and conditions described below are subject to important limitations and exceptions. See “The Exchange Offer” for a more detailed description of the terms and conditions of the exchange offer and “Description of the Exchange Notes” for a more detailed description of the terms of the exchange notes.

#### The Exchange Offer

We are offering to exchange up to \$700,000,000 aggregate principal amount of our new 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015, which have been registered under the Securities Act, in exchange for your original notes. The form and terms of these exchange notes are identical in all material respects to the original notes. The exchange notes, however, will not contain transfer restrictions and registration rights applicable to the original notes.

To exchange your original notes, you must properly tender them, and we must accept them. We will accept and exchange all original notes that you validly tender and do not validly withdraw. We will issue registered exchange notes promptly after the expiration of the exchange offer.

#### Resale of Original Notes

Based on interpretations by the staff of the SEC as detailed in a series of no-action letters issued to third parties, we believe that, as long as you are not a broker-dealer, the exchange notes offered in the exchange offer may be offered for resale, resold or otherwise transferred by you without compliance with the registration and prospectus delivery requirements of the Securities Act as long as:

- you are acquiring the exchange notes in the ordinary course of your business;



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- you are not participating, do not intend to participate in and have no arrangement or understanding with any person to participate in a “distribution” of the exchange notes; and
- you are not an “affiliate” of ours within the meaning of Rule 405 of the Securities Act.

If any of these conditions is not satisfied and you transfer any exchange notes issued to you in the exchange offer without delivering a proper prospectus or without qualifying for a registration exemption, you may incur liability under the Securities Act. Moreover, our belief that transfers of exchange notes would be permitted without registration or prospectus delivery under the conditions described above is based on SEC interpretations given to other, unrelated issuers in similar exchange offers. We cannot assure you that the SEC would make a similar interpretation with respect to our exchange offer. We will not be responsible for or indemnify you against any liability you may incur under the Securities Act.

Any broker-dealer that acquires exchange notes for its own account in exchange for original notes must represent that the original notes to be exchanged for the exchange notes were acquired by it as a result of market-making activities or other trading activities and acknowledge that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any offer to resell, resale or other retransfer of the exchange notes. However, by so acknowledging and by delivering a prospectus, such participating broker-dealer will not be deemed to admit that it is an “underwriter” within the meaning of the Securities Act. During the period ending 180 days after the consummation of the exchange offer, subject to extension in limited circumstances, a participating broker-dealer may use this prospectus for an offer to sell, a resale or other retransfer of exchange notes received in exchange for original notes which it acquired through market-making activities or other trading activities.

Expiration Date

The exchange offer will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, unless we extend the expiration date.

Accrued Interest on the Exchange Notes and the Original Notes

The exchange notes will bear interest from the most recent date to which interest has been paid on the original notes. If your original notes are accepted for exchange, then you will receive interest on the exchange notes and not on the original notes. Any original notes not tendered will remain outstanding and continue to accrue interest according to their terms.

Conditions

The exchange offer is subject to customary conditions. We may assert or waive these conditions in our sole discretion. If we materially change the terms of the exchange offer, we will resolicit

tenders of the original notes. See “The Exchange Offers—Conditions to the Exchange Offer” for more information regarding conditions to the exchange offer.

#### Procedures for Tendering Original Notes

Each holder of original notes that wishes to tender their original notes must either:

- complete, sign and date the accompanying letter of transmittal or a facsimile copy of the letter of transmittal, have the signatures on the letter of transmittal guaranteed, if required, and deliver the letter of transmittal, together with any other required documents (including the original notes), to the exchange agent; or
- if original notes are tendered pursuant to book-entry procedures, the tendering holder must deliver a completed and duly executed letter of transmittal or arrange with Depository Trust Company, or DTC, to cause an agent’s message to be transmitted with the required information (including a book-entry confirmation) to the exchange agent; or
- comply with the procedures set forth below under “—Guaranteed Delivery Procedures.”

Holders of original notes that tender original notes in the exchange offer must represent that the following are true:

- the holder is acquiring the exchange notes in the ordinary course of its business;
- the holder is not participating in, does not intend to participate in, and has no arrangement or understanding with any person to participate in a “distribution” of the exchange notes; and
- the holder is not an “affiliate” of us within the meaning of Rule 405 of the Securities Act.

Do not send letters of transmittal, certificates representing original notes or other documents to us or DTC. Send these documents only to the exchange agent at the appropriate address given in this prospectus and in the letter of transmittal. We could reject your tender of original notes if you tender them in a manner that does not comply with the instructions provided in this prospectus and the accompanying letter of transmittal. See “Risk Factors—There are significant consequences if you fail to exchange your original notes” for further information.

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### Special Procedures for Tenders by Beneficial Owners of Original Notes

If

- you beneficially own original notes;
- those notes are registered in the name of a broker, dealer, commercial bank, trust company or other nominee; and
- you wish to tender your original notes in the exchange offer;

please contact the registered holder as soon as possible and instruct it to tender on your behalf and comply with the instructions set forth in this prospectus and the letter of transmittal.

### Guaranteed Delivery Procedures

If you hold original notes in certificated form or if you own original notes in the form of a book-entry interest in a global note deposited with the trustee, as custodian for DTC, and you wish to tender those original notes but

- your original notes are not immediately available;
- time will not permit you to deliver the required documents to the exchange agent by the expiration date; or
- you cannot complete the procedure for book-entry transfer on time;

you may tender your original notes pursuant to the procedures described in “The Exchange Offer—Procedures for Tendering Original Notes—Guaranteed Delivery.”

### Withdrawal Rights

You may withdraw your tender of original notes under the exchange offer at any time before the exchange offer expires. Any withdrawal must be in accordance with the procedures described in “The Exchange Offer—Withdrawal Rights.”

### Effect on Holders of Outstanding Original Notes

As a result of making this exchange offer, and upon acceptance for exchange of all validly tendered original notes, we will have fulfilled our obligations under the registration rights agreement. Accordingly, there will be no liquidated damages payable under the registration rights agreement if original notes were eligible for exchange, but not exchanged, in the exchange offer.

If you do not tender your original notes or we reject your tender, your original notes will remain outstanding and will be entitled to the benefits of the indenture governing the notes. Under such circumstances, you would not be entitled to any further registration rights under the registration rights agreement, except under limited circumstances. Existing transfer restrictions would continue to apply to the original notes.

Any trading market for the original notes could be adversely affected if some but not all of the original notes are tendered and accepted in the exchange offer.

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### Material U.S. Federal Tax Consequences

Your exchange of original notes for exchange notes will not be treated as a taxable event for U.S. federal income tax purposes. See “Material U.S. Federal Tax Consequences.”

### Use of Proceeds

We will not receive any proceeds from the exchange offer or the issuance of the exchange notes. The net proceeds from the issuance of the original notes, together with borrowings under our new senior credit facilities, were used to finance the acquisition of United, to retire United’s existing indebtedness and Rayovac’s existing senior credit facilities and to pay related fees and expenses.

### Acceptance of Original Notes and Delivery of Original Notes

We will accept for exchange any and all original notes properly tendered prior to the expiration of the exchange offer. We will complete the exchange offer and issue the exchange notes promptly after the expiration date.

### Exchange Agent

U.S. Bank, National Association, is serving as exchange agent for the exchange offer. The address and telephone number of the exchange agent are provided in this prospectus under “The Exchange Offer—Exchange Agent” and in the letter of transmittal.

### Summary of Terms of the Exchange Notes

The form and terms of the exchange notes will be identical in all material respects to the form and terms of the original notes, except that the exchange notes:

- will have been registered under the Securities Act;
- will not bear restrictive legends restricting their transfer under the Securities Act;
- will not be entitled to the registration rights that apply to the original notes; and
- will not contain provisions relating to an increase in the interest rate borne by the original notes under circumstances related to the timing of the exchange offer.

The exchange notes represent the same debt as the original notes and are governed by the same indenture, which is governed by New York law. A brief description of the material terms of the exchange notes follows:

Issuer	Spectrum Brands, Inc.
Securities	\$700.0 million in principal amount of 7 <sup>3</sup> / <sub>8</sub> % senior subordinated notes due 2015.
Maturity	February 1, 2015.
Interest	Annual rate: 7 <sup>3</sup> / <sub>8</sub> %. Payment frequency: every six months on February 1 and August 1. First payment: August 1, 2005.
Ranking	The exchange notes will be our unsecured senior subordinated obligations. Accordingly, they will rank: <ul style="list-style-type: none"><li>• behind any of our existing and future senior indebtedness, including borrowings under our new senior credit facilities;</li><li>• equally with any of our current and future senior subordinated indebtedness, including our existing senior subordinated notes;</li><li>• ahead of any of our future debt that expressly provides that it is subordinated to the notes; and</li><li>• effectively subordinated to any existing and future indebtedness and other liabilities of our subsidiaries that are not guaranteeing the notes.</li></ul> <p>As of May 1, 2005, we had \$1.444 billion of senior debt which will be senior to the exchange notes, and \$350 million of senior subordinated notes other than the original notes, which will rank equally with the exchange notes. As of April 3, 2005, our non-guarantor subsidiaries had approximately \$349.6 million of indebtedness and other liabilities (excluding intercompany liabilities and excluding the impact of the Tetra acquisition), to which the exchange notes would be effectively subordinated. As of January 3, 2005, our non-guarantor subsidiaries had approximately \$614.8 million of indebtedness and other liabilities (excluding intercompany liabilities and including the impact of the Tetra acquisition), to which the exchange notes would be effectively subordinated. In addition, as of May 1, 2005, we would have been permitted to borrow an additional \$148 million of senior debt under our senior credit facilities (excluding outstanding letters of credit of \$27.0 million).</p>
Guarantees	Our existing and future domestic subsidiaries will be guarantors of the notes on a senior subordinated basis.

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The guarantees of the exchange notes are unsecured senior subordinated obligations of the guarantors. Accordingly, they rank behind all existing and future senior debt of the guarantors, including the guarantors' guarantees of our new senior credit facilities, equal to all future senior subordinated indebtedness of the guarantors, including guarantees of our existing senior subordinated notes, and ahead of all future debt of the guarantors that expressly provides that it is subordinated to the guarantees.

As of May 1, 2005, the guarantees would have been subordinated to approximately \$1.390 billion of senior debt of the guarantors, \$1.386 billion of which would have been guarantees of indebtedness under our senior credit facilities, and would have ranked equally with \$350 million of existing senior subordinated notes.

### Optional Redemption

We may redeem the exchange notes, in whole or in part, at any time on or after February 1, 2010 at the redemption prices described in the "Description of Notes—Optional Redemption," plus accrued and unpaid interest. In addition, on or before February 1, 2008, we may redeem up to 35% of the exchange notes with the net cash proceeds from certain equity offerings at the redemption price listed in "Description of Notes—Optional Redemption."

### Change of Control

If we experience specific kinds of changes in control, we must offer to purchase the exchange notes at 101% of their principal amount, plus accrued and unpaid interest.

### Certain Covenants

We issued the original notes, and will issue the exchange notes, under an indenture which, among other things, limits our ability and the ability of our restricted subsidiaries to:

- borrow money or sell preferred stock;
- create liens;
- pay dividends on or redeem or repurchase stock;
- make certain types of investments;
- sell stock in our restricted subsidiaries;
- restrict dividends or other payments from restricted subsidiaries;
- enter into transactions with affiliates;
- issue guarantees of debt; and
- sell assets or merge with other companies.

These covenants contain important exceptions, limitations and qualifications. For more details, see "Description of Notes."

### Absence of an Established Public Market for the Exchange Notes

The original notes are presently eligible for trading through the PORTAL<sup>®</sup> Market of the Nasdaq Stock Market, Inc., but the exchange notes will be new securities for which there is currently no market. We do not intend to apply for a listing of the exchange notes on any securities exchange or for quotation on the Nasdaq National Market. Accordingly, we cannot assure you that a liquid market for the exchange notes will develop or be maintained.

*You should refer to "Risk Factors" beginning on page 18 for an explanation of certain risks before deciding whether to participate in the exchange offer.*

**Summary Financial Data—Rayovac**

The following table sets forth summary financial data of Rayovac. The condensed consolidated financial data as of September 30, 2002, 2003 and 2004 and for each of the fiscal years then ended have been derived from Rayovac's audited consolidated financial statements incorporated by reference into this prospectus. The condensed consolidated data as of and for the six month periods ended March 28, 2004 and April 3, 2005 have been derived from Rayovac's unaudited consolidated financial statements incorporated by reference in this prospectus. The historical results included below and elsewhere in this prospectus should not be viewed as indicative of our future performance. This information is only a summary and should be read in conjunction with our historical consolidated financial statements and the notes thereto incorporated by reference into this prospectus.

	Fiscal Year Ended September 30,			Six Months Ended	
	2002(1)	2003(2)(3)	2004(4)	March 28, 2004(5)	April 3, 2005(6)
(\$ in millions except per share data)					
<b>Statement of Operations Data:</b>					
Net sales	\$572.7	\$ 922.1	\$1,417.2	\$ 732.0	\$1,025.3
Cost of goods sold	334.1	549.5	811.9	417.3	637.4
Restructuring and related charges-cost of goods sold	1.2	21.1	(0.8)	(1.1)	—
Gross profit	237.4	351.5	606.1	315.9	387.9
Operating expenses	174.4	280.4	437.7	237.7	290.8
Restructuring and related charges-operating expenses	—	11.5	12.2	6.0	0.2
Operating income	63.0	59.6	156.2	72.2	96.9
Income before income taxes(7)	45.7	23.0	90.5	40.5	41.2
Loss from discontinued operations	—	—	0.4	0.3	—
Net income	29.2	15.5	55.8	24.8	26.0
Income from continuing operations per common share	0.90	0.48	1.62	0.75	0.64
<b>Other Financial Data:</b>					
Net cash provided by operating activities	\$ 66.8	\$ 76.2	\$ 104.9	\$ 82.5	\$ 11.1
Capital expenditures	15.6	26.1	26.9	9.6	20.7
Depreciation and amortization (excluding amortization of debt issuance costs)	19.0	31.6	35.3	22.8	16.9
Book value per share	5.39	6.20	9.13	7.75	20.56
Ratio of earnings to fixed charges(8)	3.9x	1.6x	2.4x	2.2x	1.7x
<b>Balance Sheet Data (at fiscal year end):</b>					
Cash and cash equivalents	\$ 9.9	\$ 107.8	\$ 15.8	\$ 34.3	\$ 44.3
Working capital(9)	140.5	269.8	251.9	239.8	585.5
Total assets	520.9	1,545.3	1,636.0	1,483.8	3,474.4
Total debt	201.9	943.4	829.9	791.6	1,940.6
Total shareholders' equity	174.8	202.0	316.0	261.0	828.8

- (1) Fiscal 2002 includes restructuring and related charges—cost of goods sold of \$1.2 million. See Note 15 in the Notes to Rayovac's Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference for further discussion.
- (2) Fiscal 2003 includes a net sales reduction of approximately \$6.1 million related to North American retailer inventory repricing programs associated with the launch of our comprehensive new alkaline pricing program announced in 2003. These programs were launched in response to Duracell's price reduction in the U.S. market on certain AA and AAA batteries.

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Fiscal 2003 includes restructuring and related charges—cost of goods sold of \$21.1 million, and restructuring and related charges—operating expenses of \$11.5 million. Fiscal 2003 also includes a non-operating expense of \$3.1 million discussed in note (5) below. See Note 15 in the Notes to Rayovac's Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference for further discussion.

- (3) Fiscal 2003 is impacted by two acquisitions completed during the fiscal year. The VARTA acquisition was completed on October 1, 2002 and the Remington acquisition was completed on September 30, 2003. See further discussion of these acquisitions in "Management's Discussion of Financial Condition and Results of Operations—Rayovac" included in our Annual Report on Form 10-K and in Note 16 in the Notes to Rayovac's Consolidated Financial Statements for the fiscal year ended September 30, 2004 included therein incorporated herein by reference.
- (4) Fiscal 2004 is impacted by two acquisitions completed during the fiscal year. The Ningbo acquisition was completed on March 31, 2004 and the Microlite acquisition was completed on May 28, 2004. See further discussion of these acquisitions in "Management's Discussion of Financial Condition and Results of Operations—Rayovac" included in our Annual Report on Form 10-K and in Note 16 in the Notes to Rayovac's Consolidated Financial Statements for the fiscal year ended September 30, 2004 included therein incorporated herein by reference.

Fiscal 2004 includes restructuring and related charges—cost of goods sold of \$(0.8) million, and restructuring and related charges—operating expenses of \$12.2 million. See Note 15 in the Notes to Rayovac's Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference for further discussion.

- (5) The six month period ended March 28, 2004 is impacted by two acquisitions completed during the period. The Ningbo acquisition was completed on March 31, 2004 and the Microlite acquisition was completed on May 28, 2004. See further discussion of these acquisitions in "Management's Discussion of Financial Condition and Results of Operations—Rayovac" included in our Annual Report on Form 10-K and in Note 16 in the Notes to Rayovac's Consolidated Financial Statements for the fiscal year ended September 30, 2004 included therein incorporated herein by reference.

The six month period ended March 28, 2004 includes restructuring and related charges—cost of goods sold of \$(1.1) million, and restructuring and related charges—operating expenses of \$6.0 million. See Note 15 in the Notes to Rayovac's Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference for further discussion.

- (6) The six month period ended April 3, 2005 is impacted by the United acquisition completed on February 7, 2005. See "Recent Developments" for further discussion.

The six month period ended April 3, 2005 includes a charge to Cost of goods sold of \$27.7 million related to the fair value adjustment, required under generally accepted accounting principles in the United States of America, that was applied to United's acquired inventory. The six month period ended April 3, 2005 also includes \$12.0 million in debt issuance costs written off in connection with the debt refinancing that occurred at the time of the United acquisition.

- (7) SFAS 145, which addresses, among other things, the income statement presentation of gains and losses related to debt extinguishments, requires such expenses to no longer be treated as extraordinary items, unless the items meet the definition of extraordinary per Accounting Principles Board ("APB") Opinion No. 30. We adopted this statement on October 1, 2002. As a result, in fiscal 2003, we recorded a non-operating expense of \$3.1 million for the write-off of unamortized debt issuance costs associated with the replacement of our previous credit facility in October 2002.
- (8) For purposes of calculating the ratio of earnings to fixed charges, (i) earnings is defined as income before income taxes plus fixed charges and (ii) fixed charges is defined as interest expense (including capitalized interest and amortization of debt issuance costs) and the portion of operating rental expense which management believes is representative of the interest component of rent expense.
- (9) Working capital is defined as current assets less current liabilities.



## RISK FACTORS

Investing in the notes involves a number of risks. You should carefully consider the following risk factors in addition to the other information contained in and incorporated by reference into this prospectus and in any other documents to which we refer you before deciding whether to exchange your original notes for exchange notes in the exchange offer. Any of the following risks could materially and adversely affect our business, financial condition, results of operations and liquidity and the risks described below are not the only risks that we may face. Additional risks and uncertainties not currently known to us or that we currently view as immaterial may also materially and adversely affect our business, financial condition, results of operations or liquidity. In such case, you may lose all or part of your investment.

### **Risks Associated with the Exchange Offer**

*There are significant consequences if you fail to exchange your original notes.*

We did not register the original notes under the Securities Act or any state securities laws, nor do we intend to after the exchange offer. As a result, the original notes may only be transferred in limited circumstances under the securities laws. If you do not exchange your original notes in the exchange offer, you will lose your right to have the original notes registered under the Securities Act, subject to certain limitations. If you continue to hold original notes after the exchange offer, you may be unable to sell the original notes. Original notes that are not tendered or are tendered but not accepted will, following the exchange offer, continue to be subject to existing restrictions.

*You cannot be sure that an active trading market for the exchange notes will develop.*

While the original notes are presently eligible for trading in the PORTAL<sup>SM</sup> Market, there is no existing market for the exchange notes. We do not intend to apply for a listing of the exchange notes on any securities exchange. We do not know if an active public market for the exchange notes will develop or, if developed, will continue. If an active public market does not develop or is not maintained, the market price and liquidity of the exchange notes may be adversely affected. We cannot make any assurances regarding the liquidity of the market for the exchange notes, the ability of holders to sell their exchange notes or the price at which holders may sell their exchange notes. In addition, the liquidity and the market price of the exchange notes may be adversely affected by changes in the overall market for securities similar to the exchange notes, by changes in our financial performance or prospects and by changes in conditions in our industry.

*You must follow the appropriate procedures to tender your original notes or they will not be exchanged.*

The exchange notes will be issued in exchange for the original notes only after timely receipt by the exchange agent of the original notes or a book-entry confirmation related thereto, a properly completed and executed letter of transmittal or an agent's message and all other required documentation. If you want to tender your original notes in exchange for exchange notes, you should allow sufficient time to ensure timely delivery. Neither we nor the exchange agent are under any duty to give you notification of defects or irregularities with respect to tenders of original notes for exchange. Original notes that are not tendered or are tendered but not accepted will, following the exchange offer, continue to be subject to the existing transfer restrictions. In addition, if you tender the original notes in the exchange offer to participate in a distribution of the exchange notes, you will be required to comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction. For additional information, please refer to the sections entitled "The Exchange Offer" and "Plan of Distribution" later in this prospectus.

### **Risks Relating to Our Business**

*We participate in very competitive markets and we may not be able to compete successfully.*

The markets in which we participate are very competitive. In the consumer battery market, our primary competitors are Duracell (a brand of Gillette), Energizer and Panasonic (a brand of Matsushita). In the lawn and

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garden and household insect control markets, our principal national competitors are The Scotts Company, Central Garden & Pet Company, The Clorox Company, Bayer A.G. and S.C. Johnson. In the electric shaving and grooming and electric personal care product markets, our primary competitors are Braun (a brand of Gillette), Norelco (a brand of Philips), Vidal Sassoon, Revlon and Hot. In the pet supplies market, our primary competitors are The Hartz Mountain Corporation and Central Garden & Pet Company. In each of our markets, we also compete with numerous other competitors.

We and our competitors compete for consumer acceptance and limited shelf space based upon brand name recognition, perceived quality, price, performance, product packaging and design innovation, as well as creative marketing, promotion and distribution strategies. Our ability to compete in these consumer product markets may be adversely affected by a number of factors, including, but not limited to, the following:

- We compete against many well established companies that may have substantially greater financial and other resources, including personnel and research and development resources, greater overall market share and fewer regulatory burdens than we do.
- In some key product lines, our competitors may have lower production costs and higher profit margins than we do, which may enable them to compete more aggressively in offering retail discounts and other promotional incentives.
- Product improvements or effective advertising campaigns by competitors may weaken consumer demand for our products.
- Consumer preferences may change to products other than those we market.

### ***Consolidation of retailers and our dependence on a small number of key customers for a significant percentage of our sales may negatively affect our profits.***

During the past decade, retail sales of the consumer products we market have been increasingly consolidated into a small number of regional and national mass merchandisers and warehouse clubs. This trend towards consolidation is occurring on a worldwide basis. As a result of this consolidation, a significant percentage of our sales are attributable to a very limited group of retailer customers, including Wal-Mart, The Home Depot, Carrefour, Target, Lowe's, PETsMART, Canadian Tire, PetCo and Gigante. Prior to our acquisition of Tetra, Wal-Mart Stores, Inc., our largest retailer customer, accounted for approximately 18% of our pro forma consolidated net sales in fiscal 2004. Our sales generally are made through the use of individual purchase orders, consistent with industry practice. Because of the importance of these key customers, demands for price reductions or promotions by such customers, reductions in their purchases, changes in their financial condition or loss of their accounts could have a material adverse effect on our business, financial condition and results of operations. In addition, as a result of the desire of retailers to more closely manage inventory levels, there is a growing trend among them to purchase our products on a "just-in-time" basis. This requires us to shorten our lead-time for production in certain cases and more closely anticipate demand, which could in the future require us to carry additional inventories and increase our working capital and related financing requirements. Furthermore, we primarily sell branded products and a move by one of our customers to sell significant quantities of private label products which directly compete with our products could have a material adverse effect on our business, financial condition and results of operations.

### ***We cannot assure you that United and Tetra will be successfully integrated.***

If we cannot successfully integrate the operations of United, including the operations of United Pet Group and Nu-Gro, and Tetra, we may experience material adverse consequences to our business, financial condition and results of operations. The integration of separately-managed companies operating in distinctly different markets involves a number of risks, including, but not limited to, the following:

- the risks of entering markets in which we have no prior experience;

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- the diversion of management's attention from the management of daily operations to the integration of operations;
- demands on management related to the significant increase in our size after the acquisitions of United and Tetra;
- difficulties in the assimilation and retention of employees;
- difficulties in the assimilation of different corporate cultures and practices, and of broad and geographically dispersed personnel and operations;
- difficulties in the integration of departments, information technology systems, accounting systems, technologies, books and records and procedures, as well as in maintaining uniform standards and controls, including internal accounting controls, procedures and policies; and
- expenses of any undisclosed or potential legal liabilities.

Prior to the acquisitions of United and Tetra, Spectrum, United and Tetra operated as separate entities. In addition, United Pet Group and Nu-Gro operated as separate entities until acquired by United in 2004. We may not be able to maintain the levels of revenue, earnings or operating efficiency that any one of these entities had achieved or might achieve separately. The unaudited pro forma condensed consolidated financial results of operations of Rayovac and United presented in or incorporated by reference into this prospectus cover periods during which they were not under the same management and, therefore, may not be indicative of our future financial condition or operating results. Successful integration of each company's operations will depend on our ability to manage those operations, realize opportunities for revenue growth presented by strengthened product offerings and expanded geographic market coverage and, to some degree, eliminate redundant and excess costs. The anticipated savings opportunities are based on projections and assumptions, all of which are subject to change. We may not realize any of the anticipated benefits or savings to the extent or in the time frame anticipated, if at all, or such benefits and savings may require higher costs than anticipated.

***We may fail to identify suitable acquisition candidates, our acquisition strategy may divert the attention of management and our acquisitions may not be successfully integrated into our existing business.***

We intend to pursue increased market penetration and expansion of our current product offerings through additional strategic acquisitions. We may fail to identify suitable acquisition candidates, and even if we do, acquisitions may not be completed on acceptable terms or successfully integrated into our existing business. Any acquisition we make could be of significant size and involve either domestic or international parties. The acquisition and integration of a separate organization would divert management attention from other business activities. Such a diversion, together with other difficulties we may encounter in integrating an acquired business, could have a material adverse effect on our business, financial condition and results of operations. In addition, we may borrow money or issue additional stock to finance acquisitions. Such funds might not be available on terms as favorable to us as our current borrowing terms and could increase our leveraged position.

***If we are unable to improve existing products and develop new, innovative products, or if our competitors introduce new or enhanced products, our sales and market share may suffer.***

Our future success will depend, in part, upon our ability to improve our existing products and to develop, manufacture and market new innovative products. If we fail to successfully introduce, market and manufacture new products or product innovations, our ability to maintain or grow our market share may be adversely affected, which in turn could materially adversely affect our business, financial condition and results of operations.

Both we and our competitors make significant investments in research and development. If our competitors successfully introduce new or enhanced products that eliminate technological advantages our products may have in a certain market segment or otherwise outperform our products, or are perceived by consumers as doing so, we may be unable to compete successfully in market segments affected by these changes. In addition, we may be

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unable to compete if our competitors develop or apply technology which permits them to manufacture products at a lower relative cost. The fact that many of our principal competitors have substantially greater resources than us increases this risk. The patent rights or other intellectual property rights of third parties, restrictions on our ability to expand or modify manufacturing capacity or constraints on our research and development activity may also limit our ability to introduce products that are competitive on a performance basis.

### ***Our foreign operations may expose us to a number of risks related to conducting business in foreign countries.***

Our international operations and exports and imports to and from foreign markets are subject to a number of special risks. These risks include, but are not limited to:

- economic and political destabilization, governmental corruption and civil unrest;
- restrictive actions by foreign governments (e.g., duties, quotas and restrictions on transfer of funds);
- changes in foreign labor laws and regulations affecting our ability to hire and retain employees;
- changes in U.S. and foreign laws regarding trade and investment;
- changes in the economic conditions in these markets; and
- difficulty in obtaining distribution and support.

In many of the developing countries in which we operate, there has not been significant governmental regulation relating to the environment, occupational safety, employment practices or other business matters routinely regulated in the United States. As such economies develop, it is possible that new regulations may increase the expense of doing business in such countries. In addition, social legislation in many countries in which we operate may result in significantly higher expenses associated with labor costs, terminating employees or distributors and with closing manufacturing facilities.

### ***We may face a number of risks related to foreign currencies.***

Our foreign sales and certain of our expenses are transacted in foreign currencies. With the exception of purchases of Remington products, which are denominated entirely in U.S. dollars, substantially all third-party materials purchases are transacted in the currency of the local operating unit. In fiscal 2004, on a pro forma basis, after giving effect to the acquisition of United (but excluding Tetra's net sales), approximately 38% of our net sales and 33% of our operating expenses were denominated in currencies other than U.S. dollars. Our recent results benefited from increases in the value of the Euro against the U.S. dollar. Significant increases in the value of the U.S. dollar in relation to foreign currencies could have a material adverse effect on our business, financial condition and results of operations. While we generally hedge a portion of our foreign currency exposure, we are still vulnerable to the effects of currency exchange rate fluctuations. Changes in currency exchange rates may also affect our sales to, purchases from and loans to our subsidiaries as well as sales to, purchases from and bank lines of credit with our customers, suppliers and creditors that are denominated in foreign currencies. We expect that the amount of our revenues and expenses transacted in foreign currencies will increase as our Latin American, European and Asian operations grow and our exposure to risks associated with foreign currencies could increase accordingly.

### ***Sales of our products are seasonal and may cause our quarterly operating results and working capital requirements to fluctuate; adverse business or economic conditions could adversely affect our business.***

Sales of our battery, electric shaving and grooming, lawn and garden and household insect control products are seasonal. A large percentage of net sales for our battery and electric personal care products occur during the fiscal quarter ending on or about December 31, due to the impact of the December holiday season, and a large percentage of our net sales for our lawn and garden and household insect control products occur during the spring

and summer. As a result of this seasonality, our inventory and working capital needs relating to these businesses fluctuate significantly during the year. In addition, orders from retailers are often made late in the period preceding the applicable peak season, making forecasting of production schedules and inventory purchases difficult. Furthermore, adverse business or economic conditions during those applicable periods could materially adversely affect our business, financial condition and results of operations.

***We may not be able to adequately establish and protect our intellectual property rights.***

To establish and protect our intellectual property rights, we rely upon a combination of patent, trademark and trade secret laws, together with licenses, confidentiality agreements and other contractual covenants. The measures we take to protect our intellectual property rights may prove inadequate to prevent misappropriation of our technology or other intellectual property. We may need to resort to litigation to enforce or defend our intellectual property rights. If a competitor or collaborator files a patent application claiming technology also invented by us, or a trademark application claiming a trademark, service mark, or trade dress also used by us, in order to protect our rights, we may have to participate in an expensive and time consuming interference proceeding before the United States Patent and Trademark Office or any similar foreign agency. In addition, our intellectual property rights may be challenged by third parties. Even if our intellectual property rights are not directly challenged, disputes among third parties could lead to the weakening or invalidation of our intellectual property rights. Furthermore, competitors may independently develop technologies that are substantially equivalent or superior to our technology. Obtaining, protecting and defending intellectual property rights can be time consuming and expensive, and may require us to incur substantial costs, including the diversion of management and technical personnel. Moreover, the laws of certain foreign countries in which we operate or may operate in the future do not protect intellectual property rights to the same extent as do the laws of the U.S. which may negate our competitive or technological advantages in such markets. Also, some of the technology underlying our products is the subject of nonexclusive licenses from third parties. As a result, this technology could be made available to our competitors at any time. If this technology were licensed to a competitor, it could have a material adverse effect on our business, financial condition and results of operations.

***Third-party intellectual property infringement claims against us could adversely affect our business.***

From time to time we have been subject to claims that we are infringing upon the intellectual property of others and it is possible that third parties will assert infringement claims against us in the future. For example, we are a defendant in a patent infringement lawsuit in which Braun, a subsidiary of Gillette, has alleged our “Smart System” shaving system infringes two of Braun’s U.S. patents and we are also involved in a number of legal proceedings with Philips with respect to trademarks owned by Philips relating to the shape of the head portion of Philips’ three-head rotary shaver. An adverse finding against us in these or similar trademark or other intellectual property litigations may have a material adverse effect on our business, financial condition and results of operations. For more information, see “Business—Legal Proceedings.” Any such claims, with or without merit, could be time consuming and expensive, and may require us to incur substantial costs, including the diversion of management and technical personnel, cause product delays, or require us to enter into licensing or other agreements in order to secure continued access to necessary or desirable intellectual property. Our business will be harmed if we cannot obtain a necessary or desirable license, can obtain such a license only on terms we consider to be unattractive or unacceptable, or if we are unable to redesign or re-brand our products or redesign our processes to avoid actual or potential intellectual property infringement. In addition, an unfavorable ruling in an intellectual property litigation could subject us to significant liability, as well as require us to cease developing, manufacturing or selling the affected products or using the affected processes or trademarks. There can be no assurance that we would prevail in any intellectual property infringement action, will be able to obtain a license to any third party intellectual property on commercially reasonable terms, successfully develop non-infringing alternative technology, trademarks, or trade dress on a timely basis, or license non-infringing alternatives, if any exist, on commercially reasonable terms. Any significant intellectual property impediment to our ability to develop and commercialize our products could have a material adverse effect on our business, financial condition and results of operations.

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***Our dependence on a few suppliers located in Asia and one of our U.S. facilities for many of our electric shaving and grooming and electric personal care products makes us vulnerable to a disruption in the supply of our products.***

Substantially all of our electric shaving and grooming and electric personal care products are manufactured by suppliers located in China and Japan. Although we have long-standing relationships with many of these suppliers, we do not have long-term contracts with them. Any adverse change in any of the following could have a material adverse effect on our business, financial condition and results of operations:

- relationships with our suppliers;
- the financial condition of our suppliers;
- the ability to import outsourced products; or
- our suppliers' ability to manufacture and deliver outsourced products on a timely basis.

If our relationship with one of our key suppliers is adversely affected, we may not be able to quickly or effectively replace such supplier and may not be able to retrieve tooling and molds possessed by such supplier.

In addition, we manufacture the majority of our foil cutting systems for our shaving product lines, using specially designed machines and proprietary cutting technology, at one of our facilities. Damage to this facility, or prolonged interruption in the operations of this facility for repairs or other reasons, would have a material adverse effect on our ability to manufacture and sell our shaving products.

***Our dependence on, and the price of, raw materials may adversely affect our profits.***

The principal raw materials used to produce our products—including zinc powder, electrolytic manganese dioxide powder, steel and granular urea—are sourced on a global or regional basis, and the prices of those raw materials are susceptible to price fluctuations due to supply/demand trends, energy costs, transportation costs, government regulations and tariffs, changes in currency exchange rates, price controls, the economic climate and other unforeseen circumstances. We regularly engage in forward purchase and hedging transactions in an attempt to effectively manage our raw materials costs for the next six to twelve months. These efforts may not be effective and, if we are unable to pass on raw materials price increases to our customers, our future profitability may be materially adversely affected.

In addition, we have exclusivity arrangements and minimum purchase requirements with certain of our suppliers for our lawn and garden business, which increases our dependence upon and exposure to those suppliers. Also, certain agreements we have with our suppliers for our lawn and garden business are scheduled to expire in 2005 and 2006. Some of those agreements include caps on the price we pay for our supplies from the relevant supplier. In certain instances, these caps have allowed us to purchase materials at below market prices. Any renewal of those contracts may not include or reduce the effect of those caps and could even impose above market prices in an attempt by the applicable supplier to make up for any below market prices it had received from us prior to the renewal of the agreement. Any failure to timely obtain suitable supplies at competitive prices could materially adversely affect our business, financial condition and results of operations.

***Adverse weather conditions during our peak selling season for our lawn and garden and household insecticide and repellent products could have a material adverse effect on our business, financial condition and results of operations.***

Weather conditions in North America have a significant impact on the timing of sales of certain of our household products in the spring selling season and our overall annual sales. Periods of dry, hot weather can decrease insecticide sales, while periods of cold and wet weather can slow sales of herbicides and fertilizers. In addition, an abnormally cold spring throughout North America could adversely affect both fertilizer and insecticide sales and therefore our business, financial condition and results of operations.

***We depend on key personnel and may not be able to retain those employees or recruit additional qualified personnel.***

We are highly dependent on the continuing efforts of our current executive officers and we will likely depend on the senior management of any business we acquire in the future. Our business, financial condition and results of operations could be materially adversely affected by the loss of any of these persons or if we are unable to attract and retain qualified replacements.

***Class action lawsuits, regardless of their merits, could have an adverse effect on our business, financial condition and results of operations.***

Spectrum and certain of its officers and directors have been named in the past, and may be named in the future, as defendants of class action lawsuits. Regardless of their subject matter or the merits, class action lawsuits may result in significant cost to us, which may not be covered by insurance, divert the attention of management or otherwise have an adverse effect on our business, financial condition and results of operations.

***We may be exposed to significant product liability claims which our insurance may not cover and which could harm our reputation.***

In the ordinary course of our business, we may be named defendants in lawsuits involving product liability claims. In some of these proceedings, plaintiffs may seek to recover large and sometimes unspecified amounts of damages and the matters may remain unresolved for several years. These matters could have a material adverse effect on our business, results of operations and financial condition if we are unable to successfully defend against or settle these matters or if our insurance coverage is insufficient to satisfy any judgments against us or settlements relating to these matters. Although we have product liability insurance coverage and an excess umbrella policy, we cannot assure you that our insurance policies will provide coverage for any claim against us or will be sufficient to cover all possible liabilities. Moreover, any adverse publicity arising from claims made against us, even if the claims were not successful, could adversely affect the reputation and sales of our products.

***We may incur material capital and other costs due to environmental liabilities.***

Because of the nature of our operations, our facilities are subject to a broad range of federal, state, local and foreign laws and regulations relating to the environment. These include laws and regulations that govern:

- discharges to the air, water and land;
- the handling and disposal of solid and hazardous substances and wastes; and
- remediation of contamination associated with release of hazardous substances at our facilities and at off-site disposal locations.

Risk of environmental liability is inherent in our business. As a result, material environmental costs may arise in the future. In particular, we may incur capital and other costs to comply with increasingly stringent environmental laws and enforcement policies. Although we believe that we are substantially in compliance with applicable environmental regulations at our facilities, we may not be in compliance with such regulations in the future, which could have a material adverse effect upon our business, financial condition and results of operations.

From time to time, we have been required to address the effect of historic activities on the environmental condition of our properties, including without limitation, the effect of the generation and disposal of wastes such as manganese, cadmium and mercury, which are or may be considered hazardous, and releases from underground storage tanks. We have not conducted invasive testing to identify all potential environmental liability risks. Given the age of our facilities and the nature of our operations, there can be no assurance that material liabilities will not arise in the future in connection with our current or former facilities. If previously unknown

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contamination of property underlying or in the vicinity of our manufacturing facilities is discovered, we could be required to incur material unforeseen expenses. If this occurs, it may have a material adverse effect on our business, financial condition and results of operations. We are currently engaged in investigative or remedial projects at a few of our facilities. There can be no assurance that our liabilities in respect of investigative or remedial projects at our facilities will not be material.

We have been, and in the future may be, subject to proceedings related to our disposal of industrial and hazardous material at off-site disposal locations or similar disposals made by other parties for which we are responsible as a result of our relationship with such other parties. These proceedings are under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) or similar state laws that hold persons who “arranged for” the disposal or treatment of such substances strictly liable for costs incurred in responding to the release or threatened release of hazardous substances from such sites, regardless of fault or the lawfulness of the original disposal. Liability under CERCLA is typically joint and several, meaning that a liable party may be responsible for all of the costs incurred in investigating and remediating contamination at a site. As a practical matter, liability at CERCLA sites is shared by all of the viable responsible parties. While we currently have no pending CERCLA or similar state matters, we may be named as a potentially responsible party at sites in the future and the costs and liabilities associated with these sites may be material.

***Compliance with various public health, consumer protection and other regulations applicable to our products and facilities could increase our cost of doing business and expose us to additional requirements with which we may be unable to comply.***

Certain of our products and facilities are regulated by the United States Environmental Protection Agency (the “EPA”), the United States Food and Drug Administration (the “FDA”) or other federal consumer protection and product safety regulations, as well as similar registration, approval and other requirements under state and foreign laws and regulations. For example, in the United States, all products containing pesticides must be registered with the EPA and, in many cases, similar state and foreign agencies before they can be manufactured or sold. The inability to obtain or the cancellation of any registration could have an adverse effect on our business, financial condition and results of operations. The severity of the effect would depend on which products were involved, whether another product could be substituted and whether our competitors were similarly affected. We attempt to anticipate regulatory developments and maintain registrations of, and access to, substitute chemicals and other ingredients. We may not always be able to avoid or minimize these risks.

The Food Quality Protection Act established a standard for food-use pesticides, which is that a reasonable certainty of no harm will result from the cumulative effect of pesticide exposures. Under the Act, the EPA is evaluating the cumulative effects from dietary and non-dietary exposures to pesticides. The pesticides in certain of our products continue to be evaluated by the EPA as part of this exposure. It is possible that the EPA or a third party active ingredient registrant may decide that a pesticide we use in our products will be limited or made unavailable to us. For example, in 2000, Dow AgroSciences L.L.C., an active ingredient registrant, voluntarily agreed to a withdrawal of virtually all residential uses of chlorpyrifos, an active ingredient United used in its lawn and garden products under the name Dursban™ until January 2001. This had a material adverse effect on United’s operations resulting in a charge of \$8.0 million in 2001. We cannot predict the outcome or the severity of the effect of the EPA’s continuing evaluations of active ingredients used in our products.

In addition, the use of certain pesticide and fertilizer products may be regulated by various local, state, federal and foreign environmental and public health agencies. These regulations may require that only certified or professional users apply the product or that certain products be used only on certain types of locations (such as “not for use on sod farms or golf courses”), or that users post notices on properties to which products have been or will be applied, notification to individuals in the vicinity that products will be applied in the future, may provide that the product cannot be applied for aesthetic purposes, or may ban the use of certain ingredients. Compliance with public health regulations could increase our cost of doing business and expose us to additional requirements with which we may be unable to comply.



***Public perceptions that some of the products we produce and market are not safe could adversely affect us.***

We manufacture and market a number of complex chemical products bearing our brands relating to our lawn and garden and household insecticide and repellent products, such as fertilizers, growing media, herbicides and pesticides. On occasion, customers and some current or former employees have alleged that some products failed to perform up to expectations or have caused damage or injury to individuals or property. Public perception that our products are not safe, whether justified or not, could impair our reputation, damage our brand names and have a material adverse effect on our business, financial condition and results of operations.

**Risks Relating to the Notes**

***Our substantial indebtedness could adversely affect our business, financial condition and results of operations and prevent us from fulfilling our obligations under the notes.***

We have, and we will continue to have, a significant amount of indebtedness. As of May 1, 2005 we would have had total outstanding indebtedness of approximately \$2.5 billion (of which \$700 million would have consisted of the notes, \$1.386 billion would have consisted of borrowings under our senior credit facilities, \$350 million would have consisted of other existing senior subordinated notes and \$58 million would have consisted of other debt).

Our substantial indebtedness could have important consequences to you. For example, it could:

- make it more difficult for us to satisfy our obligations with respect to the notes;
- require us to dedicate a large portion of our cash flow to pay principal and interest on the notes, our new senior credit facilities and our other debt, which will reduce the availability of our cash flow to fund working capital, capital expenditures, research and development expenditures and other business activities;
- increase our vulnerability to general adverse economic and industry conditions;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- restrict us from making strategic acquisitions or exploiting business opportunities;
- place us at a competitive disadvantage compared to our competitors that have less debt; and
- limit our ability to borrow additional funds (even when necessary to maintain adequate liquidity) or dispose of assets.

In addition, a substantial portion of our debt bears interest at variable rates. If market interest rates increase, variable-rate debt will create higher debt service requirements, which would adversely affect our cash flow. While we may enter into agreements limiting our exposure to higher debt service requirements, any such agreements may not offer complete protection from this risk.

***We will require a significant amount of cash to service our indebtedness. Our ability to generate cash depends on many factors beyond our control.***

Our ability to make payments on and to refinance our indebtedness, including the notes, and to fund planned capital expenditures and research and development efforts, will depend on our ability to generate cash in the future. This is subject to general economic, financial, competitive, legislative, regulatory and other factors that may be beyond our control. We cannot assure you that our business will generate sufficient cash flow from operations or that future borrowings will be available to us under our new senior credit facilities or otherwise in an amount sufficient to enable us to pay our debt, including the notes, or to fund our other liquidity needs. We may need to refinance all or a portion of our debt, including the notes, on or before maturity. We cannot assure you that we will be able to refinance any of our debt, including our new senior credit facilities, our existing senior subordinated notes or the notes, on commercially reasonable terms or at all.

***Your right to receive payments on the notes will be junior to our existing and future senior indebtedness and the guarantees of the notes will be junior to all of the guarantors' existing and future senior indebtedness.***

The notes and the guarantees rank behind all of our and the guarantors' existing and future senior indebtedness. As of May 1, 2005, the notes and the guarantees would have been subordinated to approximately \$1.390 billion of senior debt, \$1.386 billion of which would have represented borrowings and guarantees under our senior credit facilities. In addition, our senior credit facilities would have permitted up to approximately \$148 million of additional borrowings, subject to compliance with the covenants and conditions to borrowing under the new senior credit facilities, which borrowings would be senior to the notes and the guarantees. We will be permitted to borrow substantial other senior indebtedness in the future.

As a result of this subordination with respect to our senior indebtedness upon any distribution to our creditors or the creditors of the guarantors in a bankruptcy, liquidation or reorganization or similar proceedings relating to us or the guarantors of our or the guarantors' property, the holders of our senior debt and the senior debt of the guarantors will be entitled to be paid in full in cash before any payment may be made with respect to the notes or the guarantees. In addition, all payments on the notes and the guarantees will be blocked in the event of a payment default on senior debt and may be blocked for up to 179 consecutive days in the event of certain non-payment defaults on designated senior debt. In the event of a bankruptcy, liquidation or reorganization or similar proceeding relating to us or the guarantors, the indenture relating to the notes requires that amounts otherwise payable to holders of the notes in a bankruptcy or similar proceeding be paid to holders of senior debt instead until the holders of senior debt are paid in full. As a result, holders of the notes may not receive all amounts owed to them and may receive less, ratably, than holders of trade payables and other unsubordinated indebtedness in any such proceeding.

***We may incur additional indebtedness, which could increase the risks associated with our substantial indebtedness.***

We may be able to incur substantial additional indebtedness in the future. Although the terms governing our senior credit facilities and the indentures governing our existing senior subordinated notes and the notes contain restrictions on the incurrence of additional indebtedness, debt incurred in compliance with these restrictions could be substantial. As of May 1, 2005, our senior credit facilities would have permitted additional borrowing of up to \$148 million. If new indebtedness is added to our and our subsidiaries' current indebtedness levels, the related risks that we face would be magnified. In addition, the indentures governing our existing senior subordinated notes and the notes do not prevent us from incurring obligations that do not constitute indebtedness.

***The notes and the guarantees will be unsecured and effectively subordinated to our existing and future secured debt.***

In addition to being contractually subordinated to all existing and future senior debt, holders of our secured debt will have claims that are prior to your claims as holders of the notes up to the value of the assets securing the secured debt. Notably, we and the guarantors are parties to the new senior credit facilities, which are secured by substantially all of our domestic assets and certain of our foreign assets. In the event of any distribution or payment of our assets in any foreclosure, dissolution, winding-up, liquidation, reorganization or other bankruptcy proceeding, holders of secured debt will have a prior claim to those assets that constitute their collateral. In any of the foregoing events, we cannot assure you that there will be sufficient assets to pay amounts due on the notes. As a result, holders of notes may receive less, ratably, than holders of secured debt.

***We depend in part on the cash flow from our non-guarantor subsidiaries to meet our obligations, and your right to receive payment on the notes will be structurally subordinate to the obligations of these non-guarantor subsidiaries.***

Our non-guarantor subsidiaries are separate and distinct legal entities with no obligation to pay any amounts due pursuant to the notes or the subsidiary guarantees or to provide us or the guarantors with funds for our payment obligations. Our cash flow and our ability to service our debt, including the notes, depends in part on the

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earnings of our non-guarantor subsidiaries and on the distribution of earnings, loans or other payments to us by these subsidiaries. The non-guarantor subsidiaries, not including those non-guarantor subsidiaries acquired in connection with the Tetra acquisition (which include all of our foreign subsidiaries), represented approximately 41% and 31% of our pro forma total net sales and assets, respectively, in fiscal 2004. In addition, the ability of these non-guarantor subsidiaries to make any dividend, distribution, loan or other payment to us or a guarantor subsidiary could be subject to statutory or contractual restrictions. Payments to us or a guarantor subsidiary by these non-guarantor subsidiaries will also be contingent upon their earnings and their business considerations. Because we depend in part on the cash flow of these non-guarantor subsidiaries to meet our obligations, these types of restrictions may impair our ability to make scheduled interest and principal payments on the notes.

Each of our domestic subsidiaries is a guarantor of our obligations under the notes. However, our foreign subsidiaries are not required by the indenture to guarantee the notes. The notes are structurally subordinated to all future liabilities, including trade payables, of our subsidiaries that do not guarantee the notes, and the claims of creditors of those subsidiaries, including trade creditors, have priority as to the assets and cash flows of those subsidiaries. In the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding of any of the non-guarantor subsidiaries, holders of their liabilities, including their trade creditors, are generally entitled to payment on their claims from assets of those subsidiaries before any assets are made available for distribution to us. As of April 3, 2005, our non-guarantor subsidiaries had approximately \$349.6 million of indebtedness and other liabilities (excluding intercompany liabilities and excluding the impact of the Tetra acquisition), to which the exchange notes would be effectively subordinated. As of January 3, 2005, our non-guarantor subsidiaries had approximately \$614.8 million of indebtedness and other liabilities (excluding intercompany liabilities and including the impact of the Tetra acquisition), to which the exchange notes would be effectively subordinated. Our non-guarantor subsidiaries are permitted to borrow substantial other indebtedness and incur liabilities in the future.

### ***The terms of our indebtedness impose restrictions on us that may affect our ability to successfully operate our business and our ability to make payments on the notes.***

The agreement governing our new senior credit facilities, the indentures governing our existing senior subordinated notes and the notes contain covenants that, among other things, limit our ability to:

- borrow money or sell preferred stock;
- create liens;
- pay dividends on or redeem or repurchase stock;
- make certain types of investments;
- sell stock in our restricted subsidiaries;
- restrict dividends or other payments from restricted subsidiaries;
- enter into transactions with affiliates;
- issue guarantees of debt; and
- sell assets or merge with other companies.

Our new senior credit facilities also require us to comply with specified financial ratios and tests, including, but not limited to, minimum interest coverage ratio, maximum leverage ratio and minimum fixed charge coverage ratio.

These covenants could materially and adversely affect our ability to finance our future operations or capital needs and to engage in other business activities that may be in our best interest. These covenants may also restrict our ability to expand or pursue our business strategies. Our ability to comply with these covenants may be affected by events beyond our control, such as prevailing economic conditions and changes in regulations, and if such events occur, we cannot be sure that we will be able to comply. A breach of these covenants could result in a default under the indentures governing the notes and the existing senior subordinated notes and/or the agreement governing our new senior credit facilities. If there were an event of default under the indenture for the notes, the indenture for our existing senior subordinated notes and/or the agreement governing our new senior credit facilities, holders of such defaulted debt could cause all amounts borrowed under these instruments to be due and payable immediately.

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Additionally, if we fail to repay the debt under the new senior credit facilities when it becomes due, the lenders under the senior credit facilities could proceed against certain of our assets and capital stock which we have pledged to them as security. We cannot assure you that our assets or cash flow will be sufficient to repay borrowings under the outstanding debt instruments, including the notes, in the event of a default thereunder.

***We may not have the ability to raise the funds necessary to finance any change of control offer required by the indenture governing the notes.***

Upon the occurrence of certain specific kinds of change of control events, we will be required to offer to repurchase all outstanding notes at 101% of the principal amount thereof plus accrued and unpaid interest and liquidated damages, if any, to the date of repurchase. However, it is possible that we will not have sufficient funds at the time of the change of control to make the required repurchase of notes or that restrictions in our new senior credit facilities will not allow such repurchases. The indenture governing our existing senior subordinated notes imposes a similar obligation on us to make an offer to repurchase all of our outstanding existing senior subordinated notes if a change of control occurs. In addition, certain important corporate events, such as leveraged recapitalizations that would increase the level of our indebtedness, would not constitute a “change of control” under the indenture governing our existing senior subordinated notes or the indenture governing the notes. See “Description of Notes—Repurchase at the Option of Holders—Change of Control.”

***Federal and state laws permit a court to void the guarantees under certain circumstances.***

Our payment of consideration to finance a portion of the transactions (including the issuance of a guarantee of the notes by our subsidiary guarantors) may be subject to review under federal or state fraudulent transfer laws. While the relevant laws may vary from state to state, under such laws the issuance of a guarantee will be a fraudulent conveyance if (i) any of our subsidiaries issued guarantees, with the intent of hindering, delaying or defrauding creditors or (ii) any of the guarantors received less than reasonably equivalent value or fair consideration in return for issuing their respective guarantees, and, in the case of (ii) only, one of the following is also true:

- any of the guarantors was insolvent, or became insolvent, when it paid the consideration;
- issuing the guarantees left the applicable guarantor with an unreasonably small amount of capital; or
- the applicable guarantor intended to, or believed that it would, be unable to pay debts as they matured.

Generally, an entity will be considered insolvent if:

- the sum of its debts is greater than the fair value of its property;
- the present fair value of its assets is less than the amount that it will be required to pay on its existing debts as they become due; or
- it cannot pay its debts as they become due.

If the payment of the consideration or the issuance of any guarantee were a fraudulent conveyance, a court could, among other things, void any of the guarantors’ obligations under their respective guarantees and require the repayment of any amounts paid thereunder.

We believe, however, that immediately after issuance of the notes and the guarantees, each of the guarantors will be solvent, will have sufficient capital to carry on its respective business and will be able to pay its respective debts as they mature. We cannot be sure, however, as to what standard a court would apply in making such determinations or that a court would reach the same conclusions with regard to these issues.

***The market price for the notes may be volatile.***

Historically, the market for non-investment grade debt has been subject to disruptions that have caused substantial volatility in the prices of securities similar to the notes offered hereby. The market for the notes, if any, may be subject to similar disruptions. Any such disruptions may adversely affect the value of your notes.

**SELECTED FINANCIAL DATA—RAYOVAC**

The following table sets forth selected historical consolidated financial data of Rayovac. The selected historical consolidated financial data as of September 30, 2002, 2003 and 2004 of the three fiscal years then ended have been derived from Rayovac's audited consolidated financial statements incorporated herein by reference. The selected historical consolidated financial data as of September 30, 2000 and 2001 and for the each of the two fiscal years then ended have been derived from Rayovac's audited financial statements. The condensed consolidated data as of and for the six month periods ended March 28, 2004 and April 3, 2005 have been derived from Rayovac's unaudited consolidated financial statements incorporated by reference in this prospectus. The historical results included below and elsewhere in this prospectus should not be viewed as indicative of our future performance. The following selected financial data should be read in conjunction with the information contained elsewhere in this prospectus and the consolidated financial statements and the notes thereto and other financial information incorporated herein by reference.

	Fiscal Year Ended September 30,					Six Months Ended	
	2000	2001(1)	2002(2)	2003(3)(4)	2004(5)	March 28, 2004(6)	April 3, 2005(7)
(\$ in millions except per share data)							
<b>Statement of Operations Data:</b>							
Net sales(8)	\$ 630.9	\$ 616.2	\$ 572.7	\$ 922.1	\$ 1,417.2	\$ 732.0	\$ 1,025.3
Cost of goods sold	371.5	361.2	334.1	549.5	811.9	417.3	637.4
Restructuring and related charges—cost of goods sold	—	22.1	1.2	21.1	(0.8)	1.1	—
Gross profit(8)	259.4	232.9	237.4	351.5	606.1	315.9	387.9
Operating expenses	170.1	178.3	174.4	280.4	437.7	237.7	290.8
Restructuring and related charges—operating expenses	—	0.2	—	11.5	12.2	6.0	0.2
Operating income(9)	89.3	54.4	63.0	59.6	156.2	72.2	96.9
Income before income taxes(10)	58.0	17.5	45.7	23.0	90.5	40.5	41.2
Loss from discontinued operations	—	—	—	—	0.4	0.3	—
Net income	38.4	11.5	29.2	15.5	55.8	24.8	26.0
Income from continuing operations per common share	1.32	0.39	0.90	0.48	1.62	0.75	0.64
<b>Other Financial Data:</b>							
Net cash provided by operating activities	\$ 32.8	\$ 18.0	\$ 66.8	\$ 76.2	\$ 104.9	\$ 82.5	\$ 11.1
Capital expenditures	19.0	19.7	15.6	26.1	26.9	9.6	20.7
Depreciation and amortization (excluding amortization of debt issuance costs)(9)	19.9	21.1	19.0	31.6	35.3	22.8	16.9
Book value per share	2.78	5.31	5.39	6.20	9.13	7.75	20.56
Ratio of earnings to fixed charges(11)	2.9x	1.7x	3.9x	1.6x	2.4x	2.2x	1.7x
<b>Balance Sheet Data (at end of specified period):</b>							
Cash and cash equivalents	\$ 9.8	\$ 11.4	\$ 9.9	\$ 107.8	\$ 15.8	\$ 34.3	\$ 44.3
Working capital(12)	104.7	158.5	140.5	269.8	251.9	239.8	585.5
Total assets(6)	549.6	566.5	520.9	1,545.3	1,636.0	1,483.8	3,474.4
Total debt	317.6	258.0	201.9	943.4	829.9	791.6	1,940.6
Total shareholders' equity	80.7	157.6	174.8	202.0	316.0	261.0	828.8

(1) Fiscal 2001 includes restructuring and related charges—cost of goods sold of \$22.1 million, and restructuring and related charges—operating expenses of \$0.2 million. Fiscal 2001 also includes a non-operating expense of \$8.6 million discussed in note (10) below.

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- (2) Fiscal 2002 includes restructuring and related charges—cost of goods sold of \$1.2 million. See Note 15 in the Notes to Rayovac’s Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference for further discussion.
- (3) Fiscal 2003 includes a net sales reduction of approximately \$6.1 million related to North American retailer inventory repricing programs associated with the launch of our comprehensive new alkaline pricing program announced in 2003. These programs were launched in response to Duracell’s price reduction in the U.S. market on certain AA and AAA batteries.
- Fiscal 2003 includes restructuring and related charges—cost of goods sold of \$21.1 million, and restructuring and related charges—operating expenses of \$11.5 million. Fiscal 2003 also includes a non-operating expense of \$3.1 million discussed in note (10) below. See Note 15 in the Notes to Rayovac’s Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference for further discussion.
- (4) Fiscal 2003 impacted by two acquisitions completed during the fiscal year. The VARTA acquisition was completed on October 1, 2002 and the Remington acquisition was completed on September 30, 2003. See further discussion of acquisitions in “Management’s Discussion of Financial Condition and Results of Operations—Rayovac” included elsewhere in this prospectus and in Note 16 in the Notes to Rayovac’s Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference.
- (5) Fiscal 2004 and the three month period ended January 2, 2005 are impacted by two acquisitions completed during the fiscal year. The Ningbo acquisition was completed on March 31, 2004 and the Microlite acquisition was completed on May 28, 2004. See further discussion of acquisitions in “Management’s Discussion of Financial Condition and Results of Operations—Rayovac” included elsewhere in this prospectus and in Note 16 in the Notes to Rayovac’s Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference.
- Fiscal 2004 and the three month period ended January 2, 2005 include restructuring and related charges—cost of goods sold of \$(0.8) million, and restructuring and related charges—operating expenses of \$12.2 million. See Note 15 in the Notes to Rayovac’s Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference for further discussion.
- (6) The six month period ended March 28, 2004 is impacted by two acquisitions completed during the period. The Ningbo acquisition was completed on March 31, 2004 and the Microlite acquisition was completed on May 28, 2004. See further discussion of these acquisitions in “Management’s Discussion of Financial Condition and Results of Operations—Rayovac” included in our Annual Report on Form 10-K and in Note 16 in the Notes to Rayovac’s Consolidated Financial Statements for the fiscal year ended September 30, 2004 included therein incorporated herein by reference.
- The six month period ended March 28, 2004 includes restructuring and related charges—cost of goods sold of \$(1.1) million, and restructuring and related charges—operating expenses of \$6.0 million. See Note 15 in the Notes to Rayovac’s Consolidated Financial Statements for the fiscal year ended September 30, 2004 incorporated herein by reference for further discussion.
- (7) The six month period ended April 3, 2005 is impacted by the United acquisition completed on February 7, 2005. See “Recent Developments” for further discussion.
- The six month period ended April 3, 2005 includes a charge to Cost of goods sold of \$27.7 million related to the fair value adjustment, required under generally accepted accounting principles in the United States of America, that was applied to United’s acquired inventory. The six month period ended April 3, 2005 also includes \$12.0 million in debt issuance costs written off in connection with the debt refinancing that occurred at the time of the United acquisition.
- (8) Certain reclassifications have been made to reflect the adoption of the Emerging Issues Task Force (“EITF”) No. 01-09 for periods prior to adoption in fiscal 2002. EITF 01-09 addresses the recognition, measurement and income statement classification of various types of sales incentives, either as a reduction to revenue or as an expense. Concurrent with the adoption of EITF 01-09, we reclassified certain accrued trade incentives as a contra-receivable versus our previous presentation as a component of accounts payable.

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- (9) Pursuant to Statement of Financial Accounting Standards (“SFAS”) No. 142, *Goodwill and Other Intangible Assets*, we ceased amortizing goodwill on October 1, 2001. Upon initial application of SFAS 142, we reassessed the useful lives of our intangible assets and deemed only the trade name to have an indefinite useful life because it is expected to generate cash flows indefinitely. Based on this, we ceased amortizing the trade name on October 1, 2001. Goodwill and trade name amortization expense for 2000 and 2001 included in depreciation and amortization in operating income are as follows:

	<u>2000</u>	<u>2001</u>
	(in millions)	
Goodwill amortization	\$ 1.2	\$ 1.1
Trade name amortization	2.3	2.3
<b>Total</b>	<b>\$ 3.5</b>	<b>\$ 3.4</b>

- (10) SFAS 145, which addresses, among other things, the income statement presentation of gains and losses related to debt extinguishments, requires such expenses to no longer be treated as extraordinary items, unless the items meet the definition of extraordinary per APB Opinion No. 30. We adopted this statement on October 1, 2002. As a result, we recorded non-operating expenses within income before income taxes as follows during the fiscal years ended September 30, 2003 and 2001:
- In fiscal 2003, a non-operating expense of \$3.1 million was recorded for the write-off of unamortized debt issuance costs associated with the replacement of our previous credit facility in October 2002.
  - In fiscal 2001, a non-operating expense of \$8.6 million was recorded for the premium on the repurchase of \$65.0 million of our senior subordinated notes and related write-off of unamortized debt issuance costs in connection with a primary offering of our common stock in June 2001.
- (11) For purposes of calculating the ratio of earnings to fixed charges, (i) earnings is defined as income before income taxes plus fixed charges and (ii) fixed charges is defined as interest expense (including capitalized interest and amortization of debt issuance costs) and the portion of operating rental expense which management believes is representative of the interest component of rent expense.
- (12) Working capital is defined as current assets less current liabilities.

## RECENT DEVELOPMENTS

### **The Acquisition of United**

On February 7, 2005, we acquired all of the equity interests of United for a purchase price, excluding fees and expenses, of \$70 million in cash, 13.75 million shares of our common stock and the assumption of approximately \$911.5 million of outstanding United indebtedness. The acquisition of United followed our long-term strategic plan to diversify our product categories, enter complementary categories and reduce our concentration in existing product categories.

For more information regarding the purchase agreement between Rayovac and United, please refer to our Current Report on Form 8-K filed with the SEC on January 4, 2005, which is incorporated by reference in this prospectus.

### **The United Financing**

In connection with the acquisition of United, we entered into a credit agreement consisting of a total of \$1.03 billion in senior secured credit facilities, made up of aggregate term loan facilities of \$730 million, of which \$540 million is denominated in dollars, \$140 million is denominated in Euros and \$50 million is denominated in Canadian dollars, and a revolving credit facility of \$300 million. See "Description of Certain Indebtedness" for a more detailed description of our credit facilities.

Also, in connection with the acquisition of United, we privately placed \$700,000,000 of our 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015. The proceeds from the offering of the original notes, together with the borrowings under our senior credit facilities, were used to finance the acquisition of United, retire United's existing indebtedness and Rayovac's existing senior credit facilities and pay related fees and expenses. The original notes are, and the exchange notes we are offering in the exchange offer will be, guaranteed by our domestic subsidiaries. Simultaneously with the private placement of the original notes, the subsidiary guarantors and Rayovac Corporation entered into a registration rights agreement with the initial purchasers of the original notes. Under the registration rights agreement, we must file the registration statement on or before June 7, 2005, use our commercially reasonable efforts to cause such registration statement to become effective no later than October 5, 2005, and, when such registration statement is effective, deliver this prospectus to the holders of the original notes. We must use our commercially reasonable efforts to complete the exchange offer on or before the date that is 30 business days after the effective date of such registration statement. If we do not meet our obligations under the registration statement, we must pay liquidated damages to the holders of the original notes until we have cured our default. Pursuant to the exchange offer, you may exchange your original notes for exchange notes, which have substantially the same terms as the original notes. You should read the discussion under the heading "Summary—The Original Notes" and "Description of the Original Notes" for further information regarding the exchange notes.

### **Retirement of United Notes**

On January 5, 2005, in connection with the acquisition of United, we commenced a tender offer to purchase for cash all outstanding United Notes. As of January 5, 2005, approximately \$231.9 million aggregate principal amount of United Notes were outstanding. In connection with the tender offer, we also solicited consents to amend the indenture governing the United Notes to remove substantially all of the restrictive covenants thereunder. By January 19, 2005, we received the valid tenders and consents from holders representing approximately 94% of the aggregate principal amount of the United Notes, thereby permitting amendment of the indenture governing the United Notes. On April 1, 2005, we redeemed all United Notes not tendered pursuant to the tender offer in accordance with the terms and conditions of the amended indenture governing the United Notes.



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The total consideration paid to holders that tendered their notes and delivered their consents prior to 5 p.m. (New York City time) on January 19, 2005, was equal to \$1,053.13 per \$1,000 principal amount of United Notes, which includes a consent payment of \$30.00 per \$1,000 principal amount, plus accrued but unpaid interest. Holders that tendered their notes after 5 p.m. (New York City time) on January 19, 2005, but prior to the expiration of the tender offer, received \$1,023.13 per \$1,000 principal amount of United Notes, plus accrued but unpaid interest.

### **The Acquisition of Tetra**

On April 29, 2005, we acquired all of the equity interests of Tetra for total consideration of approximately \$536 million, including estimated working capital and net of cash acquired as provided under the terms of the acquisition agreement. The acquisition of Tetra furthers our long-term strategic plan to diversify our product categories, enter complementary categories and reduce our concentration in existing product categories.

For more information regarding the purchase agreement between Rayovac and Tetra, please refer to our Current Report on Form 8-K filed with the SEC on March 17, 2005, which is incorporated by referenced in this prospectus.

### **The Tetra Financing**

In connection with the acquisition of Tetra, we entered into an amendment to our credit agreement that provided for a \$500 million incremental term facility under the credit agreement. See "Description of Certain Indebtedness" for a more detailed description of our credit facilities.

## USE OF PROCEEDS

We will not receive any proceeds from the exchange offer. Because the exchange notes have substantially identical terms as the original notes, the issuance of the exchange notes will not result in any increase in our indebtedness. The exchange offer is intended to satisfy our obligations under the registration rights agreement. Gross proceeds from the offering of the original notes were \$700 million. The net proceeds from the offering of the original notes were approximately \$679.7 million, after deducting the initial purchasers' discount and certain offering expenses, and, together with the proceeds from our new senior credit facilities, were used to finance the acquisition of United, to retire United's existing indebtedness and to repay amounts outstanding under our existing senior credit facilities.

## INDUSTRY

We primarily compete in the following seven major consumer product categories:

### **Consumer Batteries**

In 2003, the global consumer battery market generated approximately \$24.0 billion in retail sales. Since 1990, the industry's growth percentage has been in the mid-single digits. The consumer battery industry consists of alkaline batteries, zinc carbon batteries and specialty batteries, which include rechargeable batteries, hearing aid batteries, photo batteries and watch/calculator batteries. The majority of battery consumption comes from industrialized nations, with the U.S. accounting for roughly one-third of global consumption. As personal incomes grow, the markets in less industrialized countries continue the gradual transition from zinc carbon batteries, which still account for a majority of unit sales in such markets, to the better performing and higher-priced alkaline batteries, similar to the transition that occurred in North America over the past generation. Most branded consumer batteries are marketed under the following brand names: Rayovac, Duracell (a Gillette brand), Energizer and Panasonic (a Matsushita brand). In addition, batteries are also often marketed under retailers' private label brands, particularly in Europe.

### **Pet Supplies**

Within the overall \$30 billion U.S. pet industry, we estimate that the pet supplies segment represented an \$8.0 billion market in 2004 based on retail sales. Within the overall \$20 billion European pet industry, we estimate that the pet supplies segment represented a \$4.0 billion market in 2004 based on retail sales. This highly fragmented segment is comprised of pet treats and pet supplies for dogs, cats, birds, fish and other small animals, including stain and odor removal products, grooming aids, bedding and lounging products, medications and vitamin supplements. In addition, pet supplies include aquarium kits, stand-alone tanks and stands, filtration systems, heaters, pumps, sea salt, aquarium hoods and lights and other aquatic supplies and accessories. According to management estimates, the pet supplies segment in the U.S. has grown approximately 6–8% annually since 1994. We believe that the recent market expansion has been driven by increasing pet ownership and the "humanization" of pets, which results in higher levels of spending, and the industry's relative insensitivity to economic cycles, combined with innovative product development, increased retailer sophistication (i.e., pet superstores) and growth in dedicated retail square footage for pet supplies. We expect comparable market growth over the next several years due to the continuation of these trends. The industry is highly fragmented with, for example, over 500 manufacturers competing in the U.S. market, consisting primarily of small companies with limited product lines. Name brands in the pet supplies market include: Tetra, 8-in-1, Marineland, Nature's Miracle, Vitakraft and Hartz.

### **Lawn and Garden**

We estimate that retail sales of consumer lawn and garden products were approximately \$2.9 billion and \$335 million in the U.S. and Canada, respectively, in 2003. Over the next several years, we expect the lawn and garden industry to continue to grow at approximately 4% annually due to favorable demographic trends, including the increasing number of persons over the age of 45, a group that typically engages in more lawn and garden activity than the general population, and the increasing shift in the population to areas more conducive to lawn and gardening activities, such as the southern and western regions of the United States. Approximately 85 million, or 80%, of the households in the United States participate in some form of lawn and garden activity. A significant portion of lawn and garden products are marketed under the following brand names: Spectracide, Vigoro and Sta-Green, and Scotts, Miracle-Gro and Ortho (brands of The Scotts Company).

### **Electric Shaving and Grooming**

We estimate that retail sales in the global electric shaving and grooming industry exceeded \$3.0 billion in 2003. Industry analysts believe that unit sales in the electric shaving and grooming industry will continue to grow

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at approximately 3% annually over the next several years due to new product and product feature introductions, which also drive higher selling prices. Electric shavers include men's rotary and foil shavers and women's foil shavers and are used with electric shaver accessories, such as shaver replacement parts (primarily foils and cutters), pre-shave products and cleaning agents. Electric grooming products include beard and mustache trimmers, nose and ear trimmers and haircut kits and related accessories. Electric shaving and grooming products are marketed primarily under one of the following brands: Remington, Braun (a Gillette brand) and Philips/Norelco.

### **Household Insect Control**

According to management estimates, retail sales of household insect control products totaled approximately \$1.0 billion in the United States in 2003. We estimate that the household insect control market has experienced recent historical growth of 4% per year and that it will grow at rates in excess of historical rates over the next several years due to the expected increase in demand for insect control products resulting from general economic growth and increasing awareness of insect-spread illnesses such as the West Nile virus in the United States. A significant portion of household insect control products are marketed under the following brand names: Hot Shot, Cutter and Repel, Raid and OFF! (S.C. Johnson brands), Ortho (a Scotts brand) and Combat.

### **Electric Personal Care Products**

The electric personal care industry includes hair dryers, hairsetters, curling irons, hair crimpers and straighteners, hot air brushes and lighted mirrors. We estimate that retail sales of global electric personal care products exceeded \$2.0 billion in 2003 and unit sales are projected to grow at 3% annually over the next several years. This growth rate is consistent with the industry's historical growth rate, and is driven by new product and product feature introductions, which result in higher selling prices. A significant portion of electric personal care products are marketed under the following brand names: Remington, Conair, Vidal Sassoon, Revlon and Hot.

### **Portable Lighting**

We estimate that the global portable lighting market generated approximately \$3.0 billion in retail sales in 2003, of which an estimated 50% is from sales of flashlights. The global portable lighting market is fragmented by region and includes few global branded companies. Recent growth in the portable lighting market has been relatively flat, and we believe that growth opportunities will be driven by product innovation. A few of the brand names in the portable lighting market include Rayovac, Eveready and Maglite.

Across the consumer products industry, recent differentiation among competitors has been based upon strong retailer relationships. Sales within these markets are driven by well-recognized brand names, as well as consistent new product introductions. As major retailers have rapidly expanded over the last 15 years, the concentration of purchasing power for all consumer products categories has increased significantly. We expect the continued growth of major retailers such as Wal-Mart, Carrefour, Target, The Home Depot, Lowe's and Gigante to continue the concentration of industry distribution. Furthermore, as global retailers continue to reduce their number of suppliers, the ability to service these retailers with diverse product offerings and provide products globally through an expansive distribution system is increasingly important.

## **BUSINESS**

### **Overview**

We are a global branded consumer products company with leading market positions in our seven major product categories: consumer batteries; pet supplies; lawn and garden; electric shaving and grooming; household insect control; electric personal care products; and portable lighting. We are a leading worldwide manufacturer and marketer of alkaline, zinc carbon and hearing aid batteries, a leading worldwide designer and marketer of

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rechargeable batteries and battery-powered lighting products and a leading worldwide designer and marketer of electric shavers and accessories, grooming products and hair care appliances. We are also a leading North American manufacturer and marketer of lawn fertilizers, herbicides, aquariums, pet health and beauty aid products and insecticides and repellents.

We sell our products in approximately 120 countries through a variety of trade channels, including retailers, wholesalers and distributors, hearing aid professionals, industrial distributors and original equipment manufacturers (“OEMs”) and enjoy strong name recognition in our markets under the Rayovac, VARTA and Remington brands, each of which has been in existence for more than 80 years, the Spectracide, Cutter and 8-in-1 brands, which we acquired through our acquisition of United, and various Tetra brands, which were acquired through our acquisition of Tetra. We have 54 manufacturing and product development facilities located in the United States, Europe, China and Latin America. We manufacture alkaline and zinc carbon batteries, zinc air hearing aid batteries, lawn fertilizers, herbicides, pet supplies and insecticides and repellents in our company operated manufacturing facilities. Substantially all of our rechargeable batteries and chargers, electric shaving and grooming products, electric personal care products and portable lighting products are manufactured by third party suppliers, primarily located in China and Japan.

During fiscal 2004, we completed two acquisitions. On March 31, 2004, we completed the acquisition of an 85% equity interest in Ningbo, a Chinese producer of alkaline and zinc carbon batteries, thereby gaining a Chinese presence and low-cost manufacturing capabilities. In March 2005, we signed an agreement to purchase the remaining 15% interest in Ningbo. On May 28, 2004, we completed the acquisition of 90.1% of the outstanding capital stock of Microlite, a Brazilian producer of alkaline and zinc carbon batteries and battery-operated lighting products. As a result, we now own the rights to the Rayovac brand name in each of the countries where we do business.

On February 7, 2005, we completed our acquisition of all of the equity interests of United, which completed its acquisition of Nu-Gro, a Canadian lawn and garden products company, and United Pet Group, a privately owned manufacturer and marketer of branded pet supplies, on April 30, 2004 and July 30, 2004, respectively.

On April 29, 2005, we completed our acquisition of all of the equity interests of Tetra, a German manufacturer, distributor and marketer of foods, equipment and care products for fish and reptiles, and accessories for home aquariums and ponds.

Our existing consumer battery, electric shaving and grooming, electric personal care and portable lighting business is organized and managed according to three geographic regions: (i) North America, (ii) Europe/ROW and (iii) Latin America. We operate United and Tetra as separate business units.

### **Competitive Strengths**

The following strengths serve as a foundation for our business strategy:

#### ***Strong Diversified Global Brand Portfolio***

We have a global portfolio of well-recognized consumer product brands. In the consumer battery and portable lighting categories, we use the Rayovac brand name principally in North America and Latin America and we primarily market these products in Europe under the VARTA brand. In the electric shaving and grooming and electric personal care products categories, we use the Remington brand in North America, the United Kingdom, Australia and select European countries. United historically marketed its products in the lawn and garden and household insect control segments as Spectrum Brands, which includes brand names such as Spectracide, Vigoro, Hot Shot and Cutter. We also sell our pet supplies under a wide range of brands, including Tetra, 8-in-1, Dingo and Marineland. Our lawn and garden and household insect control brands are marketed primarily in North America. Our pet supply products are marketed primarily in North America and Europe. Many of these brands are well recognized in their categories, with market leading positions, and several of these

brands have been used for over 50 years. We believe that each of our major brands generates strong brand awareness. We attribute the longevity and strong consumer awareness of our brand names to the high-quality and consistent value of our products and to the success of our marketing and merchandising initiatives. We believe that the strength of our brands positions us to extend our product lines and provide our retail customers with strong sell-through to consumers.

***Strong Global Retail Relationships***

We have well-established business relationships with many of the top global retailers, distributors and wholesalers, which have enabled us to expand our overall market penetration and promote sales. With the acquisitions of United and Tetra, we have further diversified our customer base and strengthened our existing relationships with important mass merchandisers, home centers and pet superstores, such as Wal-Mart, The Home Depot, Lowe's, PETsMART, Canadian Tire and PetCo. We intend to leverage cross-selling opportunities with both our new and existing customers. We have built and maintained strong retailer relationships by providing our customers with global sourcing, high quality and innovative products and attractive margins. In addition, these relationships are reinforced by our exclusive brand arrangements with leading retailers, including our Vigoro brand at The Home Depot and our Sta-Green brand at Lowe's, as well as our position as the exclusive supplier for Wal-Mart's Expert Gardener brand. On a pro forma basis, we rank among the top 50 current suppliers to Wal-Mart in the United States based on consumer purchases.

***Expansive Distribution Network and Global Sourcing***

We distribute our products in approximately 120 countries through a variety of trade channels, including retailers, wholesalers and distributors, hearing aid professionals, industrial distributors and OEMs. Our state-of-the-art battery packaging and distribution centers in North America and Europe provide package-to-order capability for our battery products as well as rapid and cost-effective services to retail customers for such products. We have an established global sourcing system for raw materials and product components for our product offerings, including maintaining an Asian sourcing organization located in Hong Kong, which is responsible for purchasing logistics and quality assurance for our products purchased from third party vendors. By moving production to Asia, we have been successful in reducing labor and material costs for consumer battery, electric shaving and grooming, electric personal care and portable lighting products. We distribute our lawn and garden, pet supplies and household insect control products in North America through a variety of trade channels, including retailers, wholesalers and distributors. The distribution network for our lawn and garden, pet supplies and household insect control businesses are designed to provide package-to-order capability. We plan to undertake initiatives to consolidate and streamline the United, Tetra and Spectrum distribution networks to achieve greater customer service capabilities and cost savings.

***Innovative New Products, Packaging and Technologies***

We have a long history of product and packaging innovations that have helped position us as an industry leader in each of our seven product categories. We have leading battery technologies in zinc air, consumer rechargeable and lithium coin cells. We have continued to improve the performance of our alkaline batteries, which has enabled us to perform at levels comparable to our major competitors without increasing consumer prices. We also have a diverse portfolio of controlled-release nitrogen technology and have been able to offer customized fertilizer formulas to our leading customers. Our innovative packaging includes the first resealable alkaline battery multi-pack, the easy-open spin-and-lock dial hearing aid battery packaging and a handheld battery-operated spray system for use in lawn and garden, the first in its category. We continually seek to introduce new products both as extensions of existing product lines and as new product categories. For example, we recently introduced the Remington Titanium Smart System shaving system, Spectracide TripleStrike Grass & Weed Killer and the Remington Wet 2 Straight Professional Straightener hair straightener.

***World Class Information Technology Platform***

We have invested in an SAP enterprise resource planning system, which enables us to more effectively manage manufacturing planning and execution, demand planning, the supply procurement to payment cycle, the customer order to cash collection cycle and the financial planning and reporting functions. The majority of our businesses utilize this system, which significantly enhances transactional processing and detailed analysis and reporting. The SAP platform provides information system standardization throughout our company, which has allowed for the integration and consolidation of past acquisitions with minimal additional capital investment, and which we expect will similarly assist in Spectrum's integration of United and Tetra. Spectrum's IT system has proved to be an effective and efficient platform to support our business. We anticipate further cost savings and operational synergies from the transition of United to Spectrum's IT platform.

***Proven Integration Track Record***

We have a long history of successfully integrating significant acquisitions. In 1999, we acquired and successfully assimilated the Latin American operations of ROV Limited, where we reduced costs by closing three zinc carbon manufacturing facilities and implementing new raw material purchasing programs. In fiscal 2003, in conjunction with the acquisition of VARTA, we announced a series of cost savings initiatives. We fully integrated VARTA within 12 months and realized annual cost savings of approximately \$43.7 million. The Remington integration resulted in annual cost savings of approximately \$35 million. These savings were the result of combining sales organizations, consolidating administrative functions and integrating the production and distribution of Remington products into our existing manufacturing facilities and distribution network. The integration plan was substantially completed in nine months. We will continue to apply our experience with previous acquisitions in connection with the integration of United and Tetra.

***Experienced Management Team***

Our management team has substantial consumer products experience and a proven track record of operations success and brand management. On average, senior management has more than 20 years of experience at Spectrum, VARTA, United and other branded consumer product companies such as General Electric, Gillette, Braun, Procter & Gamble and S.C. Johnson. Our management team has grown our business by developing and introducing new products, expanding our distribution channels, improving our operational efficiencies and making strategic acquisitions.

***Business Strategy***

Our long-term strategic plan is to be a diversified global consumer products company that competes in high growth markets. We intend to accomplish this via a combination of organic growth and strategic acquisitions. With our acquisitions of ROV Limited in August 1999, VARTA in October 2002, Ningbo in March 2004 and Microlite in May 2004, we have become a global manufacturer and marketer of consumer batteries. These acquisitions provided us with battery manufacturing capabilities in Europe, Latin America and Asia. The Ningbo acquisition provided us with low-cost manufacturing capacity in China, and access to a growing Chinese market.

The Remington acquisition in September 2003 was the first step in diversifying our consumer product offerings. With this acquisition, we entered the electric shaving and grooming and electric personal care categories. During the current year, we are expanding distribution of these products in Europe and Latin America. Our acquisitions of United and Tetra continued our product diversification and extended our presence into the lawn and garden, pet supplies and household insect control categories. In addition, we expect that the acquisitions of United and Tetra will reduce the seasonality of our historic business, which, prior to the acquisitions, was weighted towards the Christmas season (our first quarter in its fiscal year), while demand for lawn and garden products typically peaks during the first six months of the calendar year. We believe all of these categories are in markets that represent attractive growth opportunities.

To further enhance our position in the branded consumer products market, we plan to implement the following key elements of our business strategy:

***Increase Sales Through Expanded Customer Relationships and Leveraging Our Distribution Network***

We intend to increase our sales as a result of the broader product offering that resulted from the combinations of Rayovac, United and Tetra. We intend to capture incremental sales by leveraging strong customer relationships, which will facilitate the cross-selling of our full line of products. For example, we intend to leverage United's more extensive relationships with home centers and pet stores in North America to increase sales of our branded products through these distribution channels. In addition, we will seek to improve the utilization of our existing distribution channels to increase sales of United and Tetra branded products. We believe we will strengthen existing relationships with overlapping customers, such as Wal-Mart, and will be able to serve these customers more efficiently. We also believe that we are well positioned to capitalize on the trend of global retail merchants who are continuing to consolidate their vendor base and focus on a reduced number of suppliers that can (1) provide high-value products, (2) efficiently and consistently fulfill logistical requirements and volume demands and (3) provide comprehensive product support from design to point of sale and after-market customer service.

***Continue New Product Development and Packaging Innovation***

We intend to continue our strategy of increasing sales through the introduction of new products and packaging designs in each of our seven product categories. Our research and development strategy is focused on new product development, performance improvements of our existing products and cost reductions in, and enhancements of, our products and packaging. We plan to continue to use our strong brand names, established customer relationships and significant research and development efforts to introduce innovative products that offer enhanced value to consumers through new designs and improved functionality. For example, we introduced over 200 new or improved products in the 2004 calendar year. We recently introduced the Remington Titanium Smart System shaving system, Spectracide TripleStrike Grass & Weed Killer and the Remington Wet 2 Straight Professional Straightener hair straightener. We will continue to focus on identifying new technologies and formulations necessary to meet and create consumer and retailer demand within the marketplace.

***Continue to Improve Operating Efficiencies***

We will continue to seek to improve our operational efficiencies and match manufacturing capacity and product costs to market demand. Over the last few years, we have undertaken various initiatives to reduce manufacturing, operating and other costs, such as increasing manufacturing utilization by reducing the number of our facilities, outsourcing the production of certain of our products and updating and centralizing certain packaging and distribution facilities. We believe that we can continue to reduce our cost of goods manufactured with continued focus on cost reduction initiatives. These initiatives include cost reductions through global purchasing, finished goods sourcing arrangements and improved productivity. We continue to lower operating costs as duplicative administrative support and sales and marketing functions are consolidated and overlapping functions are eliminated.

***Implement Integration Plan***

We have identified key areas where we expect to achieve cost savings and operational synergies with the acquisitions of United and Tetra. These areas include manufacturing, distribution, sales and marketing, IT systems and administrative functions. We intend to rationalize our existing manufacturing plants, reduce freight costs by maximizing full truckloads and taking advantage of our existing distribution network, transition United and Tetra to our IT platform, consolidate purchasing and increase Asian sourcing, and integrate various selling, general and administrative functions.



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### ***Enhance Earnings and Cash Flow***

We have generated high levels of cash flow from operations as a result of our earnings, cost reduction efforts and modest capital expenditure requirements. Through our integration efforts with VARTA and Remington we have streamlined our cost structure. Through our integration efforts with United and Tetra, we anticipate further improvements in our cost structure while continuing to introduce new high profit margin products. We intend to continue to focus on improving the efficiency of our organization to maximize earnings and cash flow from operations.

### ***Pursue Strategic Acquisitions***

Our acquisition strategy focuses on businesses or brands that will strengthen our current product offerings or enable us to expand into complementary categories and geographic regions. In addition, we intend to pursue acquisitions of additional consumer product brands that can benefit from our extensive distribution network and long-term retailer relationships. In particular, we believe that the pet supplies industry presents consolidation opportunities due to its highly fragmented nature, and we expect to pursue opportunities in this market.

### **Our Products**

We compete in the following seven major product categories:

- consumer batteries;
- pet supplies;
- lawn and garden products;
- electric shaving and grooming products;
- household insect control products;
- electric personal care products; and
- portable lighting products.

Pro forma net sales data for our products as a percentage of pro forma consolidated net sales for fiscal 2004 is set forth below.

Consumer batteries	37%
Lawn and garden	20
Pet supplies	19
Electric shaving and grooming	11
Household insect and control	6
Electric personal care products	4
Portable lighting	3
	100%

### ***Consumer Batteries***

*General Batteries.* Our general batteries category includes alkaline and zinc carbon. We sell a full line of alkaline batteries (AA, AAA, C, D and 9-volt sizes) for both consumers and industrial customers. Our alkaline batteries are marketed and sold primarily under the Rayovac Maximum Plus brand and the VARTA Universal, High Energy and MaxiTech brands. We also engage in private label manufacturing of alkaline batteries. Our zinc carbon batteries are designed for low- and medium-drain battery-powered devices such as flashlights.

*Rechargeable Batteries, Chargers and Other.* We sell our rechargeable batteries and chargers under the Rayovac and VARTA brands. We sell NiMH and rechargeable alkaline batteries and a variety of chargers, including our 15-minute I-C<sup>3</sup> NiMH rechargeable system, introduced in August 2003.

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Our specialty battery products include photo batteries, lithium batteries, silver oxide batteries and keyless entry batteries. We sell coin cells for use in watches, cameras, calculators, communications equipment and medical instrumentation. Our lithium coin cells are high-quality lithium batteries marketed for use in instrumentation, calculators and personal computer clocks and memory back-up systems.

*Hearing Aid Batteries.* We are currently the largest worldwide seller of hearing aid batteries. We sell our hearing aid batteries through retail trade channels and directly to professional audiologists under several brand names and under several private labels, including Beltone, Miracle Ear, Siemens and Starkey.

### ***Pet Supplies***

Our pet supplies business is comprised of a number of leading premium-branded pet supplies and specialty pet food products for dogs, cats, birds, fish and other small domestic animals. We sell a variety of specialty pet products, including treats, stain and odor removal products, grooming aids, bedding and lounging products, premium food, medications and vitamin supplements. Our largest specialty pet brands include Perfect Coat, Nature's Miracle, One Earth, Dingo, Wild Harvest and Kookamunga. We also have a broad line of consumer and commercial aquatics pet products, including integrated aquarium kits, standalone tanks and stands, filtration systems, heaters, pumps, sea salt, aquarium hoods and lights and other aquarium supplies and accessories. Our largest aquatics brands include Tetra, Bio-Wheel, Penguin, Eclipse, Magnum, Perfecto and ASI.

### ***Lawn and Garden Products***

Our lawn and garden business is comprised of a number of leading lawn and garden care products, including, among others, dry, granular lawn fertilizers, lawn fertilizer combination and lawn control products, herbicides, water-soluble and controlled-release garden and indoor plant foods, plant care products, potting soils and other growing media products and grass seed. Our largest brands include Spectracide, Garden Safe, Sta-Green, Vigoro, Schultz and Bandini. We have exclusive brand arrangements for our Vigoro brand at The Home Depot and our Sta-Green brand at Lowe's. We also sell our products in Canada where our brands include Wilson, So-Green, Greenleaf and Green Earth in the lawn and garden categories, and IB Nitrogen, Nitroform, Nutralene, S.C.U. and Organiform in the fertilizer technology category. Our lawn and garden products are targeted toward consumers who want products and packaging that are comparable or superior to, and sold at lower prices than, premium-priced brands, while our opening price point brands are designed for cost-conscious consumers who want quality products.

### ***Electric Shaving and Grooming Products***

We market a broad line of electric shaving and grooming products, including men's rotary and foil shavers, women's shavers, beard and mustache trimmers, nose and ear trimmers, haircut kits and related accessories. We market electric shaver accessories consisting of shaver replacement parts (primarily foils and cutters), pre-shave products and cleaning agents. Remington is the only brand of men's electric shavers to offer both a foil-design product line and a rotary-design product line.

### ***Household Insect Control***

Our household insect control business is comprised of a number of leading products that allow consumers to repel insects and maintain a pest-free household. Such products include household insecticides such as spider, roach and ant killer, flying insect killer, insect foggers, wasp and hornet killer, flea and tick control products and roach and ant baits. We also manufacture and market a complete line of products in the insect repellent category that provide protection from insects, especially mosquitoes, for the entire family. Such products include both personal repellents, such as application wipes, aerosols and pump sprays, and area repellents, such as yard sprays, citronella candles and torches. Our largest brands in the insect control business include Hot Shot, Cutter and Repel.

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### ***Electric Personal Care Products***

Our hair care products consist of hair dryers, hairsetters, curling irons, hair crimpers and straighteners, hot air brushes and lighted mirrors. Our wellness products consist primarily of paraffin wax hand spas and foot spas.

### ***Portable Lighting***

We sell our portable lighting products under the Rayovac and VARTA brand names, under other brand names and under licensing arrangements with third parties. We offer a broad line of battery-powered lighting products, including flashlights, lanterns and similar portable devices, for the retail and industrial markets.

### **Sales and Distribution**

We sell our products through a variety of trade channels, including retailers, wholesalers and distributors, hearing aid professionals, industrial distributors and OEMs. Our pro forma sales to Wal-Mart Stores, Inc. for our 2004 fiscal year represented approximately 18% of our pro forma consolidated net sales for fiscal 2004 and no other customer accounted for more than 10% of our consolidated net sales in fiscal 2004.

### ***North America***

We align our internal sales force in North America by distribution channel. We maintain separate sales forces primarily to service (i) our retail sales and distribution channels, (ii) our hearing aid professionals and (iii) our industrial distributors and OEM sales and distribution channels. In addition, we use a network of independent brokers to service participants in selected distribution channels.

### ***Europe/ROW***

We maintain a separate sales force in Europe/ROW and utilize an international network of distributors to promote the sale of all of our products. We have sales operations throughout Europe/ROW organized by three sales channels: (i) food/retail, which includes mass merchandisers, discounters, drug and food stores and non-food stores; (ii) special trade, which includes clubs (cash/carry), consumer electronics stores, department stores, photography stores, hearing aid professionals and wholesalers/distributors, and (iii) industrial, government and OEMs.

### ***Latin America***

We align our internal sales force in Latin America by distribution channel or geographic territory. We sell primarily to large retailers, wholesalers, distributors, food and drug chains, and retail outlets in both urban and rural areas. In some countries where we do not maintain a separate internal sales force, we sell to distributors who sell our products to all channels in their particular market.

### ***United and Tetra***

We sell our lawn and garden, pet supplies and household insect control products to mass merchandisers, home improvement centers, hardware, grocery and drug chains, nurseries and garden centers, pet superstores, independent pet stores and other retailers.

### **Manufacturing, Raw Materials and Suppliers**

The principal raw materials used to produce our products—including zinc powder, electrolytic manganese dioxide powder, steel and granular urea—are sourced on a global or regional basis, and the prices of those raw materials are susceptible to price fluctuations due to supply/demand trends, energy costs, transportation costs, government regulations and tariffs, changes in currency exchange rates, price controls, the economic climate and other unforeseen circumstances. We regularly engage in forward purchase and hedging transactions in an attempt

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to effectively manage our raw materials costs for the next six to twelve months. We believe we will continue to have access to adequate quantities of these materials.

Substantially all of our rechargeable batteries and chargers, portable lighting products and hair care, wellness and other personal care products, and our electric shaving and grooming products are manufactured by third party suppliers, primarily located in China and Japan. We maintain ownership of tooling and molds used by many of our suppliers.

We continually evaluate our facilities' capacity and related utilization. As a result of such analyses, we have closed a number of manufacturing facilities during the past five years. In general, we believe our existing facilities are adequate for our present and currently foreseeable needs.

### **Research and Development**

Our research and development strategy is focused on new product development, performance improvements of our existing products and cost reductions in, and enhancements of, our packaging. We plan to continue to use our strong brand names, established customer relationships and significant research and development efforts to introduce innovative products that offer enhanced value to consumers through new designs and improved functionality.

On a pro forma basis, we invested approximately \$19.9 million in product research and development for our 2004 fiscal year. These investments were supplemented by funds received from U.S. government contracts. These contracts enable us to investigate additional development opportunities.

### **Patents and Trademarks**

We own or license from third parties a considerable number of patents and patent applications throughout the world for battery and electric personal care product improvements, additional features and manufacturing equipment. We have a license through March 2022 to certain alkaline battery designs, technology and manufacturing equipment from Matsushita to whom we pay a royalty.

We also use and maintain a number of trademarks in our business, including RAYOVAC<sup>®</sup>, VARTA<sup>®</sup>, REMINGTON<sup>®</sup>, MAXIMUM<sup>®</sup>, MAXIMUM PLUS<sup>™</sup>, I-C3<sup>™</sup>, RENEWAL<sup>®</sup>, LOUD 'N CLEAR<sup>®</sup>, PRO LINE<sup>®</sup>, RAYOVAC ULTRA<sup>®</sup>, WORKHORSE<sup>®</sup>, ROUGHNECK<sup>®</sup>, SPORTSMAN<sup>®</sup>, AIR 4000<sup>®</sup>, XCELL<sup>®</sup>, EXTRA<sup>®</sup>, PRODIGY<sup>®</sup>, MICROSCREEN<sup>®</sup>, MICROFLEX<sup>®</sup>, PRECISION<sup>®</sup>, REMINGTON TITANIUM<sup>™</sup>, SMOOTH & SILKY<sup>®</sup>, SPECTRACIDE<sup>®</sup>, TRIAZICIDE<sup>®</sup>, TRIPLESTRIKE<sup>™</sup>, SPECTRACIDE TERMINATE<sup>®</sup>, SPECTRACIDE PRO<sup>®</sup>, HOT SHOT<sup>®</sup>, GARDEN SAFE<sup>®</sup>, SCHULTZ<sup>™</sup>, RID-A-BUG<sup>®</sup>, BAG-A-BUG<sup>®</sup>, REAL-KILL<sup>®</sup>, NO-PEST<sup>®</sup>, REPEL<sup>®</sup>, VIGORO<sup>®</sup>, STA-GREEN<sup>®</sup>, BANDINI<sup>®</sup>, WILSON<sup>®</sup>, SO-GREEN<sup>®</sup>, GREENLEAF<sup>®</sup>, GREEN EARTH<sup>®</sup>, IB NITROGEN<sup>®</sup>, NITROFORM<sup>®</sup>, NUTRALENE<sup>®</sup>, S.C.U.<sup>®</sup>, ORGANIFORM<sup>®</sup>, CUTTER<sup>®</sup>, MARINELAND<sup>®</sup>, PERFECTO<sup>®</sup>, INSTANT OCEAN<sup>®</sup>, REGENT<sup>®</sup>, 8-IN-1<sup>®</sup>, NATURE'S MIRACLE<sup>®</sup>, DINGO<sup>®</sup>, WILD HARVEST<sup>®</sup>, ONE EARTH<sup>®</sup>, LAZY PET<sup>®</sup>, JUNGLETALK<sup>®</sup>, TETRA<sup>®</sup>, TETRAMIN<sup>®</sup>, TETRAFIN<sup>®</sup>, TETRAPOND<sup>®</sup>, WHISPER<sup>®</sup> and AQUASAFE<sup>®</sup>. We rely on both registered and common law trademarks worldwide to protect our trademark rights. The Rayovac, Remington and VARTA trademarks are also registered in countries outside the U.S., including in Europe, Latin America and Asia. As a result of our acquisition of Microlite S.A. in May 2004, we now own the Rayovac trademark in Brazil. We also license the PETERS<sup>®</sup> and PETERS PROFESSIONAL<sup>®</sup> trademarks from The Scotts Company, CIL<sup>®</sup> trademarks from ICI Canada Inc., PLANT-PROD<sup>®</sup> trademarks from Plant Products Co. Ltd. and PICKSEED<sup>®</sup> trademarks from Pickseed Canada Inc.

As a result of the October 2002 sale by VARTA AG of substantially all of its consumer battery business to Rayovac and VARTA AG's subsequent sale of its automotive battery business to Johnson Controls, Inc., we became the owner of the VARTA trademark in the consumer battery category and Johnson Controls acquired

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ownership rights to the trademark in the automotive battery category. VARTA AG and its VARTA Microbatteries subsidiary continue to have ownership rights to use the trademark with travel guides, industrial batteries and micro batteries. The four owners of the VARTA trademark are parties to a Trademark and Domain Names Protection and Delimitation Agreement that governs ownership and usage rights and obligations of the parties relative to the trademark.

As a result of the common origins of the Remington entity we acquired and Remington Arms Company, Inc., the Remington trademark is owned by us and by Remington Arms, each with respect to its principal products as well as associated products. As a result of our acquisition of Remington, we own the Remington trademark for electric shavers, shaver accessories, grooming products and personal care products, while Remington Arms owns the trademark for firearms, sporting goods and products for industrial use, including industrial hand tools. The terms of a 1986 agreement between Remington and Remington Arms provides for the shared rights to use the Remington trademark on products which are not considered “principal products of interest” for either company. We retain the Remington trademark for nearly all products which we believe can benefit from the use of the brand name in our distribution channels.

On February 12, 2004, United’s largest customer and United executed a licensing, manufacturing and supply agreement. Under the agreement, United will license its Vigoro and related trademarks and be the exclusive manufacturer and supplier for certain products branded with such trademarks from January 1, 2004, the effective date of the agreement, through December 31, 2008 or such later date as is specified in the agreement. Provided the customer achieves certain required minimum purchase volumes and other conditions during such period, and the manufacturing and supply portion of the agreement is extended for an additional three-year period as specified in the agreement, United will assign the trademarks to the customer not earlier than May 1, 2009, but otherwise within thirty days after the date upon which such required minimum purchase volumes are achieved. The carrying value of such trademarks as of February 12, 2004 was approximately \$16.0 million. If the customer fails to achieve the required minimum purchase volumes or meet other certain conditions, assignment may occur at a later date, if certain conditions are met. In addition, as a result of executing the agreement, United has modified the trademarks’ initial amortization period of forty years and will record amortization in a manner consistent with projected sales activity over five years, because United believes the customer will achieve all required conditions by May 2009. Amortization expense was \$2.7 million for the twelve months ended December 31, 2004.

### **Competition**

In our retail markets, companies compete for limited shelf space and consumer acceptance. Factors influencing product sales are brand name recognition, perceived quality, price, performance, product packaging and design innovation, as well as creative marketing, promotion and distribution strategies.

The battery marketplace is highly competitive. Most consumer batteries manufactured throughout the world are sold by one of four global companies: Spectrum; Energizer, a subsidiary of Energizer Holdings, Inc.; Duracell, a division of The Gillette Company; and Matsushita (manufacturer of the Panasonic brand). We also face competition from the private label brands of major retailers, particularly in Europe. The offering of private-label batteries by retailers may create pricing pressure and may also increase consumer perceptions that batteries are a commodity product. Typically, private-label brands are not supported by advertising or promotion, and retailers sell these private label offerings at retail prices below competing brands. The main barriers to entry for new competitors are investment in technology research, cost of building manufacturing capacity and the expense of building retail distribution channels and consumer brands.

In the U.S. alkaline battery category, Rayovac is positioned as a value brand while Duracell and Energizer are positioned as premium brands. In Europe, the VARTA brand has premium positioning. In Latin America where lower disposable incomes prevail and zinc carbon batteries still outsell alkaline, Rayovac is positioned as a value brand.

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Our primary competitors in the lawn and garden and household segments include: The Scotts Company, which markets lawn and garden products under the Scotts, Ortho, Roundup, Miracle-Gro and Hyponex brand names; Bayer A.G., which markets lawn and garden products under the Bayer Advanced brand name; and Central Garden & Pet Company, which markets garden products under the AMDRO, IMAGE and Pennington Seed brand names.

Our primary competitors in the electric shaving and grooming market are Koninklijke Philips Electronics NV (“Philips”) (which only sells and markets rotary shavers) and Braun (which only sells and markets foil shavers). Only Remington competes in both the foil and rotary segments.

The pet supply industry is highly fragmented with over 500 manufacturers in the U.S., consisting primarily of small companies with limited product lines. Some of our largest competitors in this product category are Hartz and Central Garden & Pet Company.

Our primary competitors in the household insect control market include: S.C. Johnson & Son, Inc., which markets insecticide and repellent products under the Raid and OFF! brand names; The Scotts Company, which markets household insect control products under the Ortho brand name; and The Dial Corporation, which markets products under the Combat brand name.

Our major competitors in the electric personal care market are Conair, Wahl and Helen of Troy. Companies that are able to maintain or increase the amount of retail shelf space allocated to their respective products can gain competitive advantage.

Our primary competitors in the portable lighting category are Eveready and Maglite.

Some of our major competitors have greater financial and other resources and greater overall market share than we do. They have committed significant resources to protect their own market shares or to capture market share from us in the past and may continue to do so in the future. In some key product lines, our competitors may have lower production costs and higher profit margins than we do, which may enable them to compete more aggressively in advertising and in offering retail discounts and other promotional incentives to retailers, distributors, wholesalers, and, ultimately, consumers.

### **Seasonality**

We expect that the acquisitions of United and Tetra will reduce the seasonality of our business, which, prior to the acquisitions, was weighted heavily towards the Christmas season (Spectrum’s first quarter in its fiscal year). Demand for lawn and garden products typically peaks during the first six months of the calendar year (Spectrum’s second and third quarters in its fiscal year) and pet supplies sales remain fairly constant throughout the year. More evenly distributed consumer demand will help balance the seasonality in Spectrum’s business and working capital needs.

### **Governmental Regulations and Environmental Matters**

Due to the nature of our operations, our facilities are subject to a broad range of federal, state, local and foreign legal and regulatory provisions relating to the environment, including those regulating the discharge of materials into the environment, the handling and disposal of solid and hazardous substances and wastes, and the remediation of contamination associated with the releases of hazardous substances at our facilities. We believe that compliance with the federal, state, local and foreign regulations to which we are subject will not have a material effect upon our capital expenditures, financial position, earnings and competitive position.

From time to time, we have been required to address the effect of historic activities on the environmental condition of our properties, including without limitation, the effect of the generation and disposal of wastes, which are or may be considered hazardous. We have not conducted invasive testing to identify all potential

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environmental liability risks. Given the age of our facilities and the nature of our operations, there can be no assurance that material liabilities will not arise in the future in connection with our current or former facilities. If previously unknown contamination of property underlying or in the vicinity of our manufacturing facilities is discovered, we could be required to incur material unforeseen expenses. If this occurs, it may have a material adverse effect on our business, financial condition and results of operations. Although we are currently engaged in investigative or remedial projects at a few of our facilities, we do not expect that such projects will cause us to incur material expenditures; however, there can be no assurance that our liability will not be material.

We have been, and in the future may be, subject to proceedings related to our disposal of industrial and hazardous material at off-site disposal locations or similar disposals made by other parties for which we are held responsible as a result of our relationships with such other parties. These proceedings are under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) or similar state laws that hold persons who “arranged for” the disposal or treatment of such substances strictly liable for costs incurred in responding to the release or threatened release of hazardous substances from such sites, regardless of fault or the lawfulness of the original disposal. Liability under CERCLA is typically joint and several, meaning that a liable party may be responsible for all costs incurred in investigating and remediating contamination at a site. As a practical matter, liability at CERCLA sites is shared by all of the viable responsible parties. While we currently have no pending CERCLA or similar state matters, we may be named as a potentially responsible party at sites in the future and the costs and liabilities associated with these sites may be material.

Certain of our products and facilities are regulated by the EPA, the FDA or other federal consumer protection and product safety regulations, as well as similar registration, approval and other requirements under state and foreign laws and regulations. For example, in the United States, all products containing pesticides must be registered with the EPA and, in many cases, similar state and foreign agencies before they can be manufactured or sold. The inability to obtain or the cancellation of any registration could have an adverse effect on our business, financial condition and results of operations. The severity of the effect would depend on which products were involved, whether another product could be substituted and whether our competitors were similarly affected. We attempt to anticipate regulatory developments and maintain registrations of, and access to, substitute chemicals and other ingredients. We may not always be able to avoid or minimize these risks.

The Food Quality Protection Act established a standard for food-use pesticides, which is that a reasonable certainty of no harm will result from the cumulative effect of pesticide exposures. Under the Act, the EPA is evaluating the cumulative effects from dietary and non-dietary exposures to pesticides. The pesticides in certain of our products continue to be evaluated by the EPA as part of this exposure. It is possible that the EPA or a third party active ingredient registrant may decide that a pesticide we use in our products will be limited or made unavailable to us. For example, in 2000, Dow AgroSciences L.L.C., an active ingredient registrant, voluntarily agreed to a withdrawal of virtually all residential uses of chlorpyrifos, an active ingredient United used in its lawn and garden products under the name Dursban™ until January 2001. This had a material adverse effect on United’s operations resulting in a charge of \$8.0 million in 2001. We cannot predict the outcome or the severity of the effect of the EPA’s continuing evaluations of active ingredients used in our products.

Certain of our products and packaging materials are subject to regulations administered by the FDA. Among other things, the FDA enforces statutory prohibitions against misbranded and adulterated products, establishes ingredients and manufacturing procedures for certain products, establishes standards of identity for certain products, determines the safety of products and establishes labeling standards and requirements. In addition, various states regulate these products by enforcing federal and state standards of identity for selected products, grading products, inspecting production facilities, and imposing their own labeling requirements.

It is difficult to quantify with certainty the potential financial impact of actions regarding expenditures for environmental matters, particularly remediation, and future capital expenditures for environmental control equipment. Nevertheless, based upon the information currently available, we believe that our ultimate liability arising from such environmental matters, taking into account established accruals, should not be material to our business or financial condition.

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### Properties

The following table lists our primary owned or leased manufacturing, packaging, and distribution facilities:

Facility	Function	Square Footage
<b>North America</b>		
Fennimore, Wisconsin(1)	Alkaline Battery Manufacturing	176,000
Portage, Wisconsin(1)	Zinc Air Button Cell & Lithium Coin Cell Battery Manufacturing & Foil Shaver Component Manufacturing	101,000
Dixon, Illinois(2)	Packaging & Distribution of Batteries and Lighting Devices & Distribution of Electric Shaver & Personal Care Devices	576,000
Nashville, Tennessee(2)	Distribution of Batteries, Lighting Devices, Electric Shaver & Personal Care Devices	266,700
St. Louis, Missouri(2)	United Corporate Headquarters	79,200
Vinita Park, Missouri—Plant I(2)	Household and Contract Production Facility	32,800
Vinita Park, Missouri—Plant II(2)	Production Facility	86,000
Vinita Park, Missouri—Plant III(2)	Household Production Facility and Warehouse	88,000
Vinita Park, Missouri(2)	Warehouse	86,000
Vinita Park, Missouri(2)	Warehouse	165,300
Vinita Park, Missouri(2)	Storage	53,500
Bridgeton, Missouri(2)(3)	Storage	75,000-150,000
Bridgeton, Missouri(2)	Distribution Center	403,200
Bridgeton, Missouri—Plant IV(2)	Lawn and Garden Production Facility	153,000
Akron, Ohio (2)	Distribution Center	400,000
Orrville, Ohio(1)	Lawn and Garden Production Facility	30,420
Orrville, Ohio(1)	Lawn and Garden Distribution Center	20,000
Cincinnati, Ohio(2)	United Pet Group Corporate Headquarters	3,800
Mentot, Ohio(2)	Aquatics Production Facility	88,000
Noblesville, Indiana(1)	Aquatics Production Facility	400,000
Hoover, Alabama(2)	Lawn and Garden Office	35,000
Sylacauga, Alabama(2)	Lawn and Garden Production Facility and Distribution Center	71,000
Hauppauge, New York(2)	Specialty Pet Production Facility	140,000
Gainesville, Georgia(2)	Distribution Center	126,000
Brad, California(2)	Specialty Pet Production Facility	66,000
Ontario, California(2)	Distribution Center	61,000
Moorpark, California(2)	Aquatics Production Facility	177,000
Hazelton, California(2)	Specialty Pet Production Facility	88,000
Brantford, Ontario(1)	United Corporate Headquarters, Warehouse	140,000
Woodstock, Ontario(1)	Soils and Horticultural Facility	100,000
Putnam, Ontario(1)	Blend, Pack and Warehouse Facility	125,000
Blacksburg, Virginia(1)	Pet Supply Manufacturing, Assembly, Warehousing and Shipping	180,000
<b>Europe/ROW</b>		
Dischingen, Germany(2)	Alkaline Battery Manufacturing	186,000
Breitenbach, France(1)	Zinc Carbon Battery Manufacturing	165,000
Washington, UK(2)	Zinc Air Button Cell Battery Manufacturing & Distribution	63,000
Melle, Germany(1)	Pet Food and Pet Care Manufacturing	67,000
Melle, Germany(2)	Pet Food and Pet Care Distribution	64,000



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<u>Facility</u>	<u>Function</u>	<u>Square Footage</u>
Ninghai, China(1)	Zinc Carbon & Alkaline Battery Manufacturing & Distribution	274,000
Ellwangen, Germany(2)	Battery Packaging	187,000
Ellwangen, Germany(2)	Battery Distribution	125,000
<b>Latin America</b>		
Guatemala City, Guatemala(1)	Zinc Carbon Battery Manufacturing	105,000
Ipojuca, Brazil(1)	Zinc Carbon Battery Component Manufacturing	100,000
Jaboatoa, Brazil(1)	Zinc Carbon & Alkaline Battery Manufacturing	516,000
Manizales, Colombia(1)	Zinc Carbon Battery Manufacturing	91,000

- (1) Facility is owned.
- (2) Facility is leased.
- (3) Approximate square footage increases from 75,000 square feet during non-peak seasons to a maximum of 150,000 square feet during peak seasons.

We also own, operate or contract with third parties to operate distribution centers, sales offices and administrative offices throughout the world in support of our business. We lease our administrative headquarters, located in Atlanta, Georgia, and our primary research and development facility and North America headquarters, located in Madison, Wisconsin.

### **Employees**

We have approximately 10,000 full-time employees worldwide on a combined basis as of May 25, 2005. Approximately 16% of our total labor force is covered by collective bargaining agreements. We believe that our relationship with our employees is good and there have been no work stoppages involving our employees since 1981 in North America and since 1991 in the United Kingdom.

### **Legal Proceedings**

We are subject to litigation from time to time in the ordinary course of business. The amount of any liability with respect to any litigation to which we are now subject cannot currently be determined. Other than the matters set forth below, we are not party to any pending legal proceedings which, in the opinion of management, are material or may be material to our business or financial condition.

We are involved in a number of legal proceedings with Philips in Europe with respect to trademark or other intellectual property rights Philips claims to have in relation to the appearance of the faceplate of the three-headed rotary shaver. In the first such legal proceeding in Europe, we were successful in having the Philips trademark at issue declared invalid by the High Court of Justice in the United Kingdom, a decision that was ultimately upheld by the European Court of Justice ("ECJ") in 2002. The ECJ held that a shape consisting exclusively of the shape of a product is unregistrable as a trademark (or is subject to being declared invalid if it has been registered as a trademark) if it is established that the essential functional features of the shape are attributable only to the technical result. Both prior to and following the favorable ECJ decision in 2002, litigation over the Philips trademarks ensued between Rayovac (or one of its distributors) and Philips in each of France, Italy, Spain, Portugal, Germany and again in the U.K. The status of these various matters is as follows:

- In each of France (decision of June 13, 2003), Italy (decision of February 26, 2004) and Spain (decision of May 6, 2004), the respective First Instance Courts ordered that the various Philips trademarks be cancelled. The action in France commenced May 17, 2000, the action in Italy commenced May 15, 2000 and the action in Spain commenced March 12, 2003. These decisions have been appealed by Philips. In Portugal, Philips commenced a lawsuit against Rayovac's distributor on December 12, 2003 seeking only an injunction to prevent the marketing and sale of the Remington shavers. The Commercial Court

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in Portugal (decision of June 23, 2004) denied the request for an injunction. Philips initially appealed this decision in Portugal, but dropped its appeal in April 2005.

- In the second U.K. lawsuit commenced by Philips on February 15, 2000, the U.K. High Court of Justice (decision of October 21, 2004) ordered that Philips' trademarks at issue be cancelled. Philips has filed an appeal in this matter.
- In Germany, Philips commenced an action on September 5, 2002 seeking to enjoin the sale of Remington rotary shavers, money damages and other relief. On April 1, 2004, the court issued a ruling canceling two of the four Philips marks at issue in the case and narrowing the scope of enforceability of the two surviving marks. Each of Rayovac and Philips has appealed the decisions that were contrary to their respective positions. Previously, in a related action, the Cologne District Court granted an injunction in August, 2002 prohibiting the marketing and sale by Rayovac of the Remington rotary shavers, which injunction remains in place, and Rayovac has appealed the maintenance of the injunction in light of the April 2004 decision.

In addition, The Gillette Company and its subsidiary, Braun GmbH, filed a complaint against Remington in the federal district court in Massachusetts on December 2, 2003 alleging that Remington's "Smart Cleaner" automatic cleaning device on Remington's Titanium Smart System shaving product infringes United States patent numbers 5,711,328 and 5,649,556 allegedly held by Braun (*The Gillette Company and Braun GmbH v. Remington Consumer Products Company, LLC., Case No. 03 CV 12428 WGY*). The complaint, which seeks injunctive relief and monetary damages, was served on Remington in March 2004. We have answered the complaint denying all material allegations and we are vigorously defending ourselves in this matter. Trial is tentatively scheduled for the fall of 2005.

### DESCRIPTION OF CERTAIN INDEBTEDNESS

#### Senior Credit Facilities

##### General

On February 7, 2005, we entered into a credit agreement which provides for senior credit facilities (the "Senior Credit Facility"), including term loan facilities and a revolving credit facility in an initial aggregate amount of approximately \$1.03 billion. The Senior Credit Facility includes aggregate term loan facilities of approximately \$730 million consisting of an approximately \$540 million U.S. Dollar Term Loan B Facility, U.S. \$140 million Euro Term Loan B Facility and U.S. \$50 million Canadian Dollar Term Loan B Facility. The Senior Credit Facility also includes a \$300 million revolving credit facility which will be available until the sixth anniversary of the initial borrowing under the Senior Credit Facility (the "Closing Date"). The revolving facility includes a sublimit for swingline loans ("Swingline Loans") denominated in U.S. dollars ("Dollars") or Euros as well as foreign currency sublimits equal to the U.S. dollar equivalent of €25,000,000 for borrowings in Euros, the U.S. dollar equivalent of £10,000,000 for borrowings in Pounds Sterling and amounts to be determined, if any, for borrowings in Yuan.

Rayovac (the "Borrower") is the borrower under the Senior Credit Facility and certain of its subsidiaries, including Varta Consumer Batteries GmbH & Co. KGaA are co-borrowers. The Borrower can request up to five additional incremental term loan facilities in Dollars or, up to a Dollar equivalent sublimit in Euros, in an aggregate principal amount of not more than U.S. \$500 million.

##### Interest

The interest rates per annum are calculated on a 360-day basis for London Interbank Offered Rate ("LIBOR"), the Eurocurrency Rate and Sterling LIBOR advances and on a 365-day basis for Base Rate (as defined below) advances. The interest rates per annum applicable to the Senior Credit Facility (other than in

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respect of Swingline Loans) are LIBOR (or the Eurocurrency Rate, Sterling LIBOR or the Canadian Screen Rate in the case of advances made in Euros, Pounds Sterling or Canadian Dollars, respectively) plus the Applicable Margin (as defined below) or, at our option in the case of advances made in Dollars, the base rate (which is the higher of (x) the Bank of America prime rate and (y) the Federal Funds rate plus 0.5% (the “Base Rate”)) plus the Applicable Margin. We expect that Applicable Margin will mean, (i) with respect to the U.S. Dollar Term Loan B Facility and the Canadian Term Loan B Facility (a) for the first six months after the Closing Date, 2.00% per annum in the case of Eurocurrency Rate advances and with respect to U.S. Dollar Term Loan B Facility only, 1.00% per annum in the case of Base Rate advances and (b) thereafter, a percentage per annum to be determined in accordance with a pricing grid based on debt ratings, (ii) with respect to the Euro Term Loan B Facility, 2.50% per annum, and (iii) with respect to the Revolving Credit Facility, (a) for the first six months after the Closing Date, 2.25% per annum in the case of Eurocurrency Rate advances and in the case of advances made in Dollars only, 1.25% per annum in the case of Base Rate advances and (b) thereafter, a percentage per annum to be determined in accordance with a pricing grid based on the Leverage Ratio. Each Swingline Loan denominated in Dollars bears interest at the Base Rate plus the Applicable Margin for Base Rate advances under the Revolving Credit Facility.

We are required to pay a quarterly commitment fee that shall initially be 0.50% and thereafter, to be subject to stepdowns determined in accordance with a pricing performance grid, on the unused portion of the Senior Credit Facility. A quarterly letter of credit fee equal to the Applicable Margin on Revolving Credit LIBOR Advances is also payable on the stated amount of outstanding letters of credit.

### ***Maturity***

The term loan facilities are subject to repayment according to a scheduled amortization, with the final payment of all amounts outstanding, plus accrued and unpaid interest due seven years after the Closing Date. The revolving credit facility will terminate six years after the Closing Date.

### ***Prepayments***

The Senior Credit Facility provides for annual mandatory prepayments, over and above the normal amortization as a result of “Excess Cash Flow” (as defined, less certain operating expenditures including scheduled principal payments of long-term debt). The Senior Credit Facility also provides for other mandatory prepayments as a result of issuance of debt (excluding certain permitted indebtedness) and sales of certain assets above an annual threshold.

### ***Security and Guarantees***

The Senior Credit Facility is secured by substantially all of our domestic assets and certain of our foreign assets. The Borrower’s obligations under the Senior Credit Facility are guaranteed by certain of our subsidiaries, including all domestic subsidiaries.

### ***Covenants***

The Senior Credit Facility contains financial covenants with respect to debt which include maintaining minimum interest and maximum leverage ratios. In accordance with the agreement, the limits imposed by such ratios become more restrictive over time. In addition, the agreement restricts our ability to incur additional indebtedness, create liens, make investments or specified payments, give guarantees, pay dividends, make capital expenditures and merge or acquire or sell assets.

### ***Events of Default***

The Senior Credit Facility contains customary events of default, including, without limitation, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to similar obligations,

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certain events of bankruptcy and insolvency, judgment defaults, failure of any guaranty or security document supporting the agreement to be in full force and effect, change of control and customary ERISA defaults.

### ***Incremental Term Facility***

On April 29, 2005, we entered into an amendment to the Senior Credit Facility pursuant to which the lenders thereunder agreed to increase their commitments by \$500 million under an incremental term facility. The increased commitments consisted of: (i) an increase in the U.S. Dollar Term Loan Facility by an aggregate principal amount not to exceed U.S. \$115 million, (ii) an increase in the Canadian Dollar Term Loan Facility by an aggregate principal amount not to exceed the equivalent in Canadian dollars of \$20 million and (iii) an additional Euro Term Loan Facility in an aggregate principal amount not to exceed the equivalent in Euros of U.S. \$365 million. Borrowings under the incremental term facility were used to (a) pay the existing holders of the equity interests of the Tetra the cash consideration for their shares, (b) refinance the existing indebtedness of Tetra and its subsidiaries and (c) pay transaction fees and expenses incurred in connection with the acquisition of Tetra.

### **Senior Subordinated Notes Due 2013**

We currently have outstanding \$350 million in aggregate principal amount of 8.5% Senior Subordinated Notes due 2013. The notes pay interest semi-annually on April 1 and October 1 of each year and are guaranteed by all of Spectrum's domestic subsidiaries. The notes are unsecured senior subordinated obligations and rank junior to all of our senior debt. We may redeem the notes in whole or in part at any time on or after October 1, 2008, at specified redemption prices. In addition, under certain circumstances, we may redeem up to 35% of the notes before October 1, 2006. The terms of the notes restrict or limit our ability to, among other things: (i) pay dividends or make other restricted payments, (ii) incur additional indebtedness and issue preferred stock, (iii) create liens, (iv) incur dividend and other restrictions affecting subsidiaries, (v) enter into mergers, consolidations, or sales of all or substantially all of our assets, (vi) make asset sales, (vii) enter into transactions with affiliates, and (viii) issue or sell capital stock of our wholly owned subsidiaries. In addition, the holders of the notes may require us to repurchase all or a portion of the notes in the event we undergo a change of control.

## THE EXCHANGE OFFER

### Purpose of the Exchange Offer

Simultaneously with the sale of the original notes, we entered into a registration rights agreement with the initial purchasers of the original notes—Banc of America Securities LLC, Citigroup Global Markets, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and ABN AMRO Incorporated. Under the registration rights agreement, we agreed, among other things, to:

- file a registration statement relating to a registered exchange offer for the original notes with the SEC no later than 120 days after the date of the issuance of the original notes;
- use our commercially reasonable efforts to cause the SEC to declare the registration statement effective under the Securities Act no later than 240 days after the date of the issuance of the original notes; and
- commence and use our commercially reasonable efforts to consummate the exchange offer no later than the 30th business day after the registration statement was declared effective by the SEC.

We are conducting the exchange offer to satisfy our obligations under the registration rights agreement. If we fail to meet certain specified deadlines under the registration rights agreement, we will be obligated to pay liquidated damages to the holders of the original notes. A copy of the registration rights agreement has been filed with the SEC as Exhibit 4.3 to Rayovac Corporation's Current Report on Form 8-K dated February 7, 2005, and filed on February 11, 2005, and is incorporated by reference as an exhibit to the registration statement of which this prospectus is a part.

The form and terms of the exchange notes are the same as the form and terms of the original notes, except that the exchange notes:

- will be registered under the Securities Act;
- will not bear restrictive legends restricting their transfer under the Securities Act;
- will not be entitled to the registration rights that apply to the original notes; and
- will not contain provisions relating to liquidated damages in connection with the original notes under circumstances related to the timing of the exchange offer.

The exchange offer is not extended to old note holders in any jurisdiction where the exchange offer does not comply with the securities or blue sky laws of that jurisdiction.

### Terms of the Exchange Offer

We are offering to exchange up to \$700,000,000 aggregate principal amount of exchange notes for a like aggregate principal amount of original notes. The original notes must be tendered properly in accordance with the conditions set forth in this prospectus and the accompanying letter of transmittal on or prior to the expiration date and not withdrawn as permitted below. In exchange for original notes properly tendered and accepted, we will issue a like total principal amount of up to \$700,000,000 in exchange notes. This prospectus, together with the letter of transmittal, is first being sent on or about \_\_\_\_\_, 2005, to all holders of original notes known to us. Our obligation to accept original notes for exchange in the exchange offer is subject to the conditions described below under the heading "—Conditions to the Exchange Offer." The exchange offer is not conditioned upon holders tendering a minimum principal amount of original notes. As of the date of this prospectus, \$700,000,000 aggregate principal amount of original notes are outstanding.

Original notes tendered in the exchange offer must be in denominations of the principal amount of \$1,000 and any integral multiple of \$1,000 in excess thereof.

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Holders of the original notes do not have any appraisal or dissenters' rights in connection with the exchange offer. If you do not tender your original notes or if you tender original notes that we do not accept, your original notes will remain outstanding. Any original notes will be entitled to the benefits of the indenture but will not be entitled to any further registration rights under the registration rights agreement, except under limited circumstances. Existing transfer restrictions would continue to apply to such original notes. See "Risk Factors—There are significant consequences if you fail to exchange your original notes" for more information regarding original notes outstanding after the exchange offer.

After the expiration date, we will return to the holder any tendered original notes that we did not accept for exchange.

**None of us, our board of directors or our management recommends that you tender or not tender original notes in the exchange offer or has authorized anyone to make any recommendation. You must decide whether to tender in the exchange offer and, if you decide to tender, the aggregate amount of original notes to tender.**

The expiration date is 5:00 p.m., New York City time, on \_\_\_\_\_, 2005, or such later date and time to which we extend the exchange offer.

We have the right, in accordance with applicable law, at any time:

- to delay the acceptance of the original notes;
- to terminate the exchange offer and not accept any original notes for exchange if we determine that any of the conditions to the exchange offer have not occurred or have not been satisfied;
- to extend the expiration date of the exchange offer and retain all original notes tendered in the exchange offer other than those notes properly withdrawn; and
- to waive any condition or amend the terms of the exchange offer in any manner.

If we materially amend the exchange offer, we will as promptly as practicable distribute a prospectus supplement to the holders of the original notes disclosing the change and extend the exchange offer.

If we exercise any of the rights listed above, we will as promptly as practicable give oral or written notice of the action to the exchange agent and will make a public announcement of such action. In the case of an extension, an announcement will be made no later than 9:00 a.m., New York City time on the next business day after the previously scheduled expiration date.

### **Acceptance of Original Notes for Exchange and Issuance of Original Notes**

As promptly as practicable after the expiration date, we will accept all original notes validly tendered and not withdrawn, and we will issue exchange notes registered under the Securities Act to the exchange agent. The exchange agent might not deliver the exchange notes to all tendering holders at the same time. The timing of delivery depends upon when the exchange agent receives and processes the required documents.

We will be deemed to have exchanged original notes validly tendered and not withdrawn when we give oral or written notice to the exchange agent of our acceptance of the tendered original notes, with written confirmation of any oral notice to be given promptly thereafter. The exchange agent is our agent for receiving tenders of original notes, letters of transmittal and related documents.

In tendering original notes, you must warrant in the letter of transmittal or in an agent's message (described below) that (i) you have full power and authority to tender, exchange, sell, assign and transfer original notes, (ii) we will acquire good, marketable and unencumbered title to the tendered original notes, free and clear of all

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liens, restrictions, charges and other encumbrances and (iii) the original notes tendered for exchange are not subject to any adverse claims or proxies. You also must warrant and agree that you will, upon request, execute and deliver any additional documents requested by us or the exchange agent to complete the exchange, sale, assignment and transfer of the original notes.

### **Procedures for Tendering Original Notes**

#### ***Valid Tender***

When the holder of original notes tenders, and we accept, original notes for exchange, a binding agreement between us, on the one hand, and the tendering holder, on the other hand, is created, subject to the terms and conditions set forth in this prospectus and the accompanying letter of transmittal. Except as set forth below, a holder of original notes who wishes to tender original notes for exchange must, on or prior to the expiration date:

- transmit a properly completed and duly executed letter of transmittal, including all other documents required by such letter of transmittal (including original notes), to the exchange agent, U.S. Bank National Association, at the address set forth below under the heading “—Exchange Agent”;
- if original notes are tendered pursuant to the book-entry procedures set forth below, the tendering holder must deliver a completed and duly executed letter of transmittal or arrange with DTC to cause an agent’s message to be transmitted with the required information (including a book-entry confirmation), to the exchange agent at the address set forth below under the heading “—Exchange Agent”; or
- comply with the provisions set forth below under “—Guaranteed Delivery.”

In addition, on or prior to the expiration date:

- the exchange agent must receive the certificates for the original notes and the letter of transmittal;
- the exchange agent must receive a timely confirmation of the book-entry transfer of the original notes being tendered into the exchange agent’s account at DTC, along with the letter of transmittal or an agent’s message; or
- the holder must comply with the guaranteed delivery procedures described below.

The letter of transmittal or agent’s message may be delivered by mail, facsimile, hand delivery or overnight carrier, to the exchange agent.

The term “agent’s message” means a message transmitted to the exchange agent by DTC which states that DTC has received an express acknowledgment that the tendering holder agrees to be bound by the letter of transmittal and that we may enforce the letter of transmittal against such holder.

If you beneficially own original notes and those notes are registered in the name of a broker, dealer, commercial bank, trust company or other nominee or custodian and you wish to tender your original notes in the exchange offer, you should contact the registered holder as soon as possible and instruct it to tender the original notes on your behalf and comply with the instructions set forth in this prospectus and the letter of transmittal.

If you tender fewer than all of your original notes, you should fill in the amount of notes tendered in the appropriate box on the letter of transmittal. If you do not indicate the amount tendered in the appropriate box, we will assume you are tendering all original notes that you hold.

**The method of delivery of the certificates for the original notes, the letter of transmittal and all other required documents is at the election and sole risk of the holders. If delivery is by mail, we recommend registered mail with return receipt requested, properly insured, or overnight delivery service. In all cases, you should allow sufficient time to assure timely delivery. No letters of transmittal or original notes should**

**be sent directly to us. Delivery is complete when the exchange agent actually receives the items to be delivered. Delivery of documents to DTC in accordance with DTC's procedures does not constitute delivery to the exchange agent.**

### ***Signature Guarantees***

Signatures on a letter of transmittal or a notice of withdrawal, as the case may be, must be guaranteed unless the original notes surrendered for exchange are tendered:

- by a registered holder of original notes who has not completed the box entitled "Special Issuance Instructions" or "Special Delivery Instructions" on the letter of transmittal; or
- for the account of an eligible institution.

An "eligible institution" is a firm or other entity which is identified as an "Eligible Guarantor Institution" in Rule 17Ad-15 under the Exchange Act, including:

- a bank;
- a broker, dealer, municipal securities broker or dealer or government securities broker or dealer;
- a credit union;
- a national securities exchange, registered securities association or clearing agency; or
- a savings association.

If signatures on a letter of transmittal or notice of withdrawal are required to be guaranteed, the guarantor must be an eligible institution.

If original notes are registered in the name of a person other than the signer of the letter of transmittal, the original notes surrendered for exchange must be endorsed or accompanied by a written instrument or instruments of transfer or exchange, in satisfactory form as determined by us in our sole discretion, duly executed by the registered holder with the holder's signature guaranteed by an eligible institution.

### ***Book-Entry Transfers***

For tenders by book-entry transfer of original notes cleared through DTC, the exchange agent will make a request to establish an account at DTC for purposes of the exchange offer. Any financial institution that is a DTC participant may make book-entry delivery of original notes by causing DTC to transfer the original notes into the exchange agent's account at DTC in accordance with DTC's procedures for transfer. The exchange agent and DTC have confirmed that any financial institution that is a participant in DTC may use the Automated Tender Offer Program, or ATOP, procedures to tender original notes. Accordingly, any participant in DTC may make book-entry delivery of original notes by causing DTC to transfer those original notes into the exchange agent's account in accordance with its ATOP procedures for transfer.

Notwithstanding the ability of holders of original notes to effect delivery of original notes through book-entry transfer at DTC, either:

- the letter of transmittal or a facsimile thereof, or an agent's message in lieu of the letter of transmittal, with any required signature guarantees and any other required documents must be transmitted to and received by the exchange agent prior to the expiration date at the address given below under "— Exchange Agent"; or
- the guaranteed delivery procedures described below must be complied with.



***Guaranteed Delivery***

If a holder wants to tender original notes in the exchange offer and (1) the certificates for the original notes are not immediately available or all required documents are unlikely to reach the exchange agent on or prior to the expiration date, or (2) a book-entry transfer cannot be completed on a timely basis, the original notes may be tendered if the holder complies with the following guaranteed delivery procedures:

- the tender is made by or through an eligible institution;
- the eligible institution delivers a properly completed and duly executed notice of guaranteed delivery, substantially in the form provided, to the exchange agent on or prior to the expiration date;
- setting forth the name and address of the holder of the original notes being tendered and the amount of the original notes being tendered;
- stating that the tender is being made; and
- guaranteeing that, within three (3) New York Stock Exchange trading days after the date of execution of the notice of guaranteed delivery, the certificates for all physically tendered original notes, in proper form for transfer, or a book-entry confirmation, as the case may be, together with a properly completed and duly executed letter of transmittal, or an agent's message, with any required signature guarantees and any other documents required by the letter of transmittal, will be deposited by the eligible institution with the exchange agent; and
- the exchange agent receives the certificates for the original notes, or a confirmation of book-entry transfer, and a properly completed and duly executed letter of transmittal, or an agent's message in lieu thereof, with any required signature guarantees and any other documents required by the letter of transmittal within three (3) New York Stock Exchange trading days after the notice of guaranteed delivery is executed for all such tendered original notes.

You may deliver the notice of guaranteed delivery by hand, facsimile, mail or overnight delivery to the exchange agent and you must include a guarantee by an eligible institution in the form described above in such notice.

Our acceptance of properly tendered original notes is a binding agreement between the tendering holder and us upon the terms and subject to the conditions of the exchange offer.

***Determination of Validity***

We, in our sole discretion, will resolve all questions regarding the form of documents, validity, eligibility, including time of receipt, and acceptance for exchange of any tendered original notes. Our determination of these questions as well as our interpretation of the terms and conditions of the exchange offer, including the letter of transmittal, will be final and binding on all parties. A tender of original notes is invalid until all defects and irregularities have been cured or waived. Holders must cure any defects and irregularities in connection with tenders of original notes for exchange within such reasonable period of time as we will determine, unless we waive the defects or irregularities. Neither us, any of our affiliates or assigns, the exchange agent nor any other person is under any obligation to give notice of any defects or irregularities in tenders nor will they be liable for failing to give any such notice.

We reserve the absolute right, in our sole and absolute discretion:

- to reject any tenders determined to be in improper form or unlawful;
- to waive any of the conditions of the exchange offer; and
- to waive any condition or irregularity in the tender of original notes by any holder, whether or not we waive similar conditions or irregularities in the case of other holders.

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If any letter of transmittal, endorsement, bond power, power of attorney, or any other document required by the letter of transmittal is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, that person must indicate such capacity when signing. In addition, unless waived by us, the person must submit proper evidence satisfactory to us, in our sole discretion, of his or her authority to so act.

### **Resales of Original Notes**

Based on interpretive letters issued by the SEC staff to third parties in transactions similar to the exchange offer, we believe that a holder of exchange notes, other than a broker-dealer, may offer exchange notes for resale, resell and otherwise transfer the exchange notes without delivering a prospectus to prospective purchasers, if the holder acquired the exchange notes in the ordinary course of business, has no intention of engaging in a “distribution” (as defined under the Securities Act) of the exchange notes and is not an “affiliate” (as defined under the Securities Act) of Spectrum. We will not seek our own interpretive letter. As a result, we cannot assure you that the staff will take the same position on this exchange offer as it did in interpretive letters to other parties in similar transactions.

By tendering original notes, the holder, other than participating broker-dealers, as defined below, of those original notes will represent to us that, among other things:

- the exchange notes acquired in the exchange offer are being obtained in the ordinary course of business of the person receiving the exchange notes, whether or not that person is the holder;
- neither the holder nor any other person receiving the exchange notes is engaged in, intends to engage in or has an arrangement or understanding with any person to participate in a “distribution” (as defined under the Securities Act) of the exchange notes; and
- neither the holder nor any other person receiving the exchange notes is an “affiliate” (as defined under the Securities Act) of Spectrum.

If any holder or any such other person is an “affiliate” of Spectrum or is engaged in, intends to engage in or has an arrangement or understanding with any person to participate in a “distribution” of the exchange notes, such holder or other person:

- may not rely on the applicable interpretations of the staff of the SEC referred to above; and
- must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction.

Each broker-dealer that receives exchange notes for its own account in exchange for original notes must represent that the original notes to be exchanged for the exchange notes were acquired by it as a result of market-making activities or other trading activities and acknowledge that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any offer to resell, resale or other retransfer of the exchange notes pursuant to the exchange offer. Any such broker-dealer is referred to as a participating broker-dealer. However, by so acknowledging and by delivering a prospectus, the participating broker-dealer will not be deemed to admit that it is an “underwriter” (as defined under the Securities Act). If a broker-dealer acquired original notes as a result of market-making or other trading activities, it may use this prospectus, as amended or supplemented, in connection with offers to resell, resales or retransfers of exchange notes received in exchange for the original notes pursuant to the exchange offer. We have agreed that, during the period ending 180 days after the consummation of the exchange offer, subject to extension in limited circumstances, we will use all commercially reasonable efforts to keep the exchange offer registration statement effective and make this prospectus available to any broker-dealer for use in connection with any such resale. See “Plan of Distribution” for a discussion of the exchange and resale obligations of broker-dealers in connection with the exchange offer.

## **Withdrawal Rights**

You can withdraw tenders of original notes at any time prior to 5:00 p.m., New York City time, on the expiration date.

For a withdrawal to be effective, you must deliver a written notice of withdrawal to the exchange agent. The notice of withdrawal must:

- specify the name of the person tendering the original notes to be withdrawn;
- identify the original notes to be withdrawn, including the total principal amount of original notes to be withdrawn;
- where certificates for original notes are transmitted, list the name of the registered holder of the original notes if different from the person withdrawing the original notes;
- contain a statement that the holder is withdrawing his election to have the original notes exchanged; and
- be signed by the holder in the same manner as the original signature on the letter of transmittal by which the original notes were tendered, including any required signature guarantees, or be accompanied by documents of transfer to have the trustee with respect to the original notes register the transfer of the original notes in the name of the person withdrawing the tender.

If you delivered or otherwise identified original notes to the exchange agent, you must submit the serial numbers of the original notes to be withdrawn and the signature on the notice of withdrawal must be guaranteed by an eligible institution, except in the case of original notes tendered for the account of an eligible institution. If you tendered original notes as a book-entry transfer, the notice of withdrawal must specify the name and number of the account at DTC to be credited with the withdrawn original notes and you must deliver the notice of withdrawal to the exchange agent. You may not rescind withdrawals of tender; however, original notes properly withdrawn may again be tendered at any time on or prior to the expiration date.

We will determine all questions regarding the form of withdrawal, validity, eligibility, including time of receipt, and acceptance of withdrawal notices. Our determination of these questions as well as our interpretation of the terms and conditions of the exchange offer (including the letter of transmittal) will be final and binding on all parties. Neither us, any of our affiliates or assigns, the exchange agent nor any other person is under any obligation to give notice of any irregularities in any notice of withdrawal, nor will they be liable for failing to give any such notice.

In the case of original notes tendered by book-entry transfer through DTC, the original notes withdrawn or not exchanged will be credited to an account maintained with DTC. Withdrawn original notes will be returned to the holder after withdrawal. The original notes will be returned or credited to the account maintained with DTC as soon as practicable after withdrawal, rejection of tender or termination of the exchange offer. Any original notes which have been tendered for exchange but which are not exchanged for any reason will be returned to the holder thereof without cost to the holder.

Properly withdrawn original notes may again be tendered by following one of the procedures described under “—Procedures for Tendering Original Notes” above at any time prior to 5:00 p.m., New York City time, on the expiration date.

## **Conditions to the Exchange Offer**

Notwithstanding any other provision of the exchange offer, we are not required to accept for exchange, or to issue exchange notes in exchange for, any original notes, and we may terminate or amend the exchange offer, if at any time prior to 5:00 p.m., New York City time, on the expiration date, we determine that the exchange offer violates applicable law or SEC policy.

The foregoing conditions are for our sole benefit, and we may assert them regardless of the circumstances giving rise to any such condition, or we may waive the conditions, completely or partially, whenever or as many

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times as we choose, in our reasonable discretion. The foregoing rights are not deemed waived because we fail to exercise them, but continue in effect, and we may still assert them whenever or as many times as we choose. If we determine that a waiver of conditions materially changes the exchange offer, the prospectus will be amended or supplemented, and the exchange offer extended, if appropriate, as described under “—Terms of the Exchange Offer.”

In addition, at a time when any stop order is threatened or in effect with respect to the registration statement of which this prospectus constitutes a part or with respect to the qualification of the indenture under the Trust Indenture Act of 1939, as amended, we will not accept for exchange any original notes tendered, and no exchange notes will be issued in exchange for any such original notes.

If we terminate or suspend the exchange offer based on a determination that the exchange offer violates applicable law or SEC policy, the registration rights agreement requires that we, as soon as practicable after such determination, use our commercially reasonable efforts to cause a shelf registration statement covering the resale of the original notes to be filed and declared effective by the SEC. See “—Registration Rights and Additional Interest on the Original Notes.”

### **Exchange Agent**

We appointed U.S. Bank as exchange agent for the exchange offer. You should direct questions and requests for assistance, requests for additional copies of this prospectus or of the letter of transmittal and requests for notices of guaranteed delivery to the exchange agent at the address and phone number as follows:

**By Registered or Certified Mail,  
Hand Delivery or Overnight Delivery:**

U.S. Bank National Association  
EP-MN-WS2N  
60 Livingston Avenue  
St. Paul, MN 55107  
Telephone: (800) 934-6802

**Facsimile Transmissions**

(651) 495-8158  
or  
(651) 495-8159  
(Eligible Institutions Only)

**Confirmation by Telephone: (800) 934-6802**

**If you deliver letters of transmittal and any other required documents to an address or facsimile number other than those listed above, your tender is invalid.**

### **Fees and Expenses**

The registration rights agreement provides that we will bear all expenses in connection with the performance of our obligations relating to the registration of the exchange notes and the conduct of the exchange offer. These expenses include registration and filing fees, accounting and legal fees and printing costs, among others. We will pay the exchange agent reasonable and customary fees for its services and reasonable out-of-pocket expenses. We will also reimburse brokerage houses and other custodians, nominees and fiduciaries for customary mailing and handling expenses incurred by them in forwarding this prospectus and related documents to their clients that are holders of original notes and for handling or tendering for such clients.

We have not retained any dealer-manager in connection with the exchange offer and will not pay any fee or commission to any broker, dealer, nominee or other person, other than the exchange agent, for soliciting tenders of original notes pursuant to the exchange offer.

### **Transfer Taxes**

Holders who tender their original notes for exchange will not be obligated to pay any transfer taxes in connection with the exchange. If, however, exchange notes issued in the exchange offer are to be delivered to, or are to be issued in the name of, any person other than the holder of the original notes tendered, or if a transfer tax is imposed for any reason other than the exchange of original notes in connection with the exchange offer, then the holder must pay any such transfer taxes, whether imposed on the registered holder or on any other person. If

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satisfactory evidence of payment of, or exemption from, such taxes is not submitted with the letter of transmittal, the amount of such transfer taxes will be billed directly to the tendering holder.

### **Consequences of Failure to Exchange Original Notes**

Holders who desire to tender their original notes in exchange for exchange notes should allow sufficient time to ensure timely delivery. Neither the exchange agent nor Spectrum is under any duty to give notification of defects or irregularities with respect to the tenders of notes for exchange.

Original notes that are not tendered or are tendered but not accepted will, following the consummation of the exchange offer, continue to be subject to the provisions in the indenture regarding the transfer and exchange of the original notes and the existing restrictions on transfer set forth in the legend on the original notes and in the offering memorandum dated January 21, 2005, relating to the original notes. Except in limited circumstances with respect to specific types of holders of original notes, we will have no further obligation to provide for the registration under the Securities Act of such original notes. In general, original notes, unless registered under the Securities Act, may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities laws. We do not currently anticipate that we will take any action to register the original notes under the Securities Act or under any state securities laws.

Upon completion of the exchange offer, holders of the original notes will not be entitled to any further registration rights under the registration rights agreement, except under limited circumstances. Holders of the exchange notes and any original notes which remain outstanding after consummation of the exchange offer will vote together as a single class for purposes of determining whether holders of the requisite percentage of the class have taken certain actions or exercised certain rights under the indenture.

### **Consequences of Exchanging Original Notes**

Under existing interpretations of the Securities Act by the SEC's staff contained in several no-action letters to third parties, we believe that the exchange notes may be offered for resale, resold or otherwise transferred by holders after the exchange offer other than by any holder who is one of our "affiliates" (as defined in Rule 405 under the Securities Act). Such notes may be offered for resale, resold or otherwise transferred without compliance with the registration and prospectus delivery provisions of the Securities Act, if:

- a. such exchange notes are acquired in the ordinary course of such holder's business; and
- b. such holder, other than broker-dealers, has no arrangement or understanding with any person to participate in the distribution of the exchange notes.

However, the SEC has not considered the exchange offer in the context of a no-action letter and we cannot guarantee that the staff of the SEC would make a similar determination with respect to the exchange offer as in such other circumstances. Each holder, other than a broker-dealer, must furnish a written representation, at our request, that:

- a. it is not an affiliate of Spectrum;
- b. it is not engaged in, and does not intend to engage in, a distribution of the exchange notes and has no arrangement or understanding to participate in a distribution of exchange notes; and
- c. it is acquiring the exchange notes in the ordinary course of its business.

Each broker-dealer that receives exchange notes for its own account in exchange for original notes must acknowledge that such original notes were acquired by such broker-dealer as a result of market-making or other trading activities and that it will deliver a prospectus in connection with any resale of such exchange notes. See "Plan of Distribution" for a discussion of the exchange and resale obligations of broker-dealers in connection with the exchange offer.

## DESCRIPTION OF NOTES

We issued the original notes, and will issue the exchange notes under an Indenture (the “Indenture”) among Rayovac Corporation, the Guarantors and U.S. Bank National Association, as trustee (the “Trustee”). A copy of the Indenture has been filed with the SEC as Exhibit 4.1 to our Current Report on Form 8-K dated February 7, 2005, and filed on February 11, 2005, and is incorporated by reference as an exhibit to the registration statement of which this Prospectus is a part. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”). The terms of the exchange notes are the same as the terms of the original notes, except that (i) we registered the exchange notes under the Securities Act, (ii) the exchange notes will not bear restrictive legends restricting their transfer under the Securities Act, (iii) holders of the exchange notes are not entitled to certain rights under the registration rights agreement and (iv) the exchange notes will not contain provisions relating to liquidated damages in connection with the original notes under circumstances related to the timing of the exchange offer.

The following description is a summary of the material provisions of the Indenture. It does not restate that agreement in its entirety. We urge you to read the Indenture in its entirety because it, and not this description, defines your rights as holders of the Notes. Anyone who receives this Prospectus may obtain a copy of the Indenture without charge by writing to Spectrum Brands, Inc., Six Concourse Parkway, Suite 3300, Atlanta, Georgia 30328, Attention: Chief Financial Officer.

You can find the definitions of certain terms used in this description under the subheading “—Certain Definitions.” Certain defined terms used in this description but not defined below under “—Certain Definitions” have the meanings assigned to them in the Indenture. In this description, the word “Company” refers only to Spectrum Brands, Inc. and not to any of its subsidiaries and the “Notes” refers to the exchange notes.

### Brief Description of the Notes

The Notes:

- are general unsecured obligations of the Company;
- are subordinated in right of payment to all existing and future Senior Debt of the Company, including the Indebtedness of the Company under the Credit Agreement;
- are *pari passu* in right of payment with all existing and any future senior subordinated Indebtedness of the Company;
- are senior in right of payment to any future subordinated Indebtedness of the Company;
- are guaranteed by the Guarantors as described under “—Note Guarantees;” and
- are effectively subordinated to any existing and future Indebtedness and other liabilities of the Company’s Subsidiaries that are not guaranteeing the Notes.

As of May 1, 2005, the Company would have had \$1.444 billion of Senior Debt and \$350.0 million of other senior subordinated indebtedness. As of April 3, 2005, the Company’s non-guarantor subsidiaries had approximately \$349.6 million of indebtedness and other liabilities (excluding intercompany liabilities and excluding the impact of the Tetra acquisition), to which the exchange notes would be effectively subordinated. As of January 3, 2005, the Company’s non-guarantor subsidiaries had approximately \$614.8 million of indebtedness and other liabilities (excluding intercompany liabilities and including the impact of the Tetra acquisition), to which the exchange notes would be effectively subordinated.

As of the date of the Indenture, all of our subsidiaries were “Restricted Subsidiaries.” However, under the circumstances described below under the subheading “—Certain Covenants—Designation of Restricted and Unrestricted Subsidiaries,” we are permitted to designate certain of our subsidiaries as “Unrestricted Subsidiaries.” Any Unrestricted Subsidiaries will not be subject to any of the restrictive covenants in the Indenture and will not guarantee the Notes.

### **Principal, Maturity and Interest**

The Indenture provides for the issuance by the Company of Notes with an unlimited principal amount, of which \$700.0 million will be issued in this offering. The Company may issue additional notes (the “Additional Notes”) from time to time after this offering. Any offering of Additional Notes is subject to the covenant described below under the caption “—Certain Covenants—Incurrence of Indebtedness and Issuance of Preferred Stock.” The Notes and any Additional Notes subsequently issued under the Indenture would be treated as a single class for all purposes under the Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase. The Company will issue Notes in denominations of \$1,000 and integral multiples of \$1,000. The Notes will mature on February 1, 2015.

Interest on the Notes will accrue at the rate of  $7\frac{3}{8}\%$  per annum and will be payable semi-annually in arrears on February 1 and August 1, commencing on August 1, 2005. The Company will make each interest payment to the Holders of record on the immediately preceding January 15 and July 15.

Interest on the Notes will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

### **Methods of Receiving Payments on the Notes**

If a Holder has given wire transfer instructions to the Company, the Company will pay all principal, interest and premium and Liquidated Damages, if any, on that Holder’s Notes in accordance with those instructions. All other payments on Notes will be made at the office or agency of the Paying Agent and Registrar within the City and State of New York unless the Company elects to make interest payments by check mailed to the Holders at their addresses set forth in the register of Holders.

### **Paying Agent and Registrar for the Notes**

The Trustee will initially act as Paying Agent and Registrar. The Company may change the Paying Agent or Registrar without prior notice to the Holders, and the Company or any of its Subsidiaries may act as Paying Agent or Registrar.

### **Transfer and Exchange**

A Holder may transfer or exchange Notes in accordance with the Indenture and the procedures described in “Notice to Investors.” The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company is not required to transfer or exchange any Note selected for redemption. Also, the Company is not required to transfer or exchange any Note for a period of 15 days before a selection of Notes to be redeemed.

The registered Holder of a Note will be treated as the owner of it for all purposes.

### **Note Guarantees**

The Notes are guaranteed, jointly and severally, by all of the Domestic Subsidiaries of the Company. Each Note Guarantee:

- is a general unsecured obligation of the Guarantor;
- is subordinated in right of payment to all existing and future Senior Debt of the Guarantor, including the Guarantee by the Guarantor of Indebtedness under the Credit Agreement;

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- is *pari passu* in right of payment with all existing and any future senior subordinated Indebtedness of the Guarantor; and
- is senior in right of payment to any future subordinated Indebtedness of the Guarantor.

Each Note Guarantee will be subordinated to the prior payment in full of all Senior Debt of that Guarantor. The obligations of each Guarantor under its Note Guarantee will be limited as necessary to prevent that Note Guarantee from constituting a fraudulent conveyance under applicable law. See “Risk Factors—Federal and state laws permit a court to void the guarantees under certain circumstances.” As of May 1, 2005, the Guarantors would have had \$1.390 billion of Senior Debt, of which \$1.386 billion would have been guarantees of Indebtedness under the Credit Agreement, and \$350.0 million of other senior subordinated indebtedness consisting of Guarantees of the Company’s existing senior subordinated notes due 2013.

If the Company or any of its Restricted Subsidiaries acquires or creates another Domestic Subsidiary on or after the date of the Indenture, then that newly acquired or created Domestic Subsidiary must become a Guarantor and execute a supplemental indenture and deliver an Opinion of Counsel to the Trustee.

### **Subordination**

The payment of principal, interest and premium and Liquidated Damages, if any, on the Notes will be subordinated to the prior payment in full of all Senior Debt of the Company, including Senior Debt of the Company incurred after the date of the Indenture.

The holders of Senior Debt of the Company will be entitled to receive payment in full of all Obligations due in respect of Senior Debt of the Company (including interest after the commencement of any bankruptcy proceeding at the rate specified in the applicable Senior Debt of the Company) before the Holders of Notes will be entitled to receive any payment with respect to the Notes (except that Holders of Notes may receive and retain Permitted Junior Securities and payments made from the trust described under “—Legal Defeasance and Covenant Defeasance”), in the event of any distribution to creditors of the Company in connection with:

- (1) any liquidation or dissolution of the Company;
- (2) any bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property;
- (3) any assignment for the benefit of creditors; or
- (4) any marshaling of the Company’s assets and liabilities.

The Company also may not make any payment in respect of the Notes (except in Permitted Junior Securities or from the trust described under “—Legal Defeasance and Covenant Defeasance”) if:

- (1) a payment default on Designated Senior Debt of the Company occurs and is continuing; or
- (2) any other default occurs and is continuing on any series of Designated Senior Debt of the Company that permits holders of that series of Designated Senior Debt of the Company to accelerate its maturity and the Trustee receives a notice of such default (a “Payment Blockage Notice”) from the Company or the holders of such Designated Senior Debt (a “nonpayment default”).

Payments on the Notes may and shall be resumed:

- (1) in the case of a payment default on Designated Senior Debt of the Company, upon the date on which such default is cured or waived; and
- (2) in case of a nonpayment default on Designated Senior Debt of the Company, the earlier of the date on which such default is cured or waived or 179 days after the date on which the applicable Payment Blockage Notice is received, unless the maturity of such Designated Senior Debt of the Company has been accelerated.



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No new Payment Blockage Notice may be delivered unless and until:

- (1) 360 days have elapsed since the delivery of the immediately prior Payment Blockage Notice; and
- (2) all scheduled payments of principal, interest and premium and Liquidated Damages, if any, on the Notes that have come due have been paid in full in cash.

No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or be made, the basis for a subsequent Payment Blockage Notice.

If the Trustee or any Holder of the Notes receives a payment in respect of the Notes (except in Permitted Junior Securities or from the trust described under “—Legal Defeasance and Covenant Defeasance”) when:

- (1) the payment is prohibited by these subordination provisions; and
- (2) the Trustee or the Holder has actual knowledge that the payment is prohibited;

the Trustee or the Holder, as the case may be, shall hold the payment in trust for the benefit of the holders of Senior Debt of the Company. Upon the proper written request of the holders of Senior Debt of the Company, the Trustee or the Holder, as the case may be, shall deliver the amounts in trust to the holders of Senior Debt of the Company or their proper representative.

The Company must promptly notify holders of its Senior Debt if payment of the Notes is accelerated because of an Event of Default.

As a result of the subordination provisions described above, in the event of a bankruptcy, liquidation or reorganization of the Company, Holders of Notes may recover less ratably than creditors of the Company who are holders of Senior Debt of the Company.

Payments under the Note Guarantee of each Guarantor will be subordinated to the prior payment in full of all Senior Debt of such Guarantor, including Senior Debt of such Guarantor incurred after the date of the Indenture, on the same basis as provided above with respect to the subordination of payments on the Notes by the Company to the prior payment in full of Senior Debt of the Company. See “Risk Factors—Your right to receive payments on the notes will be junior to our existing and future senior indebtedness and the guarantees of the notes will be junior to all of the guarantors’ existing and future senior indebtedness.”

“Designated Senior Debt” means:

- (1) any Indebtedness outstanding under the Credit Agreement; and
- (2) after payment in full of all Obligations under the Credit Agreement, any other Senior Debt permitted under the Indenture the principal amount of which is \$50.0 million or more and that has been designated by the Company as “Designated Senior Debt.”

“Permitted Junior Securities” means:

- (1) Equity Interests in the Company or any Guarantor or any other business entity provided for by a plan of reorganization; and
- (2) debt securities of the Company or any Guarantor or any other business entity provided for by a plan of reorganization that are subordinated to all Senior Debt and any debt securities issued in exchange for Senior Debt to substantially the same extent as, or to a greater extent than, the Notes and the Note Guarantees are subordinated to Senior Debt under the Indenture.

“Senior Debt” means:

- (1) all Indebtedness of the Company or any Guarantor outstanding under Credit Facilities and all Hedging Obligations with respect thereto;

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- (2) any other Indebtedness of the Company or any Guarantor permitted to be incurred under the terms of the Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is on a parity with or subordinated in right of payment to the Notes or any Note Guarantee; and
- (3) all Obligations with respect to the items listed in the preceding clauses (1) and (2).

Notwithstanding anything to the contrary in the preceding paragraph, Senior Debt will not include:

- (1) any liability for federal, state, local or other taxes owed or owing by the Company or any Guarantor;
- (2) any Indebtedness of the Company or any Guarantor to any of their Subsidiaries or other Affiliates;
- (3) any trade payables;
- (4) the portion of any Indebtedness that is incurred in violation of the Indenture;
- (5) any Indebtedness of the Company or any Guarantor that, when incurred, was without recourse to the Company or such Guarantor;
- (6) any repurchase, redemption or other obligation in respect of Disqualified Stock; or
- (7) the 8½% Senior Subordinated Notes due 2013 of the Company.

### **Optional Redemption**

At any time prior to February 1, 2008, the Company may redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture (including any Additional Notes) at a redemption price of 107.375% of the principal amount thereof, plus accrued and unpaid interest and Liquidated Damages, if any, to the redemption date, with the net cash proceeds of one or more Equity Offerings; *provided* that:

- (1) at least 65% of the aggregate principal amount of Notes issued under the Indenture (including any Additional Notes) remains outstanding immediately after the occurrence of such redemption (excluding Notes held by the Company and its Subsidiaries); and
- (2) the redemption occurs within 45 days of the date of the closing of such Equity Offering.

Except pursuant to the preceding paragraph, the Notes will not be redeemable at the Company's option prior to February 1, 2010.

On or after February 1, 2010, the Company may redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest and Liquidated Damages, if any, thereon, to the applicable redemption date, if redeemed during the twelve-month period beginning on February 1 of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2010	103.688%
2011	102.458%
2012	101.229%
2013 and thereafter	100.000%

If less than all of the Notes are to be redeemed at any time, the Trustee will select Notes for redemption as follows:

- (1) if the Notes are listed, in compliance with the requirements of the principal national securities exchange on which the Notes are listed; or
- (2) if the Notes are not so listed, on a pro rata basis, by lot or by such method as the Trustee shall deem fair and appropriate.

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No Notes of \$1,000 or less shall be redeemed in part. Notices of redemption shall be mailed by first class mail at least 30 but not more than 60 days before the redemption date to each Holder of Notes to be redeemed at its registered address. Notices of redemption may not be conditional.

If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion of the original Note will be issued in the name of the Holder thereof upon cancellation of the original Note. Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on Notes or portions of them called for redemption.

### **Mandatory Redemption**

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

### **Repurchase at the Option of Holders**

#### ***Change of Control***

If a Change of Control occurs, each Holder of Notes will have the right to require the Company to repurchase all or any part (equal to \$1,000 or an integral multiple thereof) of that Holder's Notes pursuant to a Change of Control Offer on the terms set forth in the Indenture. In the Change of Control Offer, the Company will offer a Change of Control Payment in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest and Liquidated Damages, if any, thereon, to the date of purchase. Within 30 days following any Change of Control, the Company will mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on the Change of Control Payment Date specified in such notice, which date shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed, pursuant to the procedures required by the Indenture and described in such notice. The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of the Indenture by virtue of such compliance.

On the Change of Control Payment Date, the Company will, to the extent lawful:

- (1) accept for payment all Notes or portions thereof properly tendered pursuant to the Change of Control Offer;
- (2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions thereof so tendered; and
- (3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Company.

The Paying Agent will promptly mail or wire transfer to each Holder of Notes so tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in a principal amount of \$1,000 or an integral multiple thereof.

Prior to complying with any of the provisions of this "Change of Control" covenant, but in any event within 30 days following a Change of Control, the Company will either repay all outstanding Senior Debt or obtain the

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requisite consents, if any, under all agreements governing outstanding Senior Debt to permit the repurchase of Notes required by this covenant. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The Credit Agreement prohibits the Company from purchasing any Notes, and also provides that certain change of control events with respect to the Company constitute a default under the Credit Agreement. Any future credit agreements or other agreements relating to Senior Debt to which the Company becomes a party may contain similar restrictions and provisions. In the event a Change of Control occurs at a time when the Company is prohibited from purchasing Notes, the Company could seek the consent of its senior lenders to the purchase of Notes or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company will remain prohibited from purchasing Notes. In such case, the Company's failure to purchase tendered Notes would constitute an Event of Default under the Indenture which would, in turn, constitute a default under such Senior Debt. In such circumstances, the subordination provisions in the Indenture would likely restrict payments to the Holders of Notes.

The provisions described above that require the Company to make a Change of Control Offer following a Change of Control will be applicable regardless of whether any other provisions of the Indenture are applicable. Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the Holders of the Notes to require that the Company repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

The definition of Change of Control includes a phrase relating to the direct or indirect sale, lease, transfer, conveyance or other disposition of "all or substantially all" of the properties or assets of the Company and its Subsidiaries taken as a whole. Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a Holder of Notes to require the Company to repurchase such Notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of the assets of the Company and its Subsidiaries taken as a whole to another Person or group may be uncertain.

### ***Asset Sales***

The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

- (1) the Company (or the Restricted Subsidiary, as the case may be) receives consideration at the time of such Asset Sale at least equal to the fair market value of the assets or Equity Interests issued or sold or otherwise disposed of;
- (2) such fair market value is determined by the Company's Board of Directors and evidenced by a resolution of the Board of Directors set forth in an Officers' Certificate delivered to the Trustee; and
- (3) at least 75% of the consideration therefor received by the Company or such Restricted Subsidiary is in the form of cash or Replacement Assets or a combination of both. For purposes of this provision, each of the following shall be deemed to be cash:
  - (a) any liabilities (as shown on the Company's or such Restricted Subsidiary's most recent balance sheet), of the Company or any Restricted Subsidiary (other than contingent liabilities, Indebtedness that is by its terms subordinated to the Notes or any Note Guarantee and liabilities to the extent owed to the Company or any Affiliate of the Company) that are assumed by the

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transferee of any such assets pursuant to a written novation agreement that releases the Company or such Restricted Subsidiary from further liability; and

- (b) any securities, notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash (to the extent of the cash received in that conversion) within 90 days of the applicable Asset Sale.

Within 360 days after the receipt of any Net Proceeds from an Asset Sale, the Company may apply such Net Proceeds at its option:

- (1) to repay Senior Debt and, if the Senior Debt repaid is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto; or
- (2) to purchase Replacement Assets or make a capital expenditure in or that is used or useful in a Permitted Business.

Pending the final application of any such Net Proceeds, the Company may temporarily reduce revolving credit borrowings or otherwise invest such Net Proceeds in any manner that is not prohibited by the Indenture.

Any Net Proceeds from Asset Sales that are not applied or invested as provided in the preceding paragraph will constitute "Excess Proceeds." Within 10 days after the aggregate amount of Excess Proceeds exceeds \$20.0 million, the Company will make an Asset Sale Offer to all Holders of Notes and all holders of other Indebtedness that is *pari passu* with the Notes or any Note Guarantee containing provisions similar to those set forth in the Indenture with respect to offers to purchase with the proceeds of sales of assets, to purchase the maximum principal amount of Notes and such other *pari passu* Indebtedness that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount of the Notes and such other *pari passu* Indebtedness plus accrued and unpaid interest and Liquidated Damages, if any, to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Company may use such Excess Proceeds for any purpose not otherwise prohibited by the Indenture. If the aggregate principal amount of Notes and such other *pari passu* Indebtedness tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Notes and such other *pari passu* Indebtedness shall be purchased on a pro rata basis based on the principal amount of Notes and such other *pari passu* Indebtedness tendered. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sales provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of the Indenture by virtue of such compliance.

The Credit Agreement prohibits the Company from purchasing any Notes, and also provides that certain asset sale events with respect to the Company constitute a default under the Credit Agreement. Any future credit agreements or other agreements relating to Senior Debt to which the Company becomes a party may contain similar restrictions and provisions. In the event an Asset Sale occurs at a time when the Company is prohibited from purchasing Notes, the Company could seek the consent of its senior lenders to the purchase of Notes or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company will remain prohibited from purchasing Notes. In such case, the Company's failure to purchase tendered Notes would constitute an Event of Default under the Indenture which would, in turn, constitute a default under such Senior Debt. In such circumstances, the subordination provisions in the Indenture would likely restrict payments to the Holders of Notes.

**Certain Covenants**

***Restricted Payments***

(A) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

- (1) declare or pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Company's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends, payments or distributions payable in Equity Interests (other than Disqualified Stock) of the Company or to the Company or a Restricted Subsidiary of the Company);
- (2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Company) any Equity Interests of the Company or any Restricted Subsidiary of the Company held by Persons other than the Company or any of its Restricted Subsidiaries, other than the purchase, redemption or acquisition or retirement for value of any of (x) all of the Equity Interests in VARTA not held by the Company or any of its Restricted Subsidiaries pursuant to, and in accordance with the terms of, the VARTA Joint Venture Agreement as in effect on the date of the Indenture to the extent the cash purchase price does not exceed €5.0 million; (y) all of the Equity Interests of Ningbo Baowang not held by the Company or any of its Restricted Subsidiaries to the extent the cash purchase price does not exceed \$5.0 million; and (z) all of the Equity Interests of Microlite not held by the Company or any of its Restricted Subsidiaries pursuant to, and in accordance with the terms of, the Microlite Purchase Agreement as in effect on the date of the Indenture to the extent the cash purchase price does not exceed \$10.0 million;
- (3) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness that is subordinated to the Notes or the Note Guarantees, except a payment of interest or principal on or after the Stated Maturity thereof or on Indebtedness permitted to be incurred pursuant to clause (6) of the definition of Permitted Debt; or
- (4) make any Restricted Investment (all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as "Restricted Payments"),

unless, at the time of and after giving effect to such Restricted Payment:

- (1) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof; and
- (2) the Company would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described below under the caption "—Incurrence of Indebtedness and Issuance of Preferred Stock;" and
- (3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries after the date of the Indenture (excluding Restricted Payments permitted by clauses (2), (3) (4) (to the extent such dividends are paid to the Company or any of its Restricted Subsidiaries) and (5) of the next succeeding paragraph (B)), is less than the sum, without duplication, of:
  - (a) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from the beginning of the first fiscal quarter commencing after the date of the Indenture to the end of the Company's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit), *plus*

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- (b) 100% of the aggregate net cash proceeds received by the Company since the date of the Indenture as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Company (other than Disqualified Stock) or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of the Company that have been converted into or exchanged for such Equity Interests (other than Equity Interests (or Disqualified Stock or debt securities) sold to a Subsidiary of the Company); *plus*
  - (c) with respect to Restricted Investments made by the Company and its Restricted Subsidiaries after the date of the Indenture, an amount equal to the net reduction in Investments (other than reductions in Permitted Investments) in any Person resulting from repayments of loans or advances, or other transfers of assets, in each case to the Company or any Restricted Subsidiary or from the net cash proceeds from the sale of any such Investment (except, in each case, to the extent any such payment or proceeds are included in the calculation of Consolidated Net Income, from the release of any Guarantee (except to the extent any amounts are paid under such Guarantee) or from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries, not to exceed, in each case, the amount of Investments previously made by the Company or any Restricted Subsidiary in such Person or Unrestricted Subsidiary, *plus*
  - (d) \$50.0 million.
- (B) So long as no Default has occurred and is continuing or would be caused thereby, the preceding provisions will not prohibit:
- (1) the payment of any dividend within 60 days after the date of declaration thereof, if at said date of declaration such payment would have complied with the provisions of the Indenture;
  - (2) the redemption, repurchase, retirement, defeasance or other acquisition of any subordinated Indebtedness of the Company or any Guarantor or of any Equity Interests of the Company or any Guarantor in exchange for, or out of the net cash proceeds of a contribution to the common equity of the Company or a substantially concurrent sale (other than to a Subsidiary of the Company) of, Equity Interests of the Company (other than Disqualified Stock); provided that the amount of any such net cash proceeds that are utilized for any such redemption, repurchase, retirement, defeasance or other acquisition shall be excluded from clause (3) (b) of the preceding paragraph (A);
  - (3) the defeasance, redemption, repurchase or other acquisition of subordinated Indebtedness of the Company or any Guarantor with the net cash proceeds from an incurrence of Permitted Refinancing Indebtedness;
  - (4) the payment of any dividend by a Restricted Subsidiary of the Company to the holders of its common Equity Interests on a pro rata basis;
  - (5) Investments acquired as a capital contribution to, or in exchange for, or out of the net cash proceeds of a substantially concurrent offering of, Equity Interests (other than Disqualified Stock) of the Company; *provided* that the amount of any such net cash proceeds that are utilized for any such acquisition or exchange shall be excluded from clause (3) (b) of the preceding paragraph (A);
  - (6) the repurchase of Capital Stock deemed to occur upon the exercise of options or warrants if such Capital Stock represents all or a portion of the exercise price thereof;
  - (7) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Company held by any employee, former employee, director or former director of the Company (or any of its Restricted Subsidiaries) upon the death, disability or termination of employment of any of the foregoing pursuant to the terms of any employee equity subscription agreement, stock option agreement or similar agreement; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests in any fiscal year shall not exceed the sum of (x) \$5.0 million and (y) the amount of Restricted Payments permitted but not made pursuant to this clause (7) in the immediately preceding fiscal year; or

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- (8) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of any Restricted Subsidiary of the Company from the minority stockholders (or other holders of minority interest, however designated) of such Restricted Subsidiary for fair market value; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests shall not exceed \$20.0 million.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued to or by the Company or such Subsidiary, as the case may be, pursuant to the Restricted Payment. The fair market value of any assets or securities that are required to be valued by this covenant shall be determined by the Board of Directors whose resolution with respect thereto shall be delivered to the Trustee. Not later than the date of making any Restricted Payment, the Company shall deliver to the Trustee an Officers' Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by this "Restricted Payments" covenant were computed, together with a copy of any fairness opinion or appraisal required by the Indenture.

### ***Incurrence of Indebtedness and Issuance of Preferred Stock***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, incur any Indebtedness (including Acquired Debt), and the Company will not permit any of its Restricted Subsidiaries to issue any preferred stock; *provided, however*, that the Company or any Restricted Subsidiary of the Company may incur Indebtedness, if the Fixed Charge Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred would have been at least 2.0 to 1, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred at the beginning of such four-quarter period.

So long as no Default shall have occurred and be continuing or would be caused thereby, the first paragraph of this covenant will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

- (1) the incurrence by the Company or any Restricted Subsidiary of the Company of Indebtedness under Credit Facilities (and the incurrence of Guarantees thereof) in an aggregate principal amount at any one time outstanding pursuant to this clause (1) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Company and its Restricted Subsidiaries thereunder) not to exceed \$1.6 billion, *less* the aggregate amount of all Net Proceeds of Asset Sales applied by the Company or any Restricted Subsidiary to permanently repay any such Indebtedness (and, in the case of any revolving credit Indebtedness, to effect a corresponding commitment reduction thereunder) pursuant to the covenant "*—Repurchase at the Option of Holders—Asset Sales;*"
- (2) the incurrence of Existing Indebtedness;
- (3) the incurrence by the Company and the Guarantors of Indebtedness represented by the Notes and the related Note Guarantees to be issued on the date of the Indenture and the Exchange Notes and the related Note Guarantees to be issued pursuant to the Registration Rights Agreement;
- (4) the incurrence by the Company or any Restricted Subsidiary of the Company of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of construction or improvement of property, plant or equipment used in the business of the Company or such Guarantor, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (4), not to exceed, at any time outstanding, the greater of (a) \$50.0 million and (b) 10% of Consolidated Net Tangible Assets of the Company;
- (5) the incurrence by the Company or any Restricted Subsidiary of the Company of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance or replace



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Indebtedness (other than intercompany Indebtedness) that was permitted by the Indenture to be incurred under the first paragraph of this covenant or clauses (2) (other than the 9<sup>7</sup>/<sub>8</sub>% Senior Subordinated due 2009 of United Industries Corporation incurred in connection with its acquisition by the Company), (3), (4), (5), or (8) of this paragraph;

- (6) the incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness owing to and held by the Company or any of its Restricted Subsidiaries; *provided, however*, that:
  - (a) if the Company or any Guarantor is the obligor on such Indebtedness, such Indebtedness must be unsecured and expressly subordinated to the prior payment in full in cash of all Obligations with respect to the Notes, in the case of the Company, or the Note Guarantee, in the case of a Guarantor;
  - (b) Indebtedness owed to the Company or any Guarantor must be evidenced by an unsubordinated promissory note, unless the obligor under such Indebtedness is the Company or a Guarantor; and
  - (c) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary thereof and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Company or a Restricted Subsidiary thereof, shall be deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (6);
- (7) the Guarantee by the Company or any Restricted Subsidiary of the Company of Indebtedness of the Company or a Restricted Subsidiary of the Company that was permitted to be incurred by another provision of this covenant;
- (8) the incurrence by the Company or any Restricted Subsidiary of the Company of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (8), not to exceed \$50.0 million; and
- (9) the incurrence of Indebtedness by the Company or any Restricted Subsidiary of the Company arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided* that such Indebtedness is extinguished within five business days of incurrence.

For purposes of determining compliance with this “Incurrence of Indebtedness and Issuance of Preferred Stock” covenant, in the event that any proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (9) above, or is entitled to be incurred pursuant to the first paragraph of this covenant, the Company will be permitted to classify at the time of its incurrence such item of Indebtedness in any manner that complies with this covenant. Indebtedness under Credit Facilities outstanding on the date on which Notes are first issued under the Indenture shall be deemed to have been incurred on such date in reliance on the exception provided by clause (1) of the definition of Permitted Debt. In addition, any Indebtedness originally classified as incurred pursuant to clauses (1) through (9) above may later be reclassified by the Company such that it will be deemed as having been incurred pursuant to another of such clauses to the extent that such reclassified Indebtedness could be incurred pursuant to such new clause at the time of such reclassification.

Notwithstanding any other provision of this “Limitation on Indebtedness” covenant, the maximum amount of Indebtedness that may be Incurred pursuant to this “Limitation on Indebtedness” covenant will not be deemed to be exceeded, with respect to any outstanding Indebtedness due solely to the result of fluctuations in the exchange rates of currencies.

***Limitation on Senior Subordinated Debt***

The Company will not incur any Indebtedness that is subordinate or junior in right of payment to any Senior Debt of the Company unless it is *pari passu* or subordinate in right of payment to the Notes to the same extent. No Guarantor will incur any Indebtedness that is subordinate or junior in right of payment to the Senior Debt of such Guarantor unless it is *pari passu* or subordinate in right of payment to such Guarantor's Note Guarantee to the same extent. For purposes of the foregoing, no Indebtedness will be deemed to be subordinate or junior in right of payment to any other Indebtedness of the Company or any Guarantor, as applicable, solely by reason of any Liens or Guarantees arising or created in respect thereof or by virtue of the fact that the holders of any secured Indebtedness have entered into intercreditor agreements giving one or more of such holders priority over the other holders in the collateral held by them.

***Liens***

The Company will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind securing Indebtedness (other than Permitted Liens) upon any of their property or assets, now owned or hereafter acquired, unless all payments due under the Indenture and the Notes are secured on an equal and ratable basis with the obligations so secured until such time as such obligations are no longer secured by a Lien.

***Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

- (1) pay dividends or make any other distributions on its Capital Stock (or with respect to any other interest or participation in, or measured by, its profits) to the Company or any of its Restricted Subsidiaries or pay any liabilities owed to the Company or any of its Restricted Subsidiaries;
- (2) make loans or advances to the Company or any of its Restricted Subsidiaries; or
- (3) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

However, the preceding restrictions do not apply to encumbrances or restrictions existing under or by reason of or with respect to:

- (1) the Credit Agreement, Existing Indebtedness or any other agreements in effect on the date of the Indenture and any amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings thereof, *provided* that the encumbrances and restrictions in any such amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacement or refinancings are no more restrictive, taken as a whole, than those in effect on the date of the Indenture;
- (2) applicable laws, rules, regulations or orders;
- (3) any Person or the property or assets of a Person acquired by the Company or any of its Restricted Subsidiaries existing at the time of such acquisition and not incurred in connection with or in contemplation of such acquisition, which encumbrance or restriction is not applicable to any Person or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired and any amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings thereof, *provided* that the encumbrances and restrictions in any such amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacement or refinancings are no more restrictive, taken as a whole, than those contained in the Credit Agreement, Existing Indebtedness or such other agreements as in effect on the date of the acquisition;

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- (4) in the case of clause (3) of the first paragraph of this covenant:
  - (a) provisions that restrict in a customary manner the subletting, assignment or transfer of any property or asset that is a lease, license, conveyance or contract or similar property or asset;
  - (b) restrictions existing by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of the Company or any Restricted Subsidiary not otherwise prohibited by the Indenture; or
  - (c) restrictions arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary in any manner material to the Company or any Restricted Subsidiary;
- (5) provisions with respect to the disposition or distribution of assets or property in joint venture agreements and other similar agreements entered into in the ordinary course of business;
- (6) any agreement for the sale or other disposition of all or substantially all of the capital stock of, or property and assets of, a Restricted Subsidiary that restricted distributions by that Restricted Subsidiary pending such sale or other disposition; and
- (7) Indebtedness of a Foreign Subsidiary permitted to be incurred under the Indenture; *provided* that (a) such encumbrances or restrictions are ordinary and customary with respect to the type of Indebtedness being incurred and (b) such encumbrances or restrictions will not affect the Company's ability to make principal and interest payments on the Notes, as determined in good faith by the Board of Directors of the Company.

### ***Merger, Consolidation or Sale of Assets***

The Company will not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation) or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties and assets of the Company and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person or Persons, unless:

- (1) either: (a) the Company is the surviving corporation; or (b) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition shall have been made (i) is a corporation organized or existing under the laws of the United States, any state thereof or the District of Columbia and (ii) assumes all the obligations of the Company under the Notes, the Indenture and the Registration Rights Agreement pursuant to agreements reasonably satisfactory to the Trustee;
- (2) immediately after giving effect to such transaction no Default or Event of Default exists;
- (3) immediately after giving effect to such transaction on a pro forma basis, the Company or the Person formed by or surviving any such consolidation or merger (if other than the Company), or to which such sale, assignment, transfer, conveyance or other disposition shall have been made, will, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described above under the caption “—Incurrence of Indebtedness and Issuance of Preferred Stock”; and
- (4) each Guarantor, unless such Guarantor is the Person with which the Company has entered into a transaction under this “Consolidation, Merger or Sale of Assets” covenant, shall have by amendment to its Note Guarantee confirmed that its Note Guarantee shall apply to the obligations of the Company or the surviving Person in accordance with the Notes and the Indenture.

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In addition, neither the Company nor any Restricted Subsidiary may, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person. Clause (3) above of this “Merger, Consolidation or Sale of Assets” covenant will not apply to any merger, consolidation or sale, assignment, transfer, conveyance or other disposition of assets between or among the Company and any of its Restricted Subsidiaries.

### ***Transactions with Affiliates***

The Company will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into, make, amend, renew or extend any transaction, contract, agreement, understanding, loan, advance or Guarantee with, or for the benefit of, any Affiliate (each, an “Affiliate Transaction”), unless:

- (1) such Affiliate Transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm’s-length transaction by the Company or such Restricted Subsidiary with a Person that is not an Affiliate of the Company; and
- (2) the Company delivers to the Trustee:
  - (a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$10.0 million, a resolution of the Board of Directors set forth in an Officers’ Certificate certifying that such Affiliate Transaction or series of related Affiliate Transactions complies with this covenant and that such Affiliate Transaction or series of related Affiliate Transactions has been approved by a majority of the disinterested members of the Board of Directors; and
  - (b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$25.0 million, an opinion as to the fairness to the Company or such Restricted Subsidiary of such Affiliate Transaction or series of related Affiliate Transactions from a financial point of view issued by an independent accounting, appraisal or investment banking firm of national standing.

The following items shall not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

- (1) transactions between or among the Company and/or its Restricted Subsidiaries;
- (2) payment of reasonable and customary fees and compensation to, and reasonable and customary indemnification arrangements and similar payments on behalf of, directors of the Company;
- (3) Restricted Payments that are permitted by the provisions of the Indenture described above under the caption “—Restricted Payments;”
- (4) any sale of Capital Stock (other than Disqualified Stock) of the Company;
- (5) loans and advances to officers and employees of the Company or any of its Restricted Subsidiaries for bona fide business purposes in the ordinary course of business consistent with past practice;
- (6) any employment, consulting, service or termination agreement, or reasonable and customary indemnification arrangements, entered into by the Company or any of its Restricted Subsidiaries with officers and employees of the Company or any of its Restricted Subsidiaries and the payment of compensation to officers and employees of the Company or any of its Restricted Subsidiaries (including amounts paid pursuant to employee benefit plans, employee stock option or similar plans), in each case in the ordinary course of business and consistent with past practice; and
- (7) any agreements or arrangements in effect on the date of the Indenture, or any amendment, modification, or supplement thereto or any replacement thereof, as long as such agreement or

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arrangement, as so amended, modified, supplemented or replaced, taken as a whole, is not more disadvantageous to the Company and its Restricted Subsidiaries than the original agreement as in effect on the date of the Indenture, as determined in good faith by the Company's Board of Directors, and any transactions contemplated by any of the foregoing agreements or arrangements.

### ***Designation of Restricted and Unrestricted Subsidiaries***

The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that:

- (1) any Guarantee by the Company or any Restricted Subsidiary of any Indebtedness of the Subsidiary being so designated will be deemed to be an incurrence of Indebtedness by the Company or such Restricted Subsidiary (or both, if applicable) at the time of such designation, and such incurrence of Indebtedness would be permitted under the covenant described above under the caption “—Certain Covenants—Incurrence of Indebtedness and Issuance of Preferred Stock;”
- (2) the aggregate fair market value of all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary being so designated (including any Guarantee by the Company or any Restricted Subsidiary of any Indebtedness of such Subsidiary) will be deemed to be a Restricted Investment made as of the time of such designation and that such Investment would be permitted under the covenant described above under the caption “—Certain Covenants—Restricted Payments;”
- (3) such Subsidiary does not own any Equity Interests of, or hold any Liens on any Property of, the Company or any Restricted Subsidiary;
- (4) the Subsidiary being so designated:
  - (a) is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary of the Company unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company;
  - (b) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results;
  - (c) has not Guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries, except to the extent such Guarantee or credit support would be released upon such designation; and
  - (d) has at least one director on its Board of Directors that is not a director or officer of the Company or any of its Restricted Subsidiaries and has at least one executive officer that is not a director or officer of the Company or any of its Restricted Subsidiaries; and
- (5) no Default or Event of Default would be in existence following such designation.

Any designation of a Restricted Subsidiary of the Company as an Unrestricted Subsidiary shall be evidenced to the Trustee by filing with the Trustee a certified copy of the Board Resolution giving effect to such designation and an Officers' Certificate certifying that such designation complied with the preceding conditions and was permitted by the Indenture. If, at any time, any Unrestricted Subsidiary would fail to meet any of the preceding requirements described in clause (4) above, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of the Indenture and any Indebtedness, Investments, or Liens on the property, of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary of the Company as of such date and, if such Indebtedness, Investments or Liens are not permitted to be incurred as of such date under the Indenture, the Company shall be in default under the Indenture.

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The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that:

- (1) such designation shall be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Company of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation shall only be permitted if such Indebtedness is permitted under the covenant described under the caption “—Certain Covenants—Incurrence of Indebtedness and Issuance of Preferred Stock,” calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period;
- (2) all outstanding Investments owned by such Unrestricted Subsidiary will be deemed to be made as of the time of such designation and such Investments shall only be permitted if such Investments would be permitted under the covenant described above under the caption “—Certain Covenants—Restricted Payments;”
- (3) all Liens upon property or assets of such Unrestricted Subsidiary existing at the time of such designation would be permitted under the caption “—Certain Covenants—Liens;” and
- (4) no Default or Event of Default would be in existence following such designation.

### ***Limitation on Issuances and Sales of Equity Interests in Restricted Subsidiaries***

The Company will not transfer, convey, sell, lease or otherwise dispose of, and will not permit any of its Restricted Subsidiaries to, issue, transfer, convey, sell, lease or otherwise dispose of any Equity Interests in any Restricted Subsidiary of the Company to any Person (other than the Company or a Restricted Subsidiary of the Company or, if necessary, shares of its Capital Stock constituting directors’ qualifying shares or issuances of shares of Capital Stock of foreign Restricted Subsidiaries to foreign nationals, to the extent required by applicable law), except:

- (1) if, immediately after giving effect to such issuance, transfer, conveyance, sale, lease or other disposition, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any Investment in such Person remaining after giving effect to such issuance or sale would have been permitted to be made under the “Restricted Payments” covenant if made on the date of such issuance or sale and the cash Net Proceeds from such transfer, conveyance, sale, lease or other disposition are applied in accordance with the covenant described above under the caption “—Repurchase at the Option of Holders—Asset Sales;” or
- (2) other sales of Capital Stock of a Restricted Subsidiary by the Company or a Restricted Subsidiary, *provided* that the Company or such Restricted Subsidiary complies with the covenant described above under the caption “—Repurchase at the Option of Holders—Asset Sales.”

### ***Guarantees***

If the Company or any of its Restricted Subsidiaries acquires or creates another Domestic Subsidiary on or after the date of the Indenture, then that newly acquired or created Domestic Subsidiary must become a Guarantor and execute a supplemental indenture and deliver an Opinion of Counsel to the Trustee.

The Company will not permit any of its Restricted Subsidiaries, directly or indirectly, to Guarantee or pledge any assets to secure the payment of any other Indebtedness of the Company or any Restricted Subsidiary thereof, other than Foreign Subsidiaries, unless such Restricted Subsidiary is a Guarantor or simultaneously executes and delivers a supplemental indenture providing for the Guarantee of the payment of the Notes by such Restricted Subsidiary, which Guarantee shall be senior to or *pari passu* with such Subsidiary’s Guarantee of such other Indebtedness unless such other Indebtedness is Senior Debt, in which case the Guarantee of the Notes may be subordinated to the Guarantee of such Senior Debt to the same extent as the Notes are subordinated to such Senior Debt. The form of the Note Guarantee will be attached as an exhibit to the Indenture.

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A Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person), another Person, other than the Company or another Guarantor, unless:

- (1) immediately after giving effect to that transaction, no Default or Event of Default exists; and
- (2) either:
  - (a) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger (if other than the Guarantor) is a corporation organized or existing under the laws of the United States, any state thereof or the District of Columbia and assumes all the obligations of that Guarantor under the Indenture, its Note Guarantee and the Registration Rights Agreement pursuant to a supplemental indenture satisfactory to the Trustee; or
  - (b) such sale or other disposition or consolidation or merger complies with the covenant described above under the caption “—Repurchase at the Option of Holders—Asset Sales.”

The Note Guarantee of a Guarantor will be released:

- (1) in connection with any sale or other disposition of all of the Capital Stock of a Guarantor to a Person that is not (either before or after giving effect to such transaction) an Affiliate of the Company, if the sale of all such Capital Stock of that Guarantor complies with the covenant described above under the caption “—Repurchase at the Option of Holders—Asset Sales;”
- (2) if the Company properly designates any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary under the Indenture; or
- (3) solely in the case of a Note Guarantee created pursuant to the second paragraph of this covenant, upon the release or discharge of the Guarantee which resulted in the creation of such Note Guarantee pursuant to this covenant “—Certain Covenants—Guarantees,” except a discharge or release by or as a result of payment under such Guarantee.

### ***Payments for Consent***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid and is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

### ***Reports***

Whether or not required by the Commission, so long as any Notes are outstanding, the Company will prepare and furnish to the Holders of Notes, within the time periods specified in the Commission’s rules and regulations:

- (1) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Company were required to file such Forms, including a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and, with respect to the annual information only, a report on the annual financial statements by the Company’s certified independent accountants; and
- (2) all current reports that would be required to be filed with the SEC on Form 8-K if the Company were required to file such reports.

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In addition, whether or not required by the SEC, the Company will file a copy of all of the information and reports referred to in clauses (1) and (2) above with the SEC for public availability within the time periods specified in the SEC's rules and regulations (unless the SEC will not accept such a filing) and make such information available to securities analysts and prospective investors upon request. In addition, the Company and the Guarantors have agreed that, for so long as any Notes remain outstanding, they will furnish to the Holders and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required by this covenant shall include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in "Management's Discussion and Analysis of Financial Condition and Results of Operations," of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company.

### **Events of Default and Remedies**

Each of the following is an Event of Default:

- (1) default for 30 days in the payment when due of interest on, or Liquidated Damages with respect to, the Notes whether or not prohibited by the subordination provisions of the Indenture;
- (2) default in payment when due (whether at maturity, upon acceleration, redemption or otherwise) of the principal of, or premium, if any, on the Notes, whether or not prohibited by the subordination provisions of the Indenture;
- (3) failure by the Company or any of its Restricted Subsidiaries to comply with the provisions described under the captions "—Repurchase at the Option of Holders—Change of Control," "—Repurchase at the Option of Holders—Asset Sales" or "—Certain Covenants—Merger, Consolidation or Sale of Assets" or the provisions described in the third paragraph under the caption "—Certain Covenants—Guarantees;"
- (4) failure by the Company or any of its Restricted Subsidiaries for 60 days after written notice by the Trustee or Holders representing 25% or more of the aggregate principal amount of Notes outstanding to comply with any of the other agreements in the Indenture;
- (5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries) whether such Indebtedness or Guarantee now exists, or is created after the date of the Indenture, if that default:
  - (a) is caused by a failure to make any payment of principal at the final maturity of such Indebtedness (a "Payment Default"); or
  - (b) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$25.0 million or more;

- (6) failure by the Company or any of its Restricted Subsidiaries to pay final judgments (to the extent such judgments are not paid or covered by insurance provided by a carrier that has acknowledged coverage in writing and has the ability to perform) aggregating in excess of \$25.0 million, which judgments are not paid, discharged or stayed for a period of 60 days;
- (7) except as permitted by the Indenture, any Note Guarantee shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor, or



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any Person acting on behalf of any Guarantor, shall deny or disaffirm its obligations under its Note Guarantee; and

- (8) certain events of bankruptcy or insolvency with respect to the Company, any Guarantor or any Significant Subsidiary of the Company (or any Restricted Subsidiaries that together would constitute a Significant Subsidiary).

In the case of an Event of Default arising from certain events of bankruptcy or insolvency, with respect to the Company, any Guarantor or any Significant Subsidiary of the Company (or any Restricted Subsidiaries that together would constitute a Significant Subsidiary), all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately.

Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest or Liquidated Damages) if it determines that withholding notice is in their interest.

The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or Liquidated Damages on, or the principal of, the Notes. The Holders of a majority in principal amount of the then outstanding Notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders of Notes not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from Holders of Notes. A Holder may not pursue any remedy with respect to the Indenture or the Notes unless:

- (1) the Holder gives the Trustee written notice of a continuing Event of Default;
- (2) the Holders of at least 25% in aggregate principal amount of outstanding Notes make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer the Trustee indemnity satisfactory to the Trustee against any costs, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Notes do not give the Trustee a direction that is inconsistent with the request.

However, such limitations do not apply to the right of any Holder of a Note to receive payment of the principal of, premium or Liquidated Damages, if any, or interest on, such Note or to bring suit for the enforcement of any such payment, on or after the due date expressed in the Notes, which right shall not be impaired or affected without the consent of the Holder.

In the case of any Event of Default occurring by reason of any willful action or inaction taken or not taken by or on behalf of the Company with the intention of avoiding payment of the premium that the Company would have had to pay if the Company then had elected to redeem the Notes pursuant to the optional redemption provisions of the Indenture, an equivalent premium shall also become and be immediately due and payable to the

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extent permitted by law upon the acceleration of the Notes. If an Event of Default occurs prior to February 1, 2010, by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding the prohibition on redemption of the Notes prior to February 1, 2010, then the premium specified in the first paragraph of “—Optional Redemption” shall also become immediately due and payable to the extent permitted by law upon the acceleration of the Notes.

The Company is required to deliver to the Trustee annually within 90 days after the end of each fiscal year a statement regarding compliance with the Indenture. Upon becoming aware of any Default or Event of Default, the Company is required to deliver to the Trustee a statement specifying such Default or Event of Default.

### **No Personal Liability of Directors, Officers, Employees and Stockholders**

No director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, shall have any liability for any obligations of the Company or the Guarantors under the Notes, the Indenture, the Note Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

### **Legal Defeasance and Covenant Defeasance**

The Company may, at its option and at any time, elect to have all of its obligations discharged with respect to the outstanding Notes and all obligations of the Guarantors discharged with respect to their Note Guarantees (“Legal Defeasance”) except for:

- (1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium and Liquidated Damages, if any, on such Notes when such payments are due from the trust referred to below;
- (2) the Company’s obligations with respect to the Notes concerning issuing temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;
- (3) the rights, powers, trusts, duties and immunities of the Trustee, and the Company’s and the Guarantors’ obligations in connection therewith; and
- (4) the Legal Defeasance provisions of the Indenture.

In addition, the Company may, at its option and at any time, elect to have the obligations of the Company and the Guarantors released with respect to certain covenants that are described in the Indenture (“Covenant Defeasance”) and thereafter any omission to comply with those covenants shall not constitute a Default or Event of Default with respect to the Notes. In the event Covenant Defeasance occurs, certain events (not including non-payment, bankruptcy, receivership, rehabilitation and insolvency events) described under “Events of Default” will no longer constitute Events of Default with respect to the Notes.

In order to exercise either Legal Defeasance or Covenant Defeasance:

- (1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, or interest and premium and Liquidated Damages, if any, on the outstanding Notes on the stated maturity or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to maturity or to a particular redemption date;

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- (2) in the case of Legal Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that (a) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (b) since the date of the Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;
- (3) in the case of Covenant Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;
- (4) no Default or Event of Default shall have occurred and be continuing either: (a) on the date of such deposit; or (b) or insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time in the period ending on the 123<sup>rd</sup> day after the date of deposit;
- (5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under any material agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;
- (6) the Company must have delivered to the Trustee an Opinion of Counsel to the effect that, (1) assuming no intervening bankruptcy of the Company or any Guarantor between the date of deposit and the 123<sup>rd</sup> day following the deposit and assuming that no Holder is an “insider” of the Company under applicable bankruptcy law, after the 123<sup>rd</sup> day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors’ rights generally, including Section 547 of the United States Bankruptcy Code and (2) the creation of the defeasance trust does not violate the Investment Company Act of 1940;
- (7) the Company must deliver to the Trustee an Officers’ Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of Notes over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others;
- (8) if the Notes are to be redeemed prior to their stated maturity, the Company must deliver to the Trustee irrevocable instructions to redeem all of the Notes on the specified redemption date; and
- (9) the Company must deliver to the Trustee an Officers’ Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

### **Amendment, Supplement and Waiver**

Except as provided in the next three succeeding paragraphs, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), and any existing default or compliance with any provision of the Indenture or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes).

Without the consent of the Holders of at least 75% of the principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), an amendment or waiver may not amend or modify any of the provisions of the Indenture or the

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related definitions affecting the subordination or ranking of the Notes or any Note Guarantee in any manner adverse to the holders of the Notes or any Note Guarantee.

Without the consent of each Holder affected, an amendment or waiver may not (with respect to any Notes held by a non-consenting Holder):

- (1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the principal of or change the fixed maturity of any Note or alter the provisions, or waive any payment, with respect to the redemption of the Notes;
- (3) reduce the rate of or change the time for payment of interest on any Note;
- (4) waive a Default or Event of Default in the payment of principal of, or interest or premium, or Liquidated Damages, if any, on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration);
- (5) make any Note payable in money other than U.S. dollars;
- (6) make any change in the provisions of the Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, or interest or premium or Liquidated Damages, if any, on the Notes;
- (7) release any Guarantor from any of its obligations under its Note Guarantee or the Indenture, except in accordance with the terms of the Indenture;
- (8) impair the right to institute suit for the enforcement of any payment on or with respect to the Notes or the Note Guarantees;
- (9) amend, change or modify the obligation of the Company to make and consummate an Asset Sale Offer with respect to any Asset Sale in accordance with the “Repurchase at the Option of Holders—Asset Sales” covenant after the obligation to make such Asset Sale Offer has arisen, or the obligation of the Company to make and consummate a Change of Control Offer in the event of a Change of Control in accordance with the “Repurchase at the Option of Holders—Change of Control” covenant after such Change of Control has occurred, including, in each case, amending, changing or modifying any definition relating thereto;
- (10) except as otherwise permitted under the “Merger, Consolidation and Sale of Assets” covenant, consent to the assignment or transfer by the Company of any of its rights or obligations under the Indenture; or
- (11) make any change in the preceding amendment and waiver provisions.

Notwithstanding the preceding, without the consent of any Holder of Notes, the Company, the Guarantors and the Trustee may amend or supplement the Indenture or the Notes:

- (1) to cure any ambiguity, defect or inconsistency;
- (2) to provide for uncertificated Notes in addition to or in place of certificated Notes;
- (3) to provide for the assumption of the Company’s or any Guarantor’s obligations to Holders of Notes in the case of a merger or consolidation or sale of all or substantially all of the Company’s or such Guarantor’s assets;
- (4) to make any change that would provide any additional rights or benefits to the Holders of Notes or that does not adversely affect the legal rights under the Indenture of any such Holder;
- (5) to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act;

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- (6) to comply with the provisions described under “Certain Covenants—Guarantees;”
- (7) to evidence and provide for the acceptance of appointment by a successor Trustee; or
- (8) to provide for the issuance of Additional Notes in accordance with the Indenture.

### **Satisfaction and Discharge**

The Indenture will be discharged and will cease to be of further effect as to all Notes issued thereunder, when:

- (1) either:
  - (a) all Notes that have been authenticated (except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company) have been delivered to the Trustee for cancellation; or
  - (b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise or will become due and payable within one year and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium and Liquidated Damages, if any, and accrued interest to the date of maturity or redemption;
- (2) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;
- (3) the Company or any Guarantor has paid or caused to be paid all sums payable by it under the Indenture; and
- (4) the Company has delivered irrevocable instructions to the Trustee under the Indenture to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Company must deliver an Officers’ Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

### **Concerning the Trustee**

If the Trustee becomes a creditor of the Company or any Guarantor, the Indenture limits its right to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The Trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue or resign.

The Indenture provides that in case an Event of Default shall occur and be continuing, the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent man in the conduct of his own affairs. Subject to such provisions, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any Holder of Notes, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

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### **Book-Entry, Delivery and Form**

Except as set forth below, the exchange notes will be issued in registered, global form in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. Notes will be issued at the closing of the exchange offer only against surrender of original notes.

The exchange notes initially will be represented by one or more notes in registered, global form without interest coupons attached (the “Global Note”). On the date of the closing of the exchange offer, the Global Note will be deposited upon issuance with the Trustee as custodian for The Depository Trust Company (“DTC”), in New York, New York, and registered in the name of DTC or its nominee, in each case for credit to an account of a direct or indirect participant in DTC as described below.

Unless definitive exchange notes are issued, the Global Note may be transferred, in whole and not in part, only to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the Global Note may not be exchanged for Notes in certificated form except in the limited circumstances described below. See “—Exchange of Book-Entry Notes for Certificated Notes.”

Ownership of interests in the Global Note (“Book-Entry Interests”) will be limited to persons that have accounts with DTC, or persons that hold interests through such Participants (as defined below). Except under the limited circumstances described below, beneficial owners of Book-Entry Interests will not be entitled to physical delivery of exchange notes in definitive form.

Book-Entry Interests will be shown on, and transfers thereof will be effected only through, records maintained in book-entry form by DTC or DTC’s nominees and Participants. In addition while the exchange notes are in global form, holders of Book-Entry Interests will not be considered the owners or “holders” of exchange notes for any purpose. So long as the exchange notes are held in global form, DTC or its nominees will be considered the sole holders of the Global Note for all purposes under the indenture. In addition, Participants must rely on the procedures of DTC and Indirect Participants (as defined below) must rely on the procedures of DTC and the Participants through which they own Book-Entry Interests to transfer their interests or to exercise any rights of holders under the indenture. Transfers of beneficial interests in the Global Note will be subject to the applicable rules and procedures of DTC and its Participants or Indirect Participants, which may change from time to time.

### **Depository Procedures**

The following description of the operations and procedures of DTC is provided solely as a matter of convenience. These operations and procedures are solely within the control of DTC and are subject to change. Neither we nor the trustee take any responsibility for or are liable for these operations and procedures including the records relating to Book-Entry Interests and we urge investors to contact DTC or its participants directly to discuss these matters.

DTC has advised the Company that DTC is a limited-purpose trust company organized under the laws of the State of New York, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the Uniform Commercial Code and a “Clearing Agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC was created to hold securities for its participating organizations (collectively, the “Participants”) and to facilitate the clearance and settlement of transactions in those securities between Participants through electronic book-entry changes in accounts of its Participants. The Participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. Access to DTC’s system is also available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Participant, either directly or indirectly (collectively, the “Indirect Participants”). Persons who are not Participants may beneficially own securities held by or on

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behalf of DTC only through the Participants or the Indirect Participants. The ownership interests in, and transfers of ownership interests in, each security held by or on behalf of DTC are recorded on the records of the Participants and Indirect Participants.

DTC has also advised the Company that, pursuant to procedures established by it:

- (1) upon deposit of the Global Notes, DTC will credit the accounts of Participants pursuant to the corresponding letters of transmittal with portions of the principal amount of the Global Notes; and
- (2) ownership of these interests in the Global Notes will be shown on, and the transfer of ownership thereof will be effected only through, records maintained by DTC (with respect to the Participants) or by the Participants and the Indirect Participants (with respect to other owners of beneficial interest in the Global Notes).

We understand that under existing industry practice, in the event that we request any action of holders of exchange notes, or an owner of a beneficial interest in the Global Note desires to take any action that DTC, as the holder of such Global Note, is entitled to take, DTC would authorize the Participants to take the action and the Participants would authorize beneficial owners owning through the Participants to take the action or would otherwise act upon the instruction of the beneficial owners. Neither we nor the trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of notes by DTC, or for maintaining, supervising or reviewing any records of DTC relating to the notes.

All interests in a Global Note may be subject to the procedures and requirements of DTC. The laws of some jurisdictions, including certain states of the United States, require that certain Persons take physical delivery in definitive form of securities that they own. Consequently, the ability to transfer beneficial interests in a Global Note to such Persons will be limited to that extent. Because DTC can act only on behalf of Participants, which in turn act on behalf of Indirect Participants, the ability of a Person having beneficial interests in a Global Note to pledge such interests to Persons that do not participate in the DTC system, or otherwise take actions in respect of such interests, may be affected by the lack of a physical certificate evidencing such interests.

**Except as described below, owners of interest in the Global Notes will not have Notes registered in their names, will not receive physical delivery of Notes in certificated form and will not be considered the registered owners or “Holders” thereof under the Indenture for any purpose.**

Payments in respect of the principal of, and interest and premium on a Global Note registered in the name of DTC or its nominee will be payable to DTC or its nominee in its capacity as the registered Holder of the Global Note under the Indenture. Under the terms of the Indenture, the Company and the Trustee will treat the Persons in whose names the Notes, including the Global Notes, are registered as the owners thereof for the purpose of receiving payments and for all other purposes. Consequently, neither the Company, the Trustee nor any agent of the Company or the Trustee has or will have any responsibility or liability for:

- (1) any aspect of DTC’s records or any Participant’s or Indirect Participant’s records relating to or payments made on account of beneficial ownership interest in the Global Notes or for maintaining, supervising or reviewing any of DTC’s records or any Participant’s or Indirect Participant’s records relating to the beneficial ownership interests in the Global Notes; or
- (2) any other matter relating to the actions and practices of DTC or any of its Participants or Indirect Participants.

DTC has advised the Company that its current practice, upon receipt of any payment in respect of securities such as the Notes (including principal and interest), is to credit the accounts of the relevant Participants with the payment on the payment date unless DTC has reason to believe it will not receive payment on such payment date. Each relevant Participant is credited with an amount proportionate to its beneficial ownership of an interest in the principal amount of the relevant security as shown on the records of DTC. Payments by the Participants

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and the Indirect Participants to the beneficial owners of Notes will be governed by standing instructions and customary practices and will be the responsibility of the Participants or the Indirect Participants and will not be the responsibility of DTC, the Trustee or the Company. Neither the Company nor the Trustee will be liable for any delay by DTC or any of its Participants in identifying the beneficial owners of the Notes, and the Company and the Trustee may conclusively rely on and will be protected in relying on instructions from DTC or its nominee for all purposes.

Transfer between Participants in DTC will be effected in accordance with DTC's procedures, and will be settled in same-day Funds.

DTC has advised the Company that it will take any action permitted to be taken by a Holder of Notes only at the direction of one or more Participants to whose account DTC has credited the interests in the Global Notes and only in respect of such portion of the aggregate principal amount of the Notes as to which such Participant or Participants has or have given such direction. However, if there is an Event of Default under the Notes, DTC reserves the right to exchange the Global Notes for legended Notes in certificated form, and to distribute such Notes to its Participants.

Although DTC has agreed to the foregoing procedures to facilitate transfers of interests in the Global Note among participants in DTC, DTC is under no obligation to perform or to continue to perform such procedures, and may discontinue such procedures at any time. Neither the Company nor the Trustee nor any of their respective agents will have any responsibility for the performance by DTC or its Participants or Indirect Participants of their respective obligations under the rules and procedures governing DTC's operations.

### **Exchange of Global Notes for Certificated Notes**

A Global Note is exchangeable for definitive Notes in registered certificated form ("Certificated Notes") if:

- (1) DTC (a) notifies the Company that it is unwilling or unable to continue as depository for the Global Notes or (b) has ceased to be a clearing agency registered under the Exchange Act, and in each case the Company fails to appoint a successor depository;
- (2) the Company, at its option, notifies the Trustee in writing that it elects to cause the issuance of the Certificated Notes; or
- (3) there shall have occurred and be continuing a Default or Event of Default with respect to the Notes.

In addition, beneficial interests in a Global Note may be exchanged for Certificated Notes upon prior written notice given to the Trustee by or on behalf of DTC in accordance with the Indenture. In all cases, Certificated Notes delivered in exchange for any Global Note or beneficial interests in Global Notes will be registered in the names, and issued in any approved denominations, requested by or on behalf of the depository (in accordance with its customary procedures).

### **Exchange of Certificated Notes for Global Notes**

Certificated Notes may not be exchanged for beneficial interests in any Global Note unless the transferor first delivers to the Trustee a written certificate (in the form provided in the Indenture) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Notes.

### **Redemption of the Global Note**

In the event the Global Note, or any portion thereof, is redeemed, DTC will redeem an equal amount of the Book-Entry Interests in such Global Note from the amount received by it in respect of the redemption of such Global Note. The redemption price payable in connection with the redemption of such Book-Entry Interests will



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be equal to the amount received by DTC in connection with the redemption of such Global Note or any portion thereof. We understand that, under existing practices of DTC, if fewer than all of the exchange notes are to be redeemed at any time, DTC will credit its Participants' accounts on a proportionate basis, with adjustments to prevent fractions, or by lot or on such other basis as DTC deems fair and appropriate; provided, however, that no Book-Entry Interest of \$1,000 principal amount or less may be redeemed in part.

### **Same Day Settlement and Payment**

The Company will make payments in respect of the Notes represented by the Global Notes (including principal, premium, if any, and interest) by wire transfer of immediately available funds to the accounts specified by the Global Note Holder. The Company will make all payments of principal, interest and premium with respect to Certificated Notes by wire transfer of immediately available funds to the accounts specified by the Holders thereof or, if no such account is specified, by mailing a check to each such Holder's registered address. The Notes represented by the Global Notes are expected to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in such Notes will, therefore, be required by DTC to be settled in immediately available funds. The Company expects that secondary trading in any Certificated Notes will also be settled in immediately available funds.

The amount of the Liquidated Damages will increase by an additional one-quarter of one percent (0.25%) per annum on the principal amount of Notes with respect to each subsequent 90-day period until all Registration Defaults have been cured, up to a maximum amount of Liquidated Damages for all Registration Defaults of 1.0% per annum.

All accrued Liquidated Damages will be paid by the Company and the Guarantors on each interest payment date to the Global Note Holder by wire transfer of immediately available funds or by federal funds check and to Holders of Certificated Notes by wire transfer to the accounts specified by them or by mailing checks to their registered addresses if no such accounts have been specified.

Following the cure of all Registration Defaults, the accrual of Liquidated Damages will cease.

Holders of Notes will be required to make certain representations to the Company (as described in the Registration Rights Agreement) in order to participate in the Exchange Offer and will be required to deliver certain information to be used in connection with the Shelf Registration Statement and to provide comments on the Shelf Registration Statement within the time periods set forth in the Registration Rights Agreement in order to have their Notes included in the Shelf Registration Statement and benefit from the provisions regarding Liquidated Damages set forth above. By acquiring Notes, a Holder will be deemed to have agreed to indemnify the Company and the Guarantors against certain losses arising out of information furnished by such Holder in writing for inclusion in any Shelf Registration Statement. Holders of Notes will also be required to suspend their use of the prospectus included in the Shelf Registration Statement under certain circumstances upon receipt of written notice to that effect from the Company.

### **Certain Definitions**

Set forth below are certain defined terms used in the Indenture. Reference is made to the Indenture for a full disclosure of all such terms, as well as any other capitalized terms used herein for which no definition is provided.

*"Acquired Debt"* means, with respect to any specified Person:

- (1) Indebtedness of any other Person existing at the time such other Person is merged with or into, or becomes a Subsidiary of, such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Subsidiary of, such specified Person; and

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- (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“*Affiliate*” of any specified Person means (1) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person or (2) any executive officer or director of such specified Person. For purposes of this definition, “control,” as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control. For purposes of this definition, the terms “controlling,” “controlled by” and “under common control with” shall have correlative meanings; *provided further* that each of Paula Grundstücksverwaltungsgesellschaft mbH & Co. Vermietungs-KG, Mannheim and ROSATA Grundstücksvermietungsgesellschaft mbH & Co. Object Dischingen KG, Düsseldorf, shall not be deemed Affiliates of the Company or any of its Restricted Subsidiaries solely by virtue of the beneficial ownership by the Company or its Restricted Subsidiaries of up to 20% of the Voting Stock of each entity.

“*Asset Sale*” means:

- (1) the sale, lease, conveyance or other disposition of any property or assets; *provided* that the sale, conveyance or other disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole will be governed by the provisions of the Indenture described above under the caption “—Repurchase at the Option of Holders—Change of Control” and/or the provisions described above under the caption “—Certain Covenants—Merger, Consolidation or Sale of Assets” and not by the provisions of the Asset Sale covenant; and
- (2) the issuance of Equity Interests by any of the Company’s Restricted Subsidiaries or the sale by the Company or any Restricted Subsidiary of Equity Interests in any of its Subsidiaries.

Notwithstanding the preceding, the following items shall be deemed not to be Asset Sales:

- (1) any single transaction or series of related transactions that involves assets having a fair market value of less than \$10.0 million;
- (2) a transfer of assets between or among the Company and its Restricted Subsidiaries;
- (3) an issuance of Equity Interests by a Restricted Subsidiary to the Company or to another Restricted Subsidiary;
- (4) the sale, lease or other disposition of equipment, inventory, accounts receivable or other assets in the ordinary course of business;
- (5) the sale or other disposition of Cash Equivalents;
- (6) a Restricted Payment that is permitted by the covenant described above under the caption “—Certain Covenants—Restricted Payments;”
- (7) any sale or disposition of any property or equipment that has become damaged, worn out, obsolete or otherwise unsuitable or no longer required for use in the ordinary course of the business of the Company or its Restricted Subsidiaries;
- (8) the licensing of intellectual property in the ordinary course of business;
- (9) any sale or other disposition deemed to occur with creating or granting a Lien not otherwise prohibited by the Indenture; and
- (10) upon the termination of the VARTA joint venture with VARTA AG, the sale, transfer or other disposition of the Equity Interests in FinanceCo (as defined in the VARTA Joint Venture Agreement) and the forgiveness of any loans owed by VARTA AG, in each case pursuant to, and in accordance with the terms of, the VARTA Joint Venture Agreement as in effect on the date of the Indenture.

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“Beneficial Owner” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” shall be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms “Beneficially Owns” and “Beneficially Owned” shall have a corresponding meaning.

“Board of Directors” means:

- (1) with respect to a corporation, the board of directors of the corporation;
- (2) with respect to a partnership, the Board of Directors of the general partner of the partnership; and
- (3) with respect to any other Person, the board or committee of such Person serving a similar function.

“Capital Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP.

“Capital Stock” means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Cash Equivalents” means:

- (1) United States dollars, Euros and British Pounds Sterling;
- (2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than six months from the date of acquisition;
- (3) certificates of deposit and eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding six months and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of \$500.0 million and a Thomson Bank Watch Rating of “B” or better;
- (4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;
- (5) commercial paper having the highest rating obtainable from Moody’s Investors Service, Inc. or Standard & Poor’s Rating Services and in each case maturing within nine months after the date of acquisition;
- (6) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof having the highest ratings obtainable from Moody’s or S&P and maturing within six months from the date of acquisition thereof;

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- (7) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (6) of this definition; and
- (8) in the case of a Foreign Subsidiary, local currency held by such Foreign Subsidiary from time to time in the ordinary course of business and Euros and British Pounds Sterling.

“*Change of Control*” means the occurrence of any of the following:

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act);
- (2) the adoption of a plan relating to the liquidation or dissolution of the Company;
- (3) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the ultimate Beneficial Owner, directly or indirectly, of 50% or more of the voting power of the Voting Stock of the Company;
- (4) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors; or
- (5) the Company consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into the Company, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where (A) the Voting Stock of the Company outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance) and (B) immediately after such transaction, no “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Exchange Act) becomes, directly or indirectly, the ultimate Beneficial Owner of 50% or more of the voting power of the Voting Stock of the surviving or transferee Person.

“*Consolidated Cash Flow*” means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*, without duplication:

- (1) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*
- (2) Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that any such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*
- (3) depreciation, amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash expenses (excluding any restructuring and related charges referred to in clauses (4), (5), (6) and (7), without giving effect to the provisos, and any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; *plus*
- (4) restructuring and related charges and other non-recurring charges incurred by the Company in the fiscal year ended September 30, 2004, to the extent such charges were deducted in computing Consolidated Net Income for such period; *provided* that the maximum aggregate amount of such charges shall not exceed \$25.0 million; *plus*

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- (5) for any period prior to the acquisition of Microlite, any operating losses and non-recurring charges incurred in such period by Microlite, to the extent such operating losses and non-recurring charges were reflected in computing Consolidated Net Income for such period; *provided* that the maximum aggregate amount of such operating losses and charges shall not exceed \$8.1 million; *plus*
- (6) for any period prior to the acquisition of United Industries Corporation, restructuring and related charges incurred in such period by United Industries Corporation related to its acquisition of United Pet Group, Inc. or The Nu-Gro Company, to the extent such charges were deducted in computing Consolidated Net Income for such period; *provided* that the maximum aggregate amount of such charges shall not exceed \$31.1 million; *plus*
- (7) restructuring and related charges related to the acquisition of United Industries Corporation or any other acquisition, incurred during any period after September 30, 2004, and prior to September 30, 2008, to the extent such charges were deducted in computing Consolidated Net Income for such period; *provided* that the maximum aggregate amount of such charges shall not exceed \$100.0 million; *minus*
- (8) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue consistent with past practice, in each case, on a consolidated basis and determined in accordance with GAAP.

Notwithstanding the preceding, the provision for taxes based on the income or profits of, and the depreciation and amortization and other non-cash expenses of, a Restricted Subsidiary of the Company shall be added to Consolidated Net Income to compute Consolidated Cash Flow of the Company (A) in the same proportion that the Net Income of such Restricted Subsidiary was added to compute such Consolidated Net Income of the Company and (B) only to the extent that a corresponding amount would be permitted at the date of determination to be dividended or distributed to the Company by such Restricted Subsidiary without prior governmental approval (that has not been obtained), and without direct or indirect restriction pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Subsidiary or its stockholders.

“*Consolidated Net Income*” means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided* that:

- (1) the Net Income (but not loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid in cash to the specified Person or a Restricted Subsidiary thereof;
- (2) the Net Income of any Restricted Subsidiary shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its equityholders;
- (3) the Net Income of any Person acquired during the specified period for any period prior to the date of such acquisition shall be excluded;
- (4) the cumulative effect of a change in accounting principles shall be excluded; and
- (5) notwithstanding clause (1) above, the Net Income (but not loss) of any Unrestricted Subsidiary shall be excluded, whether or not distributed to the specified Person or one of its Subsidiaries.

“*Consolidated Net Tangible Assets*” of any Person means, as of any date, the amount which, in accordance with GAAP, would be set forth under the caption “Total Assets” (or any like caption) on a consolidated balance sheet of such Person and its Restricted Subsidiaries, as of the end of the most recently ended fiscal quarter for

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which internal financial statements are available, less (1) all intangible assets, including, without limitation, goodwill, organization costs, patents, trademarks, copyrights, franchises, and research and development costs and (2) current liabilities.

“*Continuing Directors*” means, as of any date of determination, any member of the Board of Directors of the Company who:

- (1) was a member of such Board of Directors on the date of the Indenture; or
- (2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board at the time of such nomination or election.

“*Credit Agreement*” means that certain Credit Agreement, dated the date of the Indenture, by and among the Company, certain subsidiaries of the Company, including Varta Consumer Batteries GmbH & Co. KGaA, Bank of America, N.A., as Administrative Agent, and the other Lenders named therein, including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith, and in each case as amended, modified, renewed, refunded, replaced or refinanced from time to time, regardless of whether such amendment, modification, renewal, refunding, replacement or refinancing is with the same financial institutions or otherwise.

“*Credit Facilities*” means, one or more debt facilities (including, without limitation, the Credit Agreement) or commercial paper facilities, in each case with banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time.

“*Default*” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“*Disqualified Stock*” means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is one year after the date on which the Notes mature, except to the extent such Capital Stock is solely redeemable with, or solely exchangeable for, any Equity Interests of the Company that are not Disqualified Stock. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock if the terms of such Capital Stock provide that the Company may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with the covenant described above under the caption “—Certain Covenants—Restricted Payments.” The term “Disqualified Stock” shall also include any options, warrants or other rights that are convertible into Disqualified Stock or that are redeemable at the option of the holder, or required to be redeemed, prior to the date that is one year after the date on which the Notes mature.

“*Domestic Subsidiary*” means any Restricted Subsidiary of the Company other than a Restricted Subsidiary that is (1) a “controlled foreign corporation” under Section 957 of the Internal Revenue Code or (2) a Subsidiary of any such controlled foreign corporation.

“*Equity Interests*” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

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“*Equity Offering*” means a public or private offer and sale of common stock (other than Disqualified Stock) of the Company (other than common stock sold to a Subsidiary of the Company).

“*Existing Indebtedness*” means the aggregate principal amount of Indebtedness of the Company and its Subsidiaries (other than Indebtedness under the Credit Agreement) in existence on the date of the Indenture after giving effect to the acquisition of United Industries and the application of the proceeds of the Notes and any Indebtedness under the Credit Agreement borrowed on the date of the Indenture, until such amounts are repaid.

“*fair market value*” means the price that would be paid in an arm’s-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by the Board of Directors, whose determination shall be conclusive if evidenced by a Board Resolution.

“*Fixed Charge Coverage Ratio*” means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Subsidiaries incurs, assumes, Guarantees, repays, repurchases or redeems any Indebtedness or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the “Calculation Date”), then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

- (1) acquisitions and dispositions of business entities or property and assets constituting a division or line of business of any Person that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations and including any related financing transactions, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date shall be given pro forma effect as if they had occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period shall be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act, but without giving effect to clause (3) of the proviso set forth in the definition of Consolidated Net Income;
- (2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, shall be excluded;
- (3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, shall be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Subsidiaries following the Calculation Date; and
- (4) consolidated interest expense attributable to interest on any Indebtedness (whether existing or being incurred) computed on a pro forma basis and bearing a floating interest rate shall be computed as if the rate in effect on the Calculation Date (taking into account any interest rate option, swap, cap or similar agreement applicable to such Indebtedness if such agreement has a remaining term in excess of 12 months or, if shorter, at least equal to the remaining term of such Indebtedness) had been the applicable rate for the entire period.

“*Fixed Charges*” means, with respect to any specified Person for any period, the sum, without duplication, of:

- (1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortization of debt issuance costs and original

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issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made, received or accrued in connection with Hedging Obligations; *plus*

- (2) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*
- (3) any interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon; *plus*
- (4) the product of (a) all dividends, whether paid or accrued and whether or not in cash, on any series of Disqualified Stock or preferred stock of such Person or any of its Restricted Subsidiaries, other than (i) dividends on Equity Interests payable solely in Equity Interests of the Company (other than Disqualified Stock) or (ii) dividends to the Company or a Restricted Subsidiary of the Company, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP;

*provided* that Fixed Charges shall not include any interest expense of, or dividends paid by, VARTA to VARTA AG to the extent that the Company or a Restricted Subsidiary of the Company receives interest or dividends in cash from VARTA AG in connection with the VARTA Joint Venture Agreement as in effect on the date of the Indenture.

*"Foreign Subsidiary"* means any Restricted Subsidiary of the Company other than a Domestic Subsidiary.

*"GAAP"* means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, the opinions and pronouncements of the Public Company Accounting Oversight Board and in the statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the date of the Indenture.

*"Guarantee"* means, as to any Person, a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness of another Person.

*"Guarantors"* means:

- (1) each direct or indirect Domestic Subsidiary of the Company on the date of the Indenture; and
- (2) any other subsidiary that executes a Note Guarantee in accordance with the provisions of the Indenture;

and their respective successors and assigns until released from their obligations under their Note Guarantees and the Indenture in accordance with the terms of the Indenture.

*"Hedging Obligations"* means, with respect to any specified Person, the obligations of such Person under:

- (1) interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and other agreements or arrangements designed for the purpose of fixing, hedging or swapping interest rate risk;
- (2) commodity swap agreements, commodity option agreements, forward contracts and other agreements or arrangements designed for the purpose of fixing, hedging or swapping commodity price risk; and



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- (3) foreign exchange contracts, currency swap agreements and other agreements or arrangements designed for the purpose of fixing, hedging or swapping foreign currency exchange rate risk.

“*incur*” means, with respect to any Indebtedness, to incur, create, issue, assume, Guarantee or otherwise become directly or indirectly liable for or with respect to, or become responsible for, the payment of, contingently or otherwise, such Indebtedness; *provided* that (1) any Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary of the Company will be deemed to be incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary of the Company and (2) neither the accrual of interest nor the accretion of original issue discount nor the payment of interest in the form of additional Indebtedness with the same terms and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock (to the extent provided for when the Indebtedness or Disqualified Stock on which such interest or dividend is paid was originally issued) shall be considered an incurrence of Indebtedness; *provided* that in each case the amount thereof is for all other purposes included in the Fixed Charges and Indebtedness of the Company or its Restricted Subsidiary as accrued.

“*Indebtedness*” means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof), but excluding obligations with respect to letters of credit (including trade letters of credit) securing obligations entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if drawn upon, to the extent such drawing is reimbursed no later than the fifth Business Day following receipt by such Person of a demand for reimbursement);
- (3) in respect of banker’s acceptances;
- (4) in respect of Capital Lease Obligations;
- (5) in respect of the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable;
- (6) representing Hedging Obligations, other than Hedging Obligations that are incurred in the ordinary course of business for the purpose of fixing, hedging or swapping interest rate, commodity price or foreign currency exchange rate risk (or to reverse or amend any such agreements previously made for such purposes), and not for speculative purposes, and that do not increase the Indebtedness of the obligor outstanding at any time other than as a result of fluctuations in interest rates, commodity prices or foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder; or
- (7) representing Disqualified Stock valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued dividends;

if and to the extent that any of the preceding items (other than letters of credit and Hedging Obligations) would appear as liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term “Indebtedness” includes (x) all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person), *provided* that the amount of such Indebtedness shall be the lesser of (A) the fair market value of such asset at such date of determination and (B) the amount of such Indebtedness, and (y) to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person. For purposes hereof, the “maximum fixed repurchase price” of any Disqualified Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to the Indenture, and if such price is based upon, or

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measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Board of Directors of the issuer of such Disqualified Stock.

The amount of any Indebtedness outstanding as of any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation, and shall be:

- (1) the accreted value thereof, in the case of any Indebtedness issued with original issue discount; and
- (2) the principal amount thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness;

*provided* that Indebtedness shall not include:

- (i) any liability for federal, state, local or other taxes;
- (ii) performance, surety or appeal bonds provided in the ordinary course of business; or
- (iii) agreements providing for indemnification, adjustment of purchase price or similar obligations, or Guarantees or letters of credit, surety bonds or performance bonds securing any obligations of the Company or any of its Restricted Subsidiaries pursuant to such agreements, in any case incurred in connection with the disposition of any business, assets or Restricted Subsidiary (other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition), so long as the principal amount does not exceed the gross proceeds actually received by the Company or any Restricted Subsidiary in connection with such disposition.

*“Investments”* means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans or other extensions of credit (including Guarantees, but excluding advances to customers or suppliers in the ordinary course of business that are, in conformity with GAAP, recorded as accounts receivable, prepaid expenses or deposits on the balance sheet of the Company or its Restricted Subsidiaries and endorsements for collection or deposit arising in the ordinary course of business), advances (excluding commission, travel, payroll and similar advances to officers and employees made consistent with past practices), capital contributions (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Investment in such Restricted Subsidiary not sold or disposed of in an amount determined as provided in the final paragraph of the covenant described above under the caption “—Certain Covenants—Restricted Payments.” The acquisition by the Company or any Restricted Subsidiary of the Company of a Person that holds an Investment in a third Person shall be deemed to be an Investment by the Company or such Restricted Subsidiary in such third Person only if such Investment was made in contemplation of, or in connection with, the acquisition of such Person by the Company or such Restricted Subsidiary and the amount of any such Investment shall be determined as provided in the final paragraph of the covenant described above under the caption “—Certain Covenants—Restricted Payments.”

*“Lien”* means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof,

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any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

“*Microlite*” means Microlite S.A. and its successors or assigns.

“*Microlite Purchase Agreement*” means the Share Purchase Agreement by and among Rayovac Corporation, ROV Holdings, Inc. and the shareholders of Microlite S.A. dated February 21, 2004.

“*Net Income*” means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however:

- (1) any gain or loss, together with any related provision for taxes on such gain or loss, realized in connection with: (a) any sale of assets outside the ordinary course of business of such Person; or (b) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and
- (2) any extraordinary gain or loss, together with any related provision for taxes on such extraordinary gain or loss.

“*Net Proceeds*” means the aggregate cash proceeds, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not the interest component, thereof) received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of (1) the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result thereof, (2) taxes paid or payable as a result thereof, in each case, after taking into account any available tax credits or deductions arising therefrom and any tax sharing arrangements in connection therewith, (3) amounts required to be applied to the repayment of Indebtedness or other liabilities, secured by a Lien on the asset or assets that were the subject of such Asset Sale, or required to be paid as a result of such sale, and (4) any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

“*Ningbo Baowang*” means Ningbo Baowang Battery Company, Ltd. and its successors or assigns.

“*Obligations*” means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

“*Permitted Business*” means any business conducted or proposed to be conducted (as described in the prospectus) by the Company and its Restricted Subsidiaries on the date of the Indenture and other businesses similar or reasonably related, ancillary or incidental thereto or reasonable extensions thereof.

“*Permitted Investments*” means:

- (1) any Investment in the Company or in a Restricted Subsidiary of the Company;
- (2) any Investment in Cash Equivalents;
- (3) any Investment by the Company or any Restricted Subsidiary of the Company in a Person, if as a result of such Investment:
  - (a) such Person becomes a Restricted Subsidiary of the Company; or
  - (b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary of the Company;

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- (4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with the covenant described above under the caption “—Repurchase at the Option of Holders—Asset Sales;”
- (5) Investments to the extent acquired in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Company;
- (6) Hedging Obligations that are incurred in the ordinary course of business for the purpose of fixing, hedging or swapping interest rate, commodity price or foreign currency exchange rate risk (or to reverse or amend any such agreements previously made for such purposes), and not for speculative purposes, and that do not increase the Indebtedness of the obligor outstanding at any time other than as a result of fluctuations in interest rates, commodity prices or foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder;
- (7) stock, obligations or securities received in satisfaction of judgments;
- (8) Investments in securities of trade debtors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers or in good faith settlement of delinquent obligations of such trade debtors or customers or in compromise or resolution of litigation, arbitration or other disputes with Persons who are not Affiliates; and
- (9) other Investments in any Person that is not an Affiliate of the Company (other than a Restricted Subsidiary) having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (9) since the date of the Indenture, not to exceed \$30.0 million.

“*Permitted Liens*” means:

- (1) Liens on the assets of the Company and any Guarantor securing Senior Debt that was permitted by the terms of the Indenture to be incurred;
- (2) Liens in favor of the Company or any Restricted Subsidiary;
- (3) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with the Company or any Restricted Subsidiary of the Company; *provided* that such Liens were in existence prior to the contemplation of such merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with the Company or the Restricted Subsidiary;
- (4) Liens on property existing at the time of acquisition thereof by the Company or any Restricted Subsidiary of the Company, *provided* that such Liens were in existence prior to the contemplation of such acquisition and do not extend to any property other than the property so acquired by the Company or the Restricted Subsidiary;
- (5) Liens existing on the date of the Indenture;
- (6) Liens securing Permitted Refinancing Indebtedness; *provided* that such Liens do not extend to any property or assets other than the property or assets that secure the Indebtedness being refinanced;
- (7) Liens incurred in the ordinary course of business of the Company or any Restricted Subsidiary of the Company with respect to obligations that do not exceed \$25.0 million at any one time outstanding; and
- (8) Liens on the assets of a Foreign Subsidiary securing Indebtedness of a Foreign Subsidiary that was permitted by the terms of the Indenture to be incurred.

“*Permitted Refinancing Indebtedness*” means any Indebtedness of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace,

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defease or refund other Indebtedness of the Company or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided* that:

- (1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest thereon and the amount of any reasonably determined premium necessary to accomplish such refinancing and such reasonable expenses incurred in connection therewith);
- (2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;
- (3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Notes or the Note Guarantees, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and is subordinated in right of payment to, the Notes on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;
- (4) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is *pari passu* in right of payment with the Notes or any Note Guarantees, such Permitted Refinancing Indebtedness is *pari passu* with, or subordinated in right of payment to, the Notes or such Note Guarantees; and
- (5) such Indebtedness is incurred either by the Company or by the Restricted Subsidiary who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

“*Person*” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

“*Replacement Assets*” means (1) non-current assets that will be used or useful in a Permitted Business or (2) all or substantially all of the assets of a Permitted Business or a majority of the Voting Stock of any Person engaged in a Permitted Business that will become on the date of acquisition thereof a Restricted Subsidiary.

“*Restricted Investment*” means an Investment other than a Permitted Investment.

“*Restricted Subsidiary*” of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

“*sale and leaseback transaction*” means, with respect to any Person, any transaction involving any of the assets or properties of such Person whether now owned or hereafter acquired, whereby such Person sells or transfers such assets or properties and then or thereafter leases such assets or properties or any part thereof or any other assets or properties which such Person intends to use for substantially the same purpose or purposes as the assets or properties sold or transferred.

“*Significant Subsidiary*” means any Subsidiary that would constitute a “significant subsidiary” within the meaning of Article 1 of Regulation S-X of the Securities Act.

“*Stated Maturity*” means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which such payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and shall not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

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“*Subsidiary*” means, with respect to any specified Person:

- (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and
- (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

“*Unrestricted Subsidiary*” means any Subsidiary of the Company that is designated by the Board of Directors as an Unrestricted Subsidiary pursuant to a Board Resolution in compliance with the covenant described under the caption “—Certain Covenants—Designation of Restricted and Unrestricted Subsidiaries,” and any Subsidiary of such Subsidiary.

“*VARTA*” means Varta Geratebatterie GmbH and its successors or assignees.

“*VARTA Joint Venture Agreement*” means the agreement among VARTA AG, the Company and ROV German Limited GmbH dated July 28, 2002, as amended.

The Company conducts its German operations through VARTA, a 51% owned joint venture, which is a Restricted Subsidiary of the Company. The remaining interest is held by VARTA AG. VARTA and another Restricted Subsidiary of the Company, FinanceCo (as defined in the VARTA Joint Venture Agreement) receive interest payments from VARTA AG in connection with loans owed by VARTA AG to such entities. VARTA pays dividends and interest to VARTA AG in amounts that substantially offset the monies received by VARTA AG on an after-tax basis. Pursuant to the VARTA Joint Venture Agreement, the Company can terminate the joint venture from August 1, 2005 to October 31, 2005 and VARTA AG can terminate at any time on or after January 1, 2006 or under certain other circumstances. Upon termination of the joint venture, the Equity Interests of VARTA owned by VARTA AG will be redeemed or exchanged for the shares of FinanceCo and a €1.0 million cash payment. In addition, upon termination all loans between the parties will be forgiven.

“*Voting Stock*” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“*Weighted Average Life to Maturity*” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

- (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by
- (2) the then outstanding principal amount of such Indebtedness.

“*Wholly Owned Restricted Subsidiary*” of any specified Person means a Restricted Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares or Investments by foreign nationals mandated by applicable law) shall at the time be owned by such Person or by one or more Wholly Owned Restricted Subsidiaries of such Person and one or more Wholly Owned Restricted Subsidiaries of such Person.

## U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of the U.S. federal income tax consequences to a holder of original notes who exchanges original notes for exchange notes pursuant to the exchange offer. This summary is based on existing U.S. federal income tax law, which is subject to change, possibly with retroactive effect. This summary does not discuss any state, local or non-U.S. tax considerations. Each holder of original notes is urged to consult its tax advisor regarding the U.S. federal, state, local and Non-U.S. income and other tax consequences of the exchange offer.

### **Exchange of Original Notes for Exchange Notes**

An exchange of original notes for exchange notes pursuant to the exchange offer will be ignored for U.S. federal income tax purposes. Consequently, a holder of original notes will not recognize gain or loss upon the exchange of original notes for exchange notes pursuant to the exchange offer. In addition, (i) the holding period of the exchange notes will be the same as the holding period of the original notes, (ii) the tax basis in the exchange notes will be the same as the adjusted basis in the original notes, in each case as determined at the time of the exchange and (iii) a holder will recognize interest income in respect of the exchange notes in the same amounts and at the same times as such holder would have recognized in respect of the original notes.

## CERTAIN ERISA CONSIDERATIONS

The following is a summary of certain considerations associated with the acquisition of United and holding of the notes by (a) employee benefit plans that are subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), (b) plans, including individual retirement accounts, Keogh plans and other arrangements, that are subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the “Code”), or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of the Code or ERISA (collectively, “Similar Laws”) and (c) entities whose underlying assets are considered to include “plan assets” of such plans, accounts and arrangements (each of (a), (b) and (c), a “Plan”).

### **General Fiduciary Matters**

ERISA and the Code impose certain duties on persons who are fiduciaries of a Plan subject to Title I of ERISA or Section 4975 of the Code and prohibit certain transactions involving the assets of such Plan and its fiduciaries or other interested parties. Under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of such a Plan or the management or disposition of the assets of such a Plan, or who renders investment advice to such a Plan for a fee or other compensation, is generally considered to be a fiduciary of the Plan.

In considering an investment in the notes, a Plan fiduciary should determine whether the investment is in accordance with the documents and instruments governing the Plan and the applicable provisions of ERISA, the Code or any Similar Law relating to a fiduciary’s duties to the Plan including, without limitation, the prudence, diversification, delegation of control and prohibited transaction provisions of ERISA, the Code or any other applicable Similar Laws.

Any insurance company proposing to invest assets of its general account in the notes should consider the extent that each investment would be subject to the requirements of ERISA in light of the U.S. Supreme Court’s decision in *John Hancock Mutual Life Insurance Co. v. Harris Trust and Savings Bank* and under any subsequent legislation or other guidance that has or may become available relating to that decision, including the enactment of Section 401(c) of ERISA by the Small Business Job Protection Act of 1996 and the regulations promulgated thereunder.

### **Prohibited Transaction Issues**

Section 406 of ERISA and Section 4975 of the Code prohibit Plans subject to Title I of ERISA or Section 4975 of the Code from engaging in specified transactions involving plan assets with persons or entities who are “parties in interest,” within the meaning of ERISA, or “disqualified persons,” within the meaning of Section 4975 of the Code, unless an exemption is available. A party in interest or disqualified person who engages in a non-exempt prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code. In addition, the fiduciary of the Plan that engages in such a non-exempt prohibited transaction may be subject to penalties and liabilities under ERISA and the Code. The acquisition and/or holding of notes by a Plan with respect to which the issuer is considered a party in interest or a disqualified person may constitute or result in a direct or indirect prohibited transaction under Section 406 of ERISA and/or Section 4975 of the Code, unless the investment is acquired and is held in accordance with an applicable statutory, class or individual prohibited transaction exemption. In this regard, the U.S. Department of Labor (the “DOL”) has issued prohibited transaction class exemptions, or PTCEs, that may apply to the acquisition and holding of the notes. These class exemptions include, without limitation, PTCE 84-14 respecting transactions determined by independent qualified professional asset managers, PTCE 90-1 respecting insurance company pooled separate accounts, PTCE 91-38 respecting bank collective investment trust partnerships, PTCE 95-60 respecting life insurance company general accounts and PTCE 96-23 respecting transactions determined by in-house asset managers, although there can be no assurance that all of the conditions of any such exemptions will be satisfied. Because of the foregoing, the notes should not be acquired or held by any person investing “plan assets” of any Plan, unless such acquisition and holding will not constitute a non-exempt prohibited transaction under ERISA and the Code or similar violation of any applicable Similar Laws.

### **Representations**

Accordingly, by acquiring a note, each acquiring person and each subsequent transferee of a note will be deemed to have represented and warranted that either (i) no portion of the assets used by such acquiring person or transferee to acquire the notes constitutes assets of any Plan, including without limitation, as applicable, an insurance company general account, or (ii) the acquisition and holding of the notes by such acquiror or transferee does not and will not constitute or otherwise result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code, or similar violation under any applicable Similar Laws.

### **General Investment Considerations**

The foregoing discussion is general in nature and is not intended to be all-inclusive. Due to the complexity of these rules and the penalties that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries, or other persons acquiring notes on behalf of, or with the assets of, any Plan, consult with their counsel regarding the potential applicability of ERISA, Section 4975 of the Code and any Similar Laws to the acquisition or holding of the notes and whether an exemption would be applicable to such acquisition or holding. Moreover, each Plan fiduciary should take into account, among other considerations, whether the fiduciary has the authority to make the investment, whether the investment constitutes a direct or indirect transaction with a party in interest or disqualified person, the composition of the Plan’s portfolio with respect to diversification by type of asset, the Plan’s funding objectives, the tax effects of the investment, and whether under the general fiduciary standards of investment prudence and diversification an investment in the notes is appropriate for the Plan, taking into account the overall investment policy of the Plan and the composition of the Plan’s investment portfolio.

Governmental plans and certain church plans are generally not subject to the fiduciary responsibility provisions of ERISA or the provisions of Section 4975 of the Code. However, such plans may be subject to substantially similar rules under state or other federal law, and may also be subject to the prohibited transaction rules of Section 503 of the Code.



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The sale of notes to a Plan shall not be deemed a representation by us or the initial purchasers that such an investment meets all relevant legal requirements with respect to Plans generally or any particular Plan.

### **PLAN OF DISTRIBUTION**

The exchange offer is not being made to, nor will we accept surrenders of original notes for exchange from, holders of original notes in any jurisdiction in which the exchange offer or the acceptance thereof would not be in compliance with the securities or blue sky laws of such jurisdiction.

The distribution of this prospectus and the offer and sale of the exchange notes may be restricted by law in certain jurisdictions. Persons who come into possession of this prospectus or any of the exchange notes must inform themselves about and observe any such restrictions. You must comply with all applicable laws and regulations in force in any jurisdiction in which you purchase, offer or sell the exchange notes or possess or distribute this prospectus and, in connection with any purchase, offer or sale by you of the exchange notes, must obtain any consent, approval or permission required under the laws and regulations in force in any jurisdiction to which you are subject or in which you make such purchase, offer or sale.

In reliance on interpretations of the staff of the SEC set forth in no-action letters issued to third parties in similar transactions, we believe that the exchange notes issued in the exchange offer in exchange for the original notes may be offered for resale, resold and otherwise transferred by holders without compliance with the registration and prospectus delivery provisions of the Securities Act, provided that the exchange notes are acquired in the ordinary course of such holders' business and the holders are not engaged in and do not intend to engage in and have no arrangement or understanding with any person to participate in a distribution (within the meaning of the Securities Act) of exchange notes. This position does not apply to any holder that is

- an "affiliate" of the Company within the meaning of Rule 405 under the Securities Act; or
- a broker-dealer.

All broker-dealers receiving exchange notes in the exchange offer are subject to a prospectus delivery requirement with respect to resales of the exchange notes. Each broker-dealer receiving exchange notes for its own account in the exchange offer must represent that the original notes to be exchanged for the exchange notes were acquired by it as a result of market-making activities or other trading activities and acknowledge that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any offer to resell, resale or other retransfer of the exchange notes pursuant to the exchange offer. However, by so acknowledging and by delivering a prospectus, the participating broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act. We have agreed that, for a period of 180 days after the consummation of the exchange offer, subject to extension under limited circumstances, we will use all commercially reasonable efforts to keep the exchange offer registration statement effective and make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with such resales. To date, the SEC has taken the position that broker-dealers may use a prospectus such as this one to fulfill their prospectus delivery requirements with respect to resales of exchange notes received in an exchange such as the exchange pursuant to the exchange offer, if the original notes for which the exchange notes were received in the exchange were acquired for their own accounts as a result of market-making or other trading activities.

We will not receive any proceeds from any sale of the exchange notes by broker-dealers. Broker-dealers acquiring exchange notes for their own accounts may sell the notes in one or more transactions in the over-the-counter market, in negotiated transactions, through writing options on the exchange notes or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or at negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer and/or the purchasers of such exchange notes.

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Any broker-dealer that held original notes acquired for its own account as a result of market-making activities or other trading activities, that received exchange notes in the exchange offer, and that participates in a distribution of exchange notes may be deemed to be an “underwriter” within the meaning of the Securities Act and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of the exchange notes. Any profit on these resales of exchange notes and any commissions or concessions received by a broker-dealer in connection with these resales may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not admit that it is an “underwriter” within the meaning of the Securities Act.

We have agreed to pay all expenses incident to our participation in the exchange offer, including the reasonable fees and expenses of one counsel for the holders of original notes and the initial purchasers, other than commissions or concessions of any broker-dealers and will indemnify holders of the original notes, including any broker-dealers, against specified types of liabilities, including liabilities under the Securities Act. We note, however, that in the opinion of the SEC, indemnification against liabilities under federal securities laws is against public policy and may be unenforceable.

### **LEGAL MATTERS**

The validity of the exchange notes and certain legal matters in connection with this offering will be passed upon for us by James T. Lucke, General Counsel of Spectrum, and by Cades Schutte LLP, Foley & Lardner LLP and Thompson Coburn LLP. Certain other legal matters in connection with this exchange offer will be passed upon for us by Skadden, Arps, Slate, Meagher & Flom LLP.

### **EXPERTS**

The consolidated financial statements of Rayovac Corporation as of September 30, 2004 and 2003, and for each of the years in the three-year period ended September 30, 2004, have been incorporated by reference herein and in the Registration Statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The consolidated financial statements incorporated in this Prospectus by reference to Rayovac’s Current Report on Form 8-K/A dated May 28, 2004 of Microlite S.A. for the year ended December 31, 2003 have been so incorporated in reliance on the report of PricewaterhouseCoopers Auditores Independentes, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The financial statements incorporated in this Prospectus by reference to Rayovac’s Current Report on Form 8-K dated April 27, 2005 of United Industries Corporation for the year ended December 31, 2004 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The financial statements incorporated in this Prospectus by reference to Rayovac’s Current Report on Form 8-K/A dated February 7, 2005 of United Pet Group, Inc. for the year ended December 31, 2003 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The financial statements incorporated in this Prospectus by reference to Rayovac’s Current Report on Form 8-K dated April 27, 2005 of The Nu-Gro Corporation for the year ended September 30, 2003 have been so incorporated in reliance on the report of Ernst & Young LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

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The consolidated financial statements of Tetra Holding (US), Inc. and subsidiary as of December 31, 2004 and for the year ended December 31, 2004 have been incorporated by reference herein and in the Registration Statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

### **INCORPORATION BY REFERENCE**

The following documents which Rayovac has filed with the SEC under the Exchange Act are incorporated by reference in this prospectus:

- Annual Report on Form 10-K for the fiscal year ended September 30, 2004;
- Quarterly Reports on Form 10-Q for the quarters ended January 2, 2005 and April 3, 2005; and
- Current Reports on Forms 8-K and 8-K/A filed with the SEC on August 10, 2004, October 5, 2004, January 4, 2005, January 6, 2005 (with respect to Item 8.01 thereof only), January 10, 2005 (8-K), January 10, 2005 (8-K/A), January 14, 2005 (with respect to Item 8.01 thereof only) January 24, 2005, February 3, 2005, February 11, 2005, February 15, 2005, February 18, 2005, March 18, 2005, April 7, 2005, April 19, 2005 (8-K), April 19, 2005 (8-K/A), April 27, 2005, April 28, 2005, April 29, 2005, May 5, 2005 (two Current Reports on Form 8-K were filed on May 5, 2005; only the second such report, dated April 29, 2005 and containing items 1.01, 2.01, 2.03, 3.03, 8.01 and 9.01, is incorporated herein by reference), June 2, 2005 and June 3, 2005.

All documents filed by us with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this prospectus and prior to the termination of the offering shall also be deemed to be incorporated by reference into this prospectus and to be a part hereof from the date of filing of such documents. Any statement herein or in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in any subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We will provide, without charge, to each person to whom a copy of this prospectus is delivered, upon request of such person, a copy of any documents incorporated into this prospectus by reference other than exhibits thereto unless such exhibits are specifically incorporated by reference in the document that this prospectus incorporates. Requests for such copies should be directed to Spectrum, care of Vice President, Investor Relations, Spectrum Brands, Inc., Six Concourse Parkway, Suite 3300, Atlanta, Georgia 30328, via electronic mail at [investorrelations@spectrumbrands.com](mailto:investorrelations@spectrumbrands.com), or by contacting the Vice President, Investor Relations at 770-829-6200.

### **AVAILABLE INFORMATION**

We are subject to the reporting and other information requirements of the Exchange Act and file annual, quarterly and current reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information filed by us may be inspected and copied at the public reference facility maintained by the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call 1-800-SEC-0330 for further information on the public reference room. The SEC maintains a site on the World Wide Web containing reports, proxy materials, information statements and other information regarding issuers that file electronically with the SEC at [www.sec.gov](http://www.sec.gov). Spectrum's reports, proxy statements and other information can also be inspected and copied at the offices of the New York Stock Exchange, on which our common stock is listed (symbol: SPC). We maintain a site on the World Wide Web containing information that we file with the SEC at [www.spectrumbrands.com](http://www.spectrumbrands.com).



**Spectrum Brands, Inc.**

**Offer to Exchange**

**\$700,000,000 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015  
for  
\$700,000,000 Senior Subordinated Notes due 2015  
that have been registered under the Securities Act of 1933**

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**PROSPECTUS**

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 20. Indemnification of Directors and Officers**

The following summaries are qualified in their entirety by reference to the complete text of the statutes and organizational documents referred to below.

*Spectrum Brands, Inc. and WPC Brands, Inc.*

Pursuant to the Wisconsin Business Corporation Law (“WBCL”), Spectrum Brands, Inc.’s and WPC Brands, Inc.’s directors and officers are entitled to mandatory indemnification from the companies against certain liabilities and expenses (i) to the extent the directors or officers are successful in the defense of a proceeding and (ii) in proceedings in which the director or officer is not successful in the defense thereof, unless (in the latter case only) it is determined that the director or officer breached or failed to perform his duties to the company and the breach or failure constituted (a) a willful failure to deal fairly with the company or its shareholders in connection with a matter in which the director or officer had a material conflict of interest; (b) a violation of the criminal law, unless the director or officer had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful; (c) a transaction from which the director or officer derived an improper personal profit; or (d) willful misconduct. The WBCL also provides that, subject to certain limitations, the mandatory indemnification provisions do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under a company’s articles of incorporation, by-laws, a written agreement or a resolution of the company’s board of directors or shareholders. Further, the WBCL specifically states that it is the public policy of Wisconsin to require or permit indemnification in connection with a proceeding involving securities regulation, as described therein, to the extent required or permitted as described above. Additionally, under the WBCL, directors are not subject to personal liability to a company, its shareholders or any person asserting rights on behalf thereof for certain breaches of or failures to perform any duty resulting solely from their status as directors, except in circumstances paralleling those in subparagraphs (a) through (d) outlined above. Expenses for the defense of any action for which indemnification may be available may be advanced by the companies under certain circumstances.

Spectrum Brands, Inc.’s amended and restated articles of incorporation contain no indemnification provisions.

Spectrum Brands, Inc.’s amended and restated bylaws provide that, to the fullest extent permitted or required by the WBCL, the company shall indemnify a director or officer against all liabilities incurred by or on behalf of such director or officer in connection with a proceeding in which the director or officer is a party because he or she is a director or officer. The company shall indemnify a director or officer of an affiliate (who is not otherwise serving as a director or officer) against all liabilities, and shall advance the reasonable expenses, incurred by such director or officer in a proceeding to the same extent hereunder as if such director or officer incurred such liabilities because he or she was a director or officer, if such director or officer is a party thereto because he or she is or was a director or officer of the affiliate. The company’s board may, in its sole and absolute discretion as it deems appropriate, pursuant to a majority vote thereof, indemnify against liabilities incurred by, and/or provide for the allowance of reasonable expenses of, an employee or authorized agent of the company acting within the scope of his or her duties as such and who is not otherwise a director or officer.

Spectrum Brands, Inc. has purchased directors’ and officers’ liability insurance which would indemnify their directors and officers against damages arising out of certain kinds of claims which might be made against them based on their negligent acts or omissions while acting in their capacity as such.

WPC Brands, Inc.’s third amended and restated articles of incorporation provide that each person who was or is made a party or is threatened to be made a party to or is involved in any proceeding, whether civil, criminal,

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administrative or investigative by reason of the fact that he, or a person of whom he is the legal representative, is or was a director or officer, of the company or is or was serving at the request of the company as a director, officer, employee, fiduciary, or agent of another company or of a partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the company to the fullest extent which it is empowered to do so unless prohibited from doing so by the WBCL against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding). The company shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the company's board of directors. The company may, by action of its board of directors, provide indemnification to employees and agents of the company with the same scope and effect as the foregoing indemnification of directors and officers.

WPC Brands, Inc.'s bylaws do not contain any provisions relating to indemnification.

*Aquaria, Inc., Pets 'N People, Inc., Rovcal, Inc. and Southern California Foam, Inc.*

Aquaria, Inc., Pets 'N People, Inc., Rovcal, Inc. and Southern California Foam, Inc. are empowered by Section 317 of the California General Corporation Law ("CGCL") to indemnify any person who was or is a director, officer, employee or other agent of the companies, or who is or was serving at the request of the companies as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or who was a director, officer, employee or agent of a foreign or domestic corporation that was a predecessor corporation of the corporation or of another enterprise at the request of the predecessor corporation, (other than an action by or in right of the corporation), against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred by such person in connection with any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative. To be indemnified, such person must have acted (i) in good faith and (ii) in a manner that he or she reasonably believed to be in the best interests of the corporation; and, in the case of a criminal proceeding, such person must have acted without reasonable cause to believe that his or her conduct was unlawful. In respect of any action by or in right of a company, a company may indemnify any person who was or is an agent of the company against expenses actually and reasonably incurred by such person in connection with the defense or settlement of the action if he or she acted (i) in good faith and (ii) in a manner he or she believed to be in the best interests of the corporation and its shareholders.

Aquaria, Inc.'s second amended and restated articles of incorporation provide that the company is authorized to provide indemnification of agents for breach of duty to the company and its shareholders through bylaw provision or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by the California Corporations Code, subject to the limits on such excess indemnification set forth in such code.

Aquaria, Inc.'s amended and restated bylaws provide that each of the company's directors and officers shall be indemnified and held harmless by the company to the fullest extent authorized by the CGCL against any and all expenses, judgments, penalties, fines and amounts reasonably paid in settlement that are incurred by such director or officer or on such director's or officer's behalf in connection with any threatened, pending or completed proceeding or any claim, issue or matter therein, which such director or officer is, or is threatened to be made, a party to or participant in by reason of such director's or officer's corporate status, if such director or officer acted in good faith and in a manner such director or officer reasonably believed to be in or not opposed to the best interests of the company and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The company shall indemnify any director or officer seeking indemnification in connection with a proceeding initiated by such director or officer only if such proceeding was authorized by the company's board of directors, unless such proceeding was brought to enforce an officer or director's rights to indemnification under the company's bylaws. Additionally, the company may indemnify non-officer employees. Unless ordered by a court or required by Section 145(c) of the DGCL, no indemnification shall be provided to a director, to an officer or to a non-officer employee unless a determination shall have been

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made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the company and, with respect to any criminal proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. The company must advance all expenses incurred by or on behalf of any director, and may advance expenses incurred by an officer or non-officer employee, in connection with any proceeding in which such person is involved.

Pets 'N People, Inc.'s amended articles of incorporation and amended bylaws provide that the company is authorized to provide indemnification of agents for breach of duty to the company and its shareholders through bylaw provision or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by the California Corporations Code, subject to the limits on such excess indemnification set forth in such code.

Neither Rovcal, Inc.'s articles of incorporation nor its by-laws contain any provisions relating to indemnification.

Southern California Foam, Inc.'s articles of incorporation do not contain any provisions relating to indemnification.

Southern California Foam, Inc.'s amended bylaws provide that the company may indemnify and director, officer, agent or other employee as to those liabilities and on those terms and conditions as are specified in Section 317 of the CGCL.

### *Ground Zero, Inc. and Schultz Company*

Ground Zero, Inc. and Schultz Company are empowered by Section 355 of the General and Business Corporation Law of Missouri ("GBCLM") to indemnify any person who is party to any action by reason of the fact that such person is or was a director, officer, employee or agent of the companies or who was, at the request of the companies, serving as a director, officer, employee or agent of another company, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the companies and, with respect to criminal actions, had no reasonable cause to believe that his or her conduct was unlawful. Such indemnification is permitted in relation to actions by or in right of the companies, except that no indemnification is permitted with respect to actions as to which the person was adjudged to be liable for negligence or misconduct in the performance of his or her duties unless a court determines that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity.

Ground Zero, Inc.'s articles of incorporation do not contain any provisions relating to indemnification.

Ground Zero, Inc.'s bylaws provide that the company must indemnify, to the fullest extent permitted by law, any person who was or is a party (other than a party plaintiff suing on his or her own behalf or in the right of the company) or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of the company), by reason of the fact that such person is or was or has agreed to become a director or officer of the company, or is or was serving or has agreed to serve at the request of the company as a director or officer of another company, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, in the manner set forth by the GBCLM, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding. In addition, the company may indemnify any person who was or is a party (other than a party plaintiff suing on his or her own behalf or in the right of the company) or is threatened to be made a party to such action, suit or proceeding by reason of the fact that such person is or was or has agreed to become an employee or agent of the company, or is or was serving or has agreed to serve at the request of the

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company as an employee or agent of another company, partnership, joint venture, trust or other enterprise, upon a determination of the company's board of directors that such person should be indemnified.

Schultz Company's amended articles of incorporation provide that each person who was or is made a party or is threatened to be made a party to or is involved in any proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he, or a person of whom he is the legal representative, is or was a director or officer, of the company or is or was serving at the request of the company as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the company to the fullest extent which it is empowered to do so unless prohibited from doing so by the GBCLM against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding). The company shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the company. The company may provide indemnification to employees and agents of the company with the same scope and effect as the foregoing indemnification of directors and officers.

Schultz Company's amended bylaws do not contain any provisions relating to indemnification.

### *DB Online, LLC*

Pursuant to Section 403 of the Hawaii Uniform Limited Liability Company Act, DB Online, LLC must reimburse its members or managers for payments made and must indemnify them for liabilities incurred by them in the ordinary course of business of the company or for the preservation of the company's business or property.

DB Online, LLC's articles of organization do not contain any provisions relating to indemnification.

DB Online, LLC's operating agreement provides that to the fullest extent permitted by law, the company shall indemnify the member and the officers, directors and shareholders of the member, against any and all liability incurred and/or for any act performed by them in good faith and/or for any act in good faith omitted to be performed by them in good faith (including, without limitation, reasonable legal and other professional fees and expenses as the same are incurred) as or on behalf of a member (or affiliate thereof) of the company.

*United Industries Corporation, AQ Holdings, Inc., Aquarium Systems, Inc., IB Nitrogen, Inc., JungleTalk International, Inc., Nu-Gro US Holdco Corporation, Nu-Gro America Corp., Nu-Gro Technologies, Inc., Perfecto Holding Corp., Perfecto Manufacturing, Inc., ROV Holding, Inc., Sylorr Plant Corp., Tetra Holding (US), Inc., Willinger Bros., Inc. and United Pet Group, Inc.*

United Industries Corporation, AQ Holdings, Inc., Aquarium Systems, Inc., IB Nitrogen, Inc., JungleTalk International, Inc., Nu-Gro US Holdco Corporation, Nu-Gro America Corp., Nu-Gro Technologies, Inc., Perfecto Holding Corp., Perfecto Manufacturing, Inc., ROV Holding, Inc., Sylorr Plant Corp. and United Pet Group, Inc. are empowered by Section 145 of the Delaware General Corporation Law ("DGCL"), subject to the procedures and limitations therein, to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reasons of the fact that he or she is or was a director, officer, employee or agent of the companies or is or was serving at the request of the companies as a director, officer, employee or agent of another corporation or other enterprise against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the companies and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. In the case of an action brought by or in the right of the companies, the companies may indemnify a director, officer, employee or agent of the companies (or other entity if such person is serving in such capacity at the companies' request) against expenses (including attorneys' fees) actually and



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reasonably incurred by him or her if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the companies, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the companies unless a court determines that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as the court shall deem proper. In addition, unless limited by its articles of incorporation, a company shall indemnify a present or former director or officer of the company who was successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a director, officer, employee or agent against expenses actually and reasonably incurred by him or her in connection with the proceeding. A company has the power to purchase and maintain insurance on behalf of any of the persons described above against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the company would have the power to indemnify such person against such liability under the DGCL.

United Industries Corporation's amended and restated certificate of incorporation does not contain any provisions relating to indemnification.

United Industries Corporation's bylaws provide that company shall indemnify each person who is or was a director, officer or employee of the company (including the heirs, executors, administrators or estate of such person) or is or was serving at the request of the company as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise to the full extent permitted under Sections 145(a), (b) and (c) of the DGCL or any other provisions of the laws of the State of Delaware. Indemnification is not permitted for any breach of the director's duty of loyalty to the company or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, under DGCL Section 174, or for any transaction from which the director derived an improper personal benefit.

AQ Holdings, Inc.'s amended and restated certificate of incorporation provides that if a director or officer of the company is made a party to any civil or criminal action or proceeding in any matter arising from the performance by such director or officer or his or her duties for or on behalf of the company, then, to the full extent permitted by law, the company shall, advance to such director, or upon approval of the board of directors to any officer, all sums necessary and appropriate to enable the director or officer to conduct his or her defense or appeal, in the action or proceeding, and indemnify such director or officer for all sums paid by him or her in the way of judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred in connection with the action or proceeding. No indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. Additionally, no director shall be personally liable to the company or its stockholders for monetary damages for breach of his or her fiduciary duty as a director of the corporation, except for liability for any breach of the director's duty of loyalty to the company or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, under Section 174 of the DGCL, or for any transaction from which the director derived an improper personal benefit.

AQ Holdings, Inc.'s bylaws provide that, in addition to the indemnification required under the DGCL, the company shall grant such indemnification to each of its directors and officers with respect to any matter in a proceeding as to which his liability is limited pursuant to the company's certificate of incorporation. However, such indemnification shall exclude indemnification with respect to any improper personal benefit which a director or officer is determined to have received and the expenses of defending against an improper personal benefit claim unless the director or officer is successful on the merits in said defense, and indemnification of present or former officers, directors, employees or agents of a constituent corporation absorbed in a merger or consolidation transaction with AQ Holdings, Inc. with respect to their activities prior to said transaction, unless

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specifically authorized by AQ Holdings, Inc.'s board of directors or stockholders. Such indemnification shall include prompt payment of expenses incurred by a director or officer in defending a proceeding in advance of the final disposition of such proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay such amounts if it shall ultimately be determined that he is not entitled to be indemnified by the corporation, which undertaking shall be an unsecured general obligation of the director or officer and may be accepted without regard to his ability to make repayment. Additionally, the company may grant rights to indemnification and to an advancement of expenses to any person who was or is a party or is threatened to be made a party to or is otherwise involved in any proceeding by reason of the fact that he is or was an employee or agent of the company or is or was serving at the request of the company, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

Aquarium Systems, Inc.'s certificate of incorporation does not contain any provisions relating to indemnification.

Aquarium Systems, Inc.'s bylaws provide that each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed proceeding by reason of the fact that he or she is or was a director, officer or employee of the company or is or was serving at the request of the company as a director, officer or employee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan shall be indemnified and held harmless by the company to the fullest extent authorized by the DGCL against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith. Such indemnification is only required if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the company, and with respect to a criminal action or proceeding, if such person had no reasonable cause to believe his conduct was unlawful. For proceedings by or in the right of the company, no indemnification shall be made in relation to matters as to which it shall be adjudged in such proceeding that such director, officer, employee or agent is liable to the company, unless a court shall determine that, despite such adjudication, such person is fairly and reasonably entitled to indemnification.

IB Nitrogen, Inc.'s certificate of incorporation does not contain any provisions relating to indemnification.

IB Nitrogen, Inc.'s bylaws provide that the company shall indemnify any director, officer, or employee, or former director, officer, or employee of the company, or any person who may have served at its request as a director, officer, or employee of another company in which it owns stock, or of which it is a creditor, against expenses actually and necessarily incurred by him and any amount paid in satisfaction of judgments in connection with any action, suit or proceeding whether civil or criminal in nature, in which he is made a party by reason of being or having been such a director, officer or employee (whether or not a director, officer, or employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to the matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The company may also reimburse to any director, officer, or employee the reasonable costs of settlement of any action, suit or proceeding, if it shall be found by a majority of the board of the directors not involved in the matter in controversy, whether or not a quorum, that it was to the interest of the company that such settlement be made and that such director, officer or employee was not guilty of gross negligence or willful misconduct.

JungleTalk International, Inc.'s certificate of incorporation does not contain any provisions relating to indemnification.

JungleTalk International, Inc.'s bylaws provide that the company shall indemnify each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed proceeding, by reason of the fact that he or she is or was a director, officer or employee of the company or is or was serving at the request of the company as a director, officer or employee of another

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corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding is alleged action in an official capacity while serving as a director, officer or employee or in any other capacity while serving as a director, officer or employee, against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith. Such indemnification is required only if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the company, and with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. No indemnification shall be made in the case of an action, suit or proceeding by or in the right of the company in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director, officer, employee or agent is liable to the company, unless a court shall determine that, despite such adjudication, such person is fairly and reasonably entitled to indemnification.

Nu-Gro US Holdco Corporation's certificate of incorporation provides that the company shall have the power to indemnify any person who was or is a party or is threatened to be made a party to, or testifies in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature, by reason of the fact that such person is or was a director, officer, employee or agent of the company, or is or was serving at the request of the company as a director, officer, employee or agent of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding to the full extent permitted by law, and the company may adopt bylaws or enter into agreements with any such person for the purpose of providing for such indemnification.

Nu-Gro US Holdco Corporation's bylaws do not contain any provisions relating to indemnification.

Nu-Gro America Corp.'s certificate of incorporation does not contain any provisions relating to indemnification.

Nu-Gro America Corp.'s bylaws provide that the company shall indemnify any director, officer, or employee, or former director, officer, or employee of the company, or any person who may have served at its request as a director, officer, or employee of another company in which it owns stock, or of which it is a creditor, against expenses actually and necessarily incurred by him and any amount paid in satisfaction of judgments in connection with any action, suit or proceeding whether civil or criminal in nature, in which he is made a party by reason of being or having been such a director, officer or employee (whether or not a director, officer, or employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to the matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The company may also reimburse to any director, officer, or employee the reasonable costs of settlement of any action, suit or proceeding, if it shall be found by a majority of the board of the directors not involved in the matter in controversy, whether or not a quorum, that it was to the interest of the company that such settlement be made and that such director, officer or employee was not guilty of gross negligence or willful misconduct.

Nu-Gro Technologies, Inc.'s certificate of incorporation does not contain any provisions relating to indemnification.

Nu-Gro Technologies, Inc.'s bylaws provide that the company shall indemnify any director, officer, or employee, or former director, officer, or employee of the company, or any person who may have served at its request as a director, officer, or employee of another company in which it owns stock, or of which it is a creditor, against expenses actually and necessarily incurred by him and any amount paid in satisfaction of judgments in connection with any action, suit or proceeding whether civil or criminal in nature, in which he is made a party by reason of being or having been such a director, officer or employee (whether or not a director, officer, or

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employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to the matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The company may also reimburse to any director, officer, or employee the reasonable costs of settlement of any action, suit or proceeding, if it shall be found by a majority of the board of the directors not involved in the matter in controversy, whether or not a quorum, that it was to the interest of the company that such settlement be made and that such director, officer or employee was not guilty of gross negligence or willful misconduct.

Perfecto Holding Corp.'s fourth amended and restated certificate of incorporation provides that if a director or officer of the company is made a party to any civil or criminal action or proceeding in any matter arising from the performance by such director or officer or his or her duties for or on behalf of the company, then, to the full extent permitted by law, the company shall advance to such director, or upon approval of the board of directors to any officer, all sums necessary and appropriate to enable the director or officer to conduct his or her defense or appeal, in the action or proceeding, and indemnify such director or officer for all sums paid by him or her in the way of judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred, in connection with the action or proceeding, or appeal therein, subject to the proper application of credit for any sums advanced to the director or officer. No indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Perfecto Holding Corp.'s amended and restated bylaws provide that the company shall indemnify any person who was or is a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed proceeding, whether civil, criminal, administrative, investigative or otherwise, and whether by or in the right of the corporation, its stockholders, a third party or otherwise, by reason of the fact that he is or was a director or officer of the company, or is or was a director or officer of the corporation serving at its request as a director, officer, employee or agent of another company, partnership, joint venture, trust or other enterprise, against all expense (including, but not limited to, attorneys' fees), liability, loss, judgments, fines, excise taxes, penalties and amounts paid in settlement actually and reasonably incurred by him in connection with such proceeding, including expenses incurred in seeking such indemnification. In addition, the company shall grant such indemnification to each of its directors and officers with respect to any matter in a proceeding relating to breach of fiduciary duty. However, such indemnification shall exclude indemnification with respect to any improper personal benefit which a director or officer is determined to have received and the expenses of defending against an improper personal benefit claim unless the director or officer is successful on the merits in said defense, and indemnification of present or former officers, directors, employees or agents of a constituent corporation absorbed in a merger or consolidation transaction with this corporation with respect to their activities prior to said transaction, unless specifically authorized by the board of directors or stockholders of this corporation. Such indemnification shall include prompt payment of expenses incurred. In addition, the company may grant rights to indemnification and to an advancement of expenses to any person who was or is a party or is threatened to be made a party to or is otherwise involved in any proceeding by reason of the fact that he is or was an employee or agent of the corporation or is or was serving at the request of the corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

Perfecto Manufacturing, Inc.'s certificate of incorporation does not contain any provisions relating to indemnification.

Perfecto Manufacturing, Inc.'s bylaws provide that each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed proceeding by reason of the fact that he or she is or was a director, officer or employee of the company or is or was serving at the request of the company as a director, officer or employee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding

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is alleged action in an official capacity while serving as a director, officer or employee or in any other capacity while serving as a director, officer or employee, shall be indemnified and held harmless by the company against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith. Such indemnification is required only if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the company, and with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. No indemnification shall be made in the case of an action, suit or proceeding by or in the right of the company in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director, officer, employee or agent is liable to the company, unless a court shall determine that, despite such adjudication, such person is fairly and reasonably entitled to indemnification. The company shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) initiated by such indemnitee was authorized by the company's board of directors.

ROV Holding, Inc.'s certificate of incorporation does not contain any provisions relating to indemnification.

ROV Holding, Inc.'s bylaws provide that any person threatened to be or made party to any threatened, pending or completed action, suit or proceeding by reason of the fact that such person is or was a director, officer, employee or agent of the company or was serving at the request of the company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall be indemnified in the manner and to the full extent permitted by law. Where required by law, such indemnification shall be made only as authorized in the specific case upon a determination that indemnification is proper in the circumstances. To the extent permitted by law, such indemnification shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement and, in the manner provided by law, any such expenses may be paid in advance of the final disposition of such action, suit or proceeding.

Sylorr Plant Corp.'s certificate of incorporation does not contain any provisions relating to indemnification.

Sylorr Plant Corp.'s bylaws provide that each person who was or is made a party or is threatened to be made a party to or is involved in any proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he, or a person of whom he is the legal representative, is or was a director or officer, of the company or is or was serving at the request of the company as a director, officer, employee, fiduciary, or agent of another company or of a partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the company to the fullest extent which it is empowered to do so unless prohibited from doing so by the DGCL against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding). The company shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the company. The company may, by action of its board of directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

Tetra Holding (US), Inc.'s bylaws provide that the company shall indemnify any person who is a party to any proceeding by reason of the fact that such person was a director or officer of the company, and may indemnify any such person who was subject to such proceeding by reason of the fact that such person was an employee or agent of the company, or was serving at the request of the company as a director, officer, employee or agent of another company, against expenses (including attorneys' fees) judgments, fines and amounts actually and reasonably incurred in connection with such proceeding if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the company and, with respect to criminal proceedings, had no reasonable cause to believe that his or her conduct was unlawful. Such indemnification is also required with respect to suits brought in the right of the company, provided that no indemnification shall be made with respect to proceedings as to which such person shall have been adjudged to be liable for negligence or misconduct unless a court shall determine that, despite the adjudication of liability but in view of all circumstances, such person is fairly and reasonably entitled to indemnity.

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Tetra Holding (US), Inc.'s certificate of incorporation provides that the company shall indemnify each director and officer of the company to the fullest extent permitted by applicable law, except as may be otherwise provided in the company's bylaws.

Willinger Bros., Inc.'s bylaws do not contain any provisions relating to indemnification.

Willinger Bros., Inc.'s certificate of incorporation provides that the company shall have the power to indemnify any person who is a party to a proceeding, other than a proceeding by or in the right of the company, by reason of the fact that he or she is or was an officer, director, employee or agent of the company, or is or was serving at the request of the company as an officer, director, employee or agent of another company, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred, if such person acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the company and, with respect to criminal proceedings, had no reasonable cause to believe that his or her conduct was unlawful. The company may also indemnify any such persons against proceedings by or in right of the company, provided that no indemnification is permitted with respect to proceedings under which such person shall have been adjudged to be liable for negligence or misconduct, unless a court shall determine that, despite the adjudication of liability, such person is fairly and reasonably entitled to indemnity.

United Pet Group, Inc.'s amended and restated certificate of incorporation provides that the company shall indemnify any person who was or is a party or is threatened to be made a party to, or testifies in, any threatened, pending or completed proceeding, whether civil, criminal, administrative or investigative in nature, by reason of the fact that such person is or was a director, officer, employee or agent of the company, or is or was serving at the request of the company as a director, officer, employee or agent of another company, partnership, joint venture, employee benefit plan, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suite or proceeding to the full extent permitted by law, and the company may adopt bylaws or enter into agreements with any such person for the purpose of providing for such indemnification.

United Pet Group, Inc.'s amended and restated bylaws do not contain any provisions relating to indemnification.

### **Item 21. Exhibits and Financial Statement Schedules**

(a) Exhibits.

See Index of Exhibits (page E-1).

### **Item 22. Undertakings**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

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(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(e) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

**SIGNATURES**

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the cities and states indicated below on June 3, 2005.

Signed in the city of Atlanta, state of Georgia:

SPECTRUM BRANDS, INC.

By: \_\_\_\_\_ /s/ JAMES T. LUCKE  
Name: \_\_\_\_\_ **James T. Lucke**  
Title: \_\_\_\_\_ **Senior Vice President–  
General Counsel and Secretary**

ROV HOLDING, INC.

By: \_\_\_\_\_ /s/ JAMES T. LUCKE  
Name: \_\_\_\_\_ **James T. Lucke**  
Title: \_\_\_\_\_ **Secretary**

ROVCAL, INC.

By: \_\_\_\_\_ /s/ JAMES T. LUCKE  
Name: \_\_\_\_\_ **James T. Lucke**  
Title: \_\_\_\_\_ **Secretary**

Signed in the city of St. Louis, state of Missouri:

UNITED INDUSTRIES CORPORATION

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: \_\_\_\_\_ **Louis N. Laderman**  
Title: \_\_\_\_\_ **Vice President, Secretary and General Counsel**

SCHULTZ COMPANY

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: \_\_\_\_\_ **Louis N. Laderman**  
Title: \_\_\_\_\_ **Vice President and Secretary**

WPC BRANDS, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: \_\_\_\_\_ **Louis N. Laderman**  
Title: \_\_\_\_\_ **Vice President and Secretary**

SYLORR PLANT CORP.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: \_\_\_\_\_ **Louis N. Laderman**  
Title: \_\_\_\_\_ **Vice President and Secretary**

GROUND ZERO, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: \_\_\_\_\_ **Louis N. Laderman**  
Title: \_\_\_\_\_ **Vice President and Secretary**



NU-GRO US HOLDCO CORPORATION.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Secretary**

NU-GRO AMERICA CORP.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

IB NITROGEN INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

NU-GRO TECHNOLOGIES, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

UNITED PET GROUP, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

DB ONLINE, LLC

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

SOUTHERN CALIFORNIA FOAM, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

AQ HOLDINGS, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

AQUARIA, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

PERFECTO HOLDING CORP.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

AQUARIUM SYSTEMS, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

PERFECTO MANUFACTURING, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

JUNGLETALK INTERNATIONAL, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

PETS 'N PEOPLE, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**

Signed in the city of Blacksburg, state of Virginia:

TETRA HOLDING (US), INC.

By: \_\_\_\_\_ /s/ KEVIN BRENNER  
Name: **Kevin Brenner**  
Title: **President and CEO**

WILLINGER BROS., INC.

By: \_\_\_\_\_ /s/ KEVIN BRENNER  
Name: **Kevin Brenner**  
Title: **President and CEO**

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints James T. Lucke and each of them his, her or its true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him, her or it and in his, her or its name, place and stead, in any and all capacities, to sign any and all amendments to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he, she or it might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

ROV HOLDING, INC.

By: \_\_\_\_\_ /s/ JAMES T. LUCKE

Name: **James T. Lucke**

Title: **Secretary**

Date: June 3, 2005

ROVCAL, INC.

By: \_\_\_\_\_ /s/ JAMES T. LUCKE

Name: **James T. Lucke**

Title: **Secretary**

Date: June 3, 2005

UNITED INDUSTRIES CORPORATION

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN

Name: **Louis N. Laderman**

Title: **Vice President, Secretary and General Counsel**

Date: June 3, 2005

SCHULTZ COMPANY

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN

Name: **Louis N. Laderman**

Title: **Vice President and Secretary**

Date: June 3, 2005

WPC BRANDS, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN

Name: **Louis N. Laderman**

Title: **Vice President and Secretary**

Date: June 3, 2005

SYLORR PLANT CORP.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

GROUND ZERO, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

NU-GRO US HOLDCO CORPORATION

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Secretary**  
Date: June 3, 2005

NU-GRO AMERICA CORP.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

IB NITROGEN INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

NU-GRO TECHNOLOGIES, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

UNITED PET GROUP, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

DB ONLINE, LLC

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

SOUTHERN CALIFORNIA FOAM, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

AQ HOLDINGS, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

AQUARIA, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

PERFECTO HOLDING CORP.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

AQUARIUM SYSTEMS, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

PERFECTO MANUFACTURING, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

JUNGLETALK INTERNATIONAL, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

PETS 'N PEOPLE, INC.

By: \_\_\_\_\_ /s/ LOUIS N. LADERMAN  
Name: **Louis N. Laderman**  
Title: **Vice President and Secretary**  
Date: June 3, 2005

TETRA HOLDING (US), INC.

By: \_\_\_\_\_ /s/ KEVIN BRENNER  
Name: **Kevin Brenner**  
Title: **President and CEO**  
Date: June 3, 2005

WILLINGER BROS., INC.

By: \_\_\_\_\_ /s/ KEVIN BRENNER  
Name: **Kevin Brenner**  
Title: **President and CEO**  
Date: June 3, 2005

**EXHIBIT INDEX**

Exhibit 1.1	Purchase Agreement, dated January 21, 2005, by and among Rayovac Corporation, ROV Holding, Inc., Rovcal, Inc., Banc of America Securities LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and ABN AMRO (filed by incorporation by reference to Exhibit 1.1 to the Current Report on Form 8-K filed with the SEC on January 24, 2005).
Exhibit 2.1	Agreement and Plan of Merger, dated January 3, 2005, by and among Rayovac Corporation, Lindbergh Corporation and United Industries Corporation (filed by incorporation by reference to Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC on January 4, 2005).
Exhibit 3.1	Amended and Restated Articles of Incorporation of Spectrum Brands, Inc. (filed by incorporation by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q for the quarterly period ended April 3, 2005 filed with the SEC on May 12, 2005).
Exhibit 3.2	Amended and Restated By-laws of Spectrum Brands, Inc. (filed by incorporation by reference to Exhibit 3.2 to the Quarterly Report on Form 10-Q for the quarterly period ended April 3, 2005 filed with the SEC on May 12, 2005).
Exhibit 3.3*	AQ Holdings, Inc. Amended and Restated Certificate of Incorporation.
Exhibit 3.4*	AQ Holdings, Inc. By-Laws.
Exhibit 3.5*	Aquaria, Inc. Second Amended and Restated Articles of Incorporation.
Exhibit 3.6*	Aquaria, Inc. Amended and Restated By-Laws.
Exhibit 3.7*	Aquarium Systems, Inc. Certificate of Incorporation.
Exhibit 3.8*	Aquarium Systems, Inc. By-Laws.
Exhibit 3.9*	DB Online, LLC Articles of Organization.
Exhibit 3.10*	DB Online, LLC Operating Agreement.
Exhibit 3.11*	Ground Zero Inc. Articles of Incorporation.
Exhibit 3.12*	Ground Zero Inc. By-Laws.
Exhibit 3.13*	IB Nitrogen Inc. Certificate of Incorporation.
Exhibit 3.14*	IB Nitrogen Inc. By-Laws.
Exhibit 3.15*	JungleTalk International, Inc. Certificate of Incorporation.
Exhibit 3.16*	JungleTalk International, Inc. By-Laws.
Exhibit 3.17*	Nu-Gro America Corp. Certificate of Incorporation.
Exhibit 3.18*	Nu-Gro America Corp. By-Laws.
Exhibit 3.19*	Nu-Gro Technologies, Inc. Certificate of Incorporation.
Exhibit 3.20*	Nu-Gro Technologies, Inc. By-Laws.
Exhibit 3.21*	Nu-Gro US Holdco Corporation Certificate of Incorporation.
Exhibit 3.22*	Nu-Gro US Holdco Corporation By-Laws.
Exhibit 3.23*	Perfecto Holding Corp. Fourth Amended and Restated Certificate of Incorporation.
Exhibit 3.24*	Perfecto Holding Corp. Amended and Restated By-Laws.

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Exhibit 3.25*	Perfecto Manufacturing, Inc. Certificate of Incorporation.
Exhibit 3.26*	Perfecto Manufacturing, Inc. By-Laws.
Exhibit 3.27*	Pets ‘N People, Inc. Articles of Incorporation.
Exhibit 3.28*	Pets ‘N People, Inc. By-Laws.
Exhibit 3.29	ROV Holding, Inc. Certificate of Incorporation (filed by incorporation by reference to Exhibit 3.3 to the Registration Statement on Form S-4 filed with the SEC on November 6, 2003).
Exhibit 3.30	ROV Holding, Inc. By-Laws (filed by incorporation by reference to Exhibit 3.4 to the Registration Statement on Form S-4 filed with the SEC on November 6, 2003).
Exhibit 3.31	Rovcal, Inc. Articles of Incorporation (filed by incorporation by reference to Exhibit 3.5 to the Registration Statement on Form S-4 filed with the SEC on November 6, 2003).
Exhibit 3.32	Rovcal, Inc. By-Laws (filed by incorporation by reference to Exhibit 3.6 to the Registration Statement on Form S-4 filed with the SEC on November 6, 2003).
Exhibit 3.33*	Schultz Company Amended Articles of Incorporation.
Exhibit 3.34*	Schultz Company By-Laws.
Exhibit 3.35*	Southern California Foam, Inc. Articles of Incorporation.
Exhibit 3.36*	Southern California Foam, Inc. By-Laws.
Exhibit 3.37*	Sylorr Plant Corp. Certificate of Incorporation.
Exhibit 3.38*	Sylorr Plant Corp. By-Laws.
Exhibit 3.39*	Tetra Holding (US), Inc. Certificate of Incorporation.
Exhibit 3.40*	Tetra Holding (US), Inc. By-Laws
Exhibit 3.41*	United Industries Corporation Amended and Restated Certificate of Incorporation.
Exhibit 3.42*	United Industries Corporation By-Laws.
Exhibit 3.43*	United Pet Group, Inc. Amended and Restated Certificate of Incorporation.
Exhibit 3.44*	United Pet Group, Inc. Amended and Restated By-Laws.
Exhibit 3.45*	Willinger Bros., Inc. Certificate of Incorporation.
Exhibit 3.46*	Willinger Bros., Inc. By-Laws.
Exhibit 3.47*	WPC Brands, Inc. Third Amended and Restated Articles of Incorporation.
Exhibit 3.48*	WPC Brands, Inc. By-Laws.
Exhibit 4.1	Indenture dated as of February 7, 2005 by and among Rayovac Corporation, certain of Rayovac Corporation’s domestic subsidiaries and U.S. Bank National Association (filed by incorporation by reference to Exhibit 4.1 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).
Exhibit 4.2	Supplemental Indenture dated as of May 3, 2005 to the Indenture dated as of February 7, 2005 by and among Spectrum Brands, Inc., the Guarantors (as defined in the Indenture), certain of Spectrum Brands, Inc.’s domestic subsidiaries and U.S. Bank National Association (filed by incorporation by reference to Exhibit 4.2 to the Current Report on Form 8-K filed with the SEC on May 5, 2005).



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Exhibit 4.3	Indenture, dated September 30, 2003, by and among Rayovac Corporation, ROV Holding, Inc., Rovcal, Inc., Vestar Shaver Corp., Vestar Razor Corp., Remington Products Company, L.L.C., Remington Capital Corporation, Remington Rand Corporation, Remington Corporation, L.L.C. and U.S. Bank National Association (filed by incorporation by reference to the Current Report on Form 8-K filed with the SEC on October 15, 2003).
Exhibit 4.4	Supplemental Indenture, dated October 24, 2003, by and among Rayovac Corporation, ROV Holding, Inc., Rovcal, Inc., Remington Products Company, L.L.C. and U.S. Bank National Association (filed by incorporation by reference to the Registration Statement on Form S-4 filed with the SEC on November 6, 2003).
Exhibit 4.5	Third Supplemental Indenture dated as of February 7, 2005 to the Indenture dated as of September 30, 2003 by and among Rayovac Corporation, certain of Rayovac Corporation's domestic subsidiaries and U.S. Bank National Association (filed by incorporation by reference to Exhibit 4.2 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).
Exhibit 4.6	Fourth Supplemental Indenture dated as of May 3, 2005 to the Indenture dated as of September 20, 2003 by and among Spectrum Brands, Inc., the Guarantors (as defined in the Indenture), certain of Spectrum Brands, Inc.'s domestic subsidiaries and U.S. Bank National Association (filed by incorporation by reference to Exhibit 4.1 to the Current Report on Form 8-K filed with the SEC on May 5, 2005).
Exhibit 4.7	Registration Rights Agreement dated as of February 7, 2005 by and between Rayovac Corporation, certain of Rayovac's domestic subsidiaries, Banc of America Securities LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and ABN AMRO Incorporated (filed by incorporation by reference to Exhibit 4.3 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).
Exhibit 4.8	Specimen certificate representing the common stock (filed by incorporation by reference to the Registration Statement on Form S-1, Registration No. 333-35181).
Exhibit 5.1*	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP.
Exhibit 5.2*	Opinion of James T. Lucke, Senior Vice President, Secretary and General Counsel of Spectrum Brands, Inc.
Exhibit 5.3*	Opinion of Thompson Coburn LLP.
Exhibit 5.4*	Opinion of Foley & Lardner LLP.
Exhibit 5.5*	Opinion of Cades Schutte LLP.
Exhibit 10.1	Amended and Restated Employment Agreement, effective as of October 1, 2004, by and between Rayovac Corporation and David A. Jones (incorporated by reference to Exhibit 10.1 to the Annual Report on Form 10-K for the fiscal year ended September 30, 2002, filed with the SEC on December 14, 2004).
Exhibit 10.2	Amended and Restated Employment Agreement, dated as of April 1, 2005, by and between Rayovac Corporation and Kent J. Hussey (filed by incorporation by reference to Exhibit 10.1 to the Current Report on Form 8-K filed with the SEC on April 7, 2005).
Exhibit 10.3	Amended and Restated Employment Agreement, dated as of April 1, 2005, by and between the Company and Kenneth V. Biller (filed by incorporation by reference to Exhibit 10.2 to the Current Report on Form 8-K filed with the SEC on April 7, 2005).
Exhibit 10.4	Amended and Restated Registered Director's Agreement, dated April 1, 2005, by and between Rayovac Europe GmbH and Remy Burel (filed by incorporation by reference to exhibit 10.3 to the Current Report on Form 8-K filed with the SEC on April 7, 2005).

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Exhibit 10.5	Separation Agreement and Release between the Company and Lester Lee dated as of April 13, 2005 (filed by incorporation by reference to Exhibit 10.1 to the Current Report on Form 8-K filed with the SEC on April 19, 2005).
Exhibit 10.6	Building Lease between Rayovac Corporation and SPG Partners dated May 14, 1985, as amended June 24, 1986, and June 10, 1987 (filed by incorporation by reference to the Registration Statement on form S-1 filed with the SEC on December 13, 1996).
Exhibit 10.7	Amendment, dated December 31, 1998, between Rayovac Corporation and SPG Partners, to the Building Lease, between Rayovac Corporation and SPG Partners, dated May 14, 1985 (filed by incorporation by reference to Exhibit 10.12 to the Quarterly Report on Form 10-Q for the quarterly period ended January 3, 1999, filed with the SEC on February 17, 1999).
Exhibit 10.8	Real Property Leasing Agreement, dated December 21, 2000, by and between VARTA Gerätebatterie GmbH, as Tenant, and ROSATA Grudstücks-Vermietungsgesellschaft mbH and Co. object Dischingin KG, as Landlord, as amended (filed by incorporation by reference to Exhibit 10.15 to the Quarterly Report on Form 10-Q for the quarterly period ended December 29, 2002, filed with the SEC on February 12, 2003).
Exhibit 10.9	Addendum No. 2 to Real Property Leasing Agreement, dated December 21, 2000, by and between VARTA Gerätebatterie GmbH, as Tenant, and ROSATA Grudstücks-Vermietungsgesellschaft mbH and Co. object Dischingin KG, as Landlord, as amended (filed by incorporation by reference to Exhibit 10.16 to the Registration Statement on Form S-4 filed with the SEC on November 6, 2003).
Exhibit 10.10	Fourth Amended and Restated Credit Agreement, dated February 7, 2005 between Rayovac Corporation, the Subsidiary Borrowers named therein, Bank of America, N.A., Citicorp North America, Inc., Merrill Lynch Capital Corporation, the other lenders party thereto, Banc of America Securities LLC, Citigroup Global Markets Inc., and Merrill Lynch, Pierce, Fenner & Smith (filed by incorporation by reference to Exhibit 10.1 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).
Exhibit 10.11	Amendment No.1 dated as of April 29, 2005 to the Fourth Amended and Restated Credit Agreement dated as of February 7, 2005 (filed by incorporation by reference to Exhibit 10.14 to the current report on Form 8-K filed with the SEC on May 5, 2005).
Exhibit 10.12	Security Agreement, dated February 7, 2005, between the Grantors referred to therein and Bank Of America, N.A. (filed by incorporation by reference to Exhibit 10.2 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).
Exhibit 10.13	ROV Guarantee, dated as of February 7, 2005 from the ROV Guarantors named therein and the Additional ROV Guarantors named therein in favor of the Secured Parties referred to in the Credit Agreement referred to therein (filed by incorporation by reference to Exhibit 10.3 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).
Exhibit 10.14	KGaA Guarantee dated as of February 7, 2005 from the KGaA Guarantors named therein and the Additional KGaA Guarantors referred to therein in favor of the Lenders referred to in the Credit Agreement referred to therein (filed by incorporation by reference to Exhibit 10.4 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).
Exhibit 10.15	UK Guarantee dated as of February 7, 2005 from the UK Guarantors named therein and the Additional UK Guarantors referred to therein in favor of the Lenders referred to in the Credit Agreement referred to therein (filed by incorporation by reference to Exhibit 10.5 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).

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Exhibit 10.16	Registration Rights Agreement, dated February 7, 2005, by and among Rayovac Corporation and those Persons listed on Schedule I attached thereto, who were, immediately prior to the Effective Time, stockholders of United Industries Corporation (filed by incorporation by reference to Exhibit 10.6 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).
Exhibit 10.17	Standstill Agreement by and between Rayovac Corporation, Thomas H. Lee Equity Fund IV, L.P., THL Equity Advisors IV, LLC, Thomas H. Lee Partners, L.P., and Thomas H. Lee Advisors, L.L.C. (filed by incorporation by reference to Exhibit 10.7 to the Current Report on Form 8-K filed with the SEC on February 11, 2005).
Exhibit 10.18	Joint Venture Agreement, dated July 28, 2002, by and among Rayovac Corporation, VARTA AG and ROV German Limited GmbH, as amended (filed by incorporation by reference to Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC on October 16, 2002).
Exhibit 10.19	Technical Collaboration, Sale and Supply Agreement, dated as of March 5, 1998, by and among Rayovac Corporation, Matsushita Battery Industrial Co., Ltd. and Matsushita Electric Industrial Co., Ltd. (filed by incorporation by reference to Exhibit 10.15 to the Quarterly Report on Form 10-Q for the quarterly period ended March 28, filed with the SEC on May 5, 1998).
Exhibit 10.20	Lease by and between Rex Realty Co., Lessor, and United Industries Corporation, Lessee, effective December 1, 1995 (filed by incorporation by reference to Exhibit 10.16 to the Form S-4 of United Industries Corporation (SEC file # 333-76055) filed with SEC on April 9, 1999).
Exhibit 10.21	Lease and Agreement between LGH Investment, L.L.C., as Landlord, and Chemical Dynamics, Inc. d/b/a Schultz Company, as Tenant, dated January 18, 2000 (filed by incorporation by reference to Exhibit 10.21 to the Quarterly Report on Form 10-Q for the quarterly period ended April 3, 2005 filed with the SEC on May 13, 2005).
Exhibit 10.22	Lease Agreement between Pursell Holdings, LLC, as Lessor, and Sylorr Plant Corp., as Lessee, dated October 3, 2002 (filed by incorporation by reference to Exhibit 10.22 to the Quarterly Report on Form 10-Q for the quarterly period ended April 3, 2005 filed with the SEC on May 13, 2005).
Exhibit 10.23	Trademark License and Manufacturing and Supply Agreement by and between United Industries Corporation and Home Depot U.S.A., Inc. effective as of January 1, 2004 (filed by incorporation by reference to Exhibit 10.50 to the Quarterly Report on Form 10-Q of United Industries Corporation (SEC file # 333-76055) for the quarterly period ended March 31, 2004, filed with the SEC on May 14, 2004).
Exhibit 10.24	Rayovac Corporation 1996 Stock Option Plan (filed by incorporation by reference to Exhibit 10.11 to the Quarterly Report on Form 10-Q for the quarterly period ended June 29, 1997, filed with the SEC on August 13, 1997).
Exhibit 10.25	1997 Rayovac Incentive Plan (filed by incorporation by reference to Exhibit 10.13 to the Registration Statement on Form S-1 filed with the SEC on October 31, 1997).
Exhibit 10.26	2004 Rayovac Incentive Plan (filed by incorporation by reference to Exhibit 10.24 to the Quarterly Report on Form 10-Q for the quarterly period ended June 27, 2004, filed with the SEC on August 11, 2004).
Exhibit 10.27	Form of Award Agreements under 2004 Rayovac Incentive Plan (filed by incorporation by reference to Exhibit 10.21 to the Annual Report on Form 10-K for the year ended September 30, 2004, filed with the SEC on December 14, 2004).

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Exhibit 10.28	Form of Restricted Stock Award Agreement under the 2004 Rayovac Incentive Plan (filed by incorporation by reference to Exhibit 10.4 to the Current Report on Form 8-K filed with the SEC on April 7, 2005).
Exhibit 10.29	Form of Superior Achievement Program Restricted Stock Award Agreement under the 2004 Rayovac Incentive Plan (filed by incorporation by reference to Exhibit 10.5 to the Current Report on Form 8-K filed with the SEC on April 7, 2005).
Exhibit 10.30	Rayovac Corporation Supplemental Executive Retirement Plan (filed by incorporation by reference to Exhibit 10.21 to the Quarterly Report on Form 10-Q for the quarterly period ended December 29, 2002, filed with the SEC on February 12, 2003).
Exhibit 10.31	Amendment No. 3 to Rayovac Corporation Supplemental Executive Retirement Plan (filed by incorporation by reference to Exhibit 10.28 to the Quarterly Report on Form 10-Q for the quarterly period ended June 27, 2004, filed with the SEC on August 11, 2004).
Exhibit 10.32	Rayovac Corporation Deferred Compensation Plan, as amended (filed by incorporation by reference to Exhibit 10.22 to the Quarterly Report on Form 10-Q for the quarterly period ended December 29, 2002, filed with the SEC on February 12, 2003).
Exhibit 10.33	Amendment No. 3 and Amendment No. 4 to Rayovac Corporation Deferred Compensation Plan (filed by incorporation by reference to Exhibit 10.25 to the Annual Report on Form 10-K for the year ended September 30, 2004, filed with the SEC on December 14, 2004).
Exhibit 12.1*	Statement of Computation of Ratio of Earnings to Fixed Charges.
Exhibit 21.1*	List of subsidiaries of Spectrum Brands, Inc.
Exhibit 23.1*	Consent of KPMG LLP (relating to Rayovac Corporation).
Exhibit 23.2*	Consent of PricewaterhouseCoopers Auditores Independentes (relating to Microlite S.A.).
Exhibit 23.3*	Consent of PricewaterhouseCoopers LLP (relating to United Industries Corporation).
Exhibit 23.4*	Consent of PricewaterhouseCoopers LLP (relating to United Pet Group, Inc).
Exhibit 23.5*	Consent of Ernst & Young LLP (relating to The Nu-Gro Corporation)
Exhibit 23.6*	Consent of KPMG LLP (relating to Tetra Holding (US), Inc. and subsidiary).
Exhibit 23.7*	Consent of Skadden, Arps, Slate, Meagher and Flom LLP (included in Exhibit 5.1)
Exhibit 23.8*	Consent of James T. Lucke, Esq. (included in Exhibit 5.2).
Exhibit 23.9*	Consent of Thompson Coburn LLP (included in Exhibit 5.3).
Exhibit 23.10*	Consent of Foley & Lardner LLP (included in Exhibit 5.4).
Exhibit 23.11*	Consent of Cades Schutte (included in Exhibit 5.5).
Exhibit 24.1*	Power of Attorney (included on signature page to the registration statement).
Exhibit 25.1*	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of U.S. Bank National Association, as Trustee.
Exhibit 99.1*	Form of Letter of Transmittal.
Exhibit 99.2*	Form of Notice of Guaranteed Delivery.
Exhibit 99.3*	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
Exhibit 99.4*	Form of Letter to Clients.

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\* Filed herewith

## AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

## AQ HOLDINGS, INC.

An original Certificate of Incorporation by AQ Holdings, Inc. (the "Corporation") was filed with the Secretary of State on July 29, 1998 (the "Certificate of Incorporation"). This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Certificate of Incorporation, has been duly adopted by the Corporation in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").

The text of the Certificate of Incorporation is hereby amended and restated in its entirety to provide as herein set forth in full.

ARTICLE I

The name of the Corporation is AQ Holdings, Inc.

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 10,000 shares of Common Stock, \$.01 par value per share ("Common Stock").

ARTICLE V

In furtherance of and not in limitation of powers conferred by statute, it is further provided:

1. Election of Directors need not be by written ballot unless the by-laws of the Corporation so provide.

2. The Board of Directors is expressly authorized to adopt, amend or repeal the by-laws of the Corporation to the extent specified therein.

ARTICLE VI

Meetings of stockholders may be held within or without the State of Delaware, as the by-laws may provide.

ARTICLE VII

To the extent permitted by law, the books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated in the by-laws of the Corporation or from time to time by its Board of Directors.

ARTICLE VIII

If a Director or officer of the Corporation is made a party to any civil or criminal action or proceeding in any matter arising from the performance by such Director or officer or his or her duties for or on behalf of the Corporation, then, to the full extent permitted by law, the Corporation shall: (a) advance to such Director, or upon approval of the Board of Directors to any officer, all sums necessary and appropriate to enable the Director or officer to conduct his or her defense or appeal, in the action or proceeding, and (b) indemnify such Director or officer for all sums paid by him or her in the way of judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred, in connection with the action or proceeding, or appeal therein, subject to the proper application of credit for any sums advances to the Director or officer pursuant to clause (a) of this paragraph.

The indemnification and advancement of expenses provided by this Article VIII shall not be deemed exclusive of any other rights to which a Director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in the Amended and Restated Certificate of Incorporation, the by-laws, a resolution of shareholders, a resolution of the Board of Directors, an agreement providing for such indemnification or otherwise provided by law, provided that no indemnification may be made to or on behalf of any Director or officer if a judgment or other final adjudication adverse to the Director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

ARTICLE IX

A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as a director of the Corporation, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the General Corporation Law of the State of Delaware, or (d) for any transaction from which the Director derived an improper personal benefit. If the General Corporation Law of the State of Delaware is amended after the effective date of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of each past or present Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

Any repeal or modification of this Article IX by (a) the stockholders of the Corporation or (b) an amendment to the General Corporation Law of the State of Delaware (unless such statutory amendment specifically provides to the contrary) shall not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring either before or after such repeal or modification, of a person serving as a Director prior to or at the time of such repeal or modification.

ARTICLE X

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

I, Michael Wilson, Assistant Secretary of the Corporation, for the purpose of amending and restating the Corporation's Certificate of Incorporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that it is my free act and deed on behalf of the Corporation this 10th day of August, 1999.

/s/ Michael Wilson

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Michael Wilson  
Assistant Secretary



**BY-LAWS**  
**of**  
**AQ HOLDINGS, INC.**

ARTICLE I

Stockholders

1. Annual Meeting. The annual meeting of stockholders shall be held at the place, date and time determined by the Board of Directors. The purposes for which the annual meeting is to be held, in addition to those prescribed by law, by the Certificate of Incorporation or by these By-laws, may be specified by the Board of Directors or the President or Chief Executive Officer. If no annual meeting has been held on the date fixed above, a special meeting in lieu thereof may be held or there may be action by written consent of the stockholders on matters to be voted on at the annual meeting, and such special meeting or written consent shall have for the purposes of these By-Laws or otherwise all the force and effect of an annual meeting.

2. Special Meetings. Special meetings of stockholders may be called by the President or Chief Executive Officer or by the Board of Directors. Special meetings shall be called by the Secretary, or in case of death, absence, incapacity or refusal of the Secretary, by any other officer, upon written application of one or more stockholders who hold at least fifty percent (50%) in interest of the capital stock entitled to vote at such meeting. The call for the meeting shall state the place, date, hour and purposes of the meeting. Only the purposes specified in the notice of special meeting shall be considered or dealt with at such special meeting.

3. Notice of Meetings. A written notice stating the place, date and hour of all meetings of stockholders, and in the case of special meetings, the purposes of the meeting shall be given by the Secretary (or other person authorized by these By-Laws or by law) not less than ten (10) nor more than sixty (60) days before the meeting to each stockholder entitled to vote thereat and to each stockholder who, under the Certificate of Incorporation or under these By-laws is entitled to such notice, by delivering such notice to him or by mailing it, postage prepaid, and addressed to such stockholder at his address as it appears in the records of the corporation. Notice need not be given to a stockholder if a written waiver of notice is executed before or after the meeting by such stockholder, if communication with such stockholder is unlawful, or if such stockholder attends the meeting in question, unless such attendance was for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened. If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at the meeting at which the adjournment is taken, except that if the adjournment is for

more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

4. Quorum. The holders of a majority in interest of all stock issued, outstanding and entitled to vote at a meeting shall constitute a quorum. Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, whether or not a quorum is present. The stockholders present at a duly constituted meeting may continue to transact business until adjournment notwithstanding the withdrawal of enough stockholders to reduce the voting shares below a quorum.

5. Voting and Proxies. Stockholders shall have one vote for each share of stock entitled to vote owned by them of record according to the books of the corporation unless otherwise provided by law or by the Certificate of Incorporation. Stockholders may vote either in person or by written proxy or express directly or by written proxy their consent or dissent to a corporate action taken without a meeting, but no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period or is irrevocable and coupled with an interest. Proxies shall be filed with the Secretary of the meeting, or of any adjournment thereof. Except as otherwise limited therein, proxies shall entitle the persons authorized thereby to vote at any adjournment of such meeting.

6. Action at Meeting. When a quorum is present, any matter before the meeting shall be decided by vote of the holders of a majority of the shares of stock voting on such matter except where a larger vote is required by law, by the Certificate of Incorporation or by these By-laws. Any election by stockholders shall be determined by a plurality of the votes cast, except where a larger vote is required by law, by the Certificate of Incorporation or by these By-laws. The corporation shall not directly or indirectly vote any share of its own stock; provided, however, that the corporation may vote shares which it holds in a fiduciary capacity to the extent permitted by law.

7. Action without a Meeting. Any action required or permitted by law to be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of the outstanding shares of stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office, by hand or by certified mail, return receipt requested or to the corporation's principal place of business or to the officer of the corporation having custody of the minute book. Every written consent shall bear the date of signature and no written consent shall be effective unless, within sixty days of the earliest dated consent delivered pursuant to these By-laws, written consents signed by a sufficient number of stockholders entitled to take action are delivered to the corporation in the manner set forth in these By-laws. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

8. Stockholder Lists. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

## ARTICLE II

### Directors

1. Powers. The business of the corporation shall be managed by or under the direction of a Board of Directors who may exercise all the powers of the corporation except as otherwise provided by law, by the Certificate of Incorporation 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.

2. Election and Qualification. Unless otherwise provided in the Certificate of Incorporation or in these By-laws, the number of Directors which shall constitute the whole board shall be determined by vote of the Board of Directors or by the stockholders at the annual meeting. Directors need not be stockholders.

3. Vacancies; Reduction of Board. A majority of the Directors then in office, although less than a quorum, or a sole remaining Director, may fill vacancies in the Board of Directors occurring for any reason and newly created directorships resulting from any increase in the authorized number of Directors. In lieu of filling any vacancy the stockholders or the Board of Directors may reduce the number of Directors.

4. Enlargement of the Board. The Board of Directors may be enlarged by the stockholders at any meeting or by vote of a majority of the Directors then in office.

5. Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these By-laws, Directors shall hold office until their successors are elected and qualified or until their earlier resignation or removal. Any Director may resign by delivering his written resignation to the corporation. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

6. Removal. To the extent permitted by law, a Director may be removed from office with or without cause by vote of the holders of a majority of the shares of stock entitled to vote in the election of Directors. A Director may be removed for cause only after reasonable notice and opportunity to be heard before the body proposing to remove him.

7. Meetings. Regularly scheduled meetings of the Board of Directors may be held without notice at such time, date and place as the Board of Directors may from time to time determine. Special meetings of the Board of Directors may be called, orally or in writing, by the President, Chief Executive Officer, Treasurer or two or more Directors, designating the time, date and place thereof. Directors may participate in meetings of the Board of Directors by means of conference telephone or similar communications equipment by means of which all Directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting.

8. Noice of Meetings. Notice of the time, date and place of all special meetings of the Board of Directors shall be given to each Director by the Secretary, or Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the officer or one of the Directors calling the meeting. Notice shall be given to each Director in person or by telephone or by telegram sent to his business or home address at least twenty-four hours in advance of the meeting, or by written notice mailed to his business or home address at least forty-eight hours in advance of the meeting. Notice need not be given to any Director if a written waiver of notice is executed by him before or after the meeting, or if communication with such Director is unlawful. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

9. Quorum. At any meeting of the Board of Directors, a majority of the Directors then in office shall constitute a quorum. Less than a quorum may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice.

10. Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, a majority of the Directors present may take any action on behalf of the Board of Directors, unless a larger number is required by law, by the Certificate of Incorporation or by these By-laws.

11. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a written consent thereto is signed by all the Directors and filed with the records of the meetings of the Board of Directors. Such consent shall be treated as a vote of the Board of Directors for all purposes.

12. Committees. The Board of Directors, by vote of a majority of the Directors then in office, may establish one or more committees, each committee to consist of one or more Directors, and may delegate thereto some or all of its powers except those which by law, by the Certificate of Incorporation, 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 in the absence of such rules its business shall be conducted so far as possible in the same manner as is provided in these By-laws for the Board of Directors. All members of such committees shall hold their committee offices at the pleasure of the Board of Directors, and the Board may abolish any committee at any time. Each such committee shall report its action to the Board of Directors who shall have power to rescind any action of any committee without retroactive effect.

## ARTICLE III

### Officers

1. Enumeration. The officers of the corporation shall consist of a Chief Executive Officer, a President, a Treasurer, a Secretary, and such other officers, including one or more Vice Chairmen, Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board of Directors may determine.

2. Election. The Chief Executive Officer, President, Treasurer and Secretary shall be elected annually by the Board of Directors at their first meeting following the annual meeting of stockholders. Other officers may be chosen by the Board of Directors at such meeting or at any other meeting.

3. Qualification. No officer need be a stockholder or Director. Any two or more offices may be held by the same person. Any officer may be required by the Board of Directors to give bond for the faithful performance of his duties in such amount and with such sureties as the Board of Directors may determine.

4. Tenure. Except as otherwise provided by the Certificate of Incorporation or by these By-laws, each of the officers of the corporation shall hold his office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign by delivering his written resignation to the corporation, and such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

5. Removal. The Board of Directors may remove any officer with or without cause by a vote of a majority of the entire number of Directors then in office; provided, that an officer may be removed for cause only after reasonable notice and opportunity to be heard by the Board of Directors.

6. Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

7. Chairman of the Board and Chief Executive Officer. The Chief Executive Officer of the corporation shall be the Chairman of the Board and shall have general supervision and control of its business and affairs, subject to the direction of the Board of Directors. Unless otherwise provided by the Board of Directors, the Chief Executive Officer shall preside, when present, at all meetings of the stockholders and the Board of Directors.

8. President and Vice Presidents. In the absence of the Chief Executive Officer, the President shall preside, when present, at all meetings of stockholders and the Board of Directors. The Board of Directors shall have the authority to appoint a temporary presiding officer to serve at any meeting of the stockholders or Board of Directors if the Chief Executive Officer or the President is unable to do so for any reason.

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

9. Treasurer and Assistant Treasurers. 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. The Treasurer 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.

10. Secretary and Assistant Secretaries. The Secretary shall record the proceedings of all meetings of the stockholders and the Board of Directors in books kept for that purpose. In the event the Secretary is absent from any such meeting an Assistant Secretary, or if the Assistant Secretary is absent, a temporary secretary chosen at the meeting, shall record the proceedings thereof.

The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the corporation) and shall have such other duties and powers as may be designated from time to time by the Board of Directors or the President.

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

11. Other Powers and Duties. Subject to these By-laws, each officer of the corporation shall have, in addition to the duties and powers specifically set forth in these By-laws, such duties and powers as are customarily incident to his office, and such duties and powers as may be designated from time to time by the Board of Directors.

#### ARTICLE IV

##### Capital Stock

1. Certificates of Stock. Each stockholder shall be entitled to a certificate of the capital stock of the corporation in such form as may from time to time be prescribed by the Board of Directors. Such certificate shall be signed by the Chief Executive Officer, President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Such signatures may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law. The corporation shall be permitted to issue fractional shares.

2. Transfers. Subject to any restrictions on transfer, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate therefor properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the corporation or its transfer agent may reasonably require.

3. Record Holders. Except as may otherwise be required by law, by the Certificate of Incorporation or by these By-laws, 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.

4. Record Date. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not precede the date on which it is established, and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, more than ten (10) days after the date on which the record date for stockholder consent without a meeting is established, nor more than sixty (60) days prior to any other action. In such case only stockholders of record on such record date shall be so entitled notwithstanding any transfer of stock on the books of the corporation after the record date.

If no record date is fixed, (a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, (b) the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in this state, to its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded, and (c) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

5. Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock, a duplicate certificate may be issued in place thereof, upon such terms as the Board of Directors may prescribe.

## ARTICLE V

### Indemnification

1. Indemnification of Directors and Officers. The corporation shall indemnify, to the fullest extent permitted by the General Corporation Law of the State of Delaware any person who was or is a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, and whether by or in the right of the corporation, its stockholders, a third party or otherwise (a "Proceeding"), by reason of the fact that he is or was a Director or officer of the corporation, or is or was a Director or officer of the corporation serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against all expense (including, but not limited to, attorneys' fees), liability, loss, judgments, fines, excise taxes, penalties and amounts paid in settlement actually and reasonably incurred by him in connection with such Proceeding, including expenses incurred in seeking such indemnification. In addition, the corporation shall grant such indemnification to each of its Directors and officers with respect to any matter in a Proceeding as to which his liability is limited pursuant to Section 9 of the Certificate of Incorporation of the corporation. However, such indemnification shall exclude (i) indemnification with respect to any improper personal benefit which a Director or officer is determined to have received and the expenses of defending against an improper personal benefit claim unless the Director or officer is successful on the merits in said defense, and (ii) indemnification of present or former officers, directors, employees or agents of a constituent corporation absorbed in a merger or consolidation transaction with this corporation with respect to their activities prior to said transaction, unless specifically authorized by the Board of Directors or stockholders of this corporation. Such indemnification shall include prompt payment of expenses incurred by a Director or officer in defending a Proceeding in advance of the final disposition of such Proceeding, upon receipt of an undertaking by or on behalf of the Director or officer to repay such amounts if it shall ultimately be determined that he is not entitled to be indemnified by the corporation under this Article V, which undertaking shall be an unsecured general obligation of the Director or officer and may be accepted without regard to his ability to make repayment.

2. Indemnification of Employees and Agents. 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, pursuant to the provisions of this Article V, to any person who was or is a party or is threatened to be made a party to or is otherwise involved in any Proceeding by reason of the fact that he is or was an employee or agent of the corporation or is or was serving at the request of the corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.



3. Nature of Indemnification Rights. The indemnification rights provided in this Article V shall be a contract right and shall not be deemed exclusive of any other rights to which any person, whether or not entitled to be indemnified hereunder, may be entitled under any statute, by-law, agreement, vote of stockholders or Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and inure to the benefit of the heirs, executors and administrators of such a person. A Director or officer shall be entitled to the benefit of any amendment of the Delaware General Corporation Law which enlarges indemnification rights hereunder, but any such amendment which adversely affects indemnification rights with respect to prior activities shall not apply to him without his consent unless otherwise required by law. Each person who is or becomes a Director or officer of the corporation shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Article V.

4. Amendment. The provisions of this Article V may be amended as provided in Article VI; however, no amendment or repeal of such provisions which adversely affects the rights of a Director or officer under this Article V with respect to his acts or omissions prior to such amendment or repeal, shall apply to him without his consent.

## ARTICLE VI

### Miscellaneous Provisions

1. Fiscal Year. Except as otherwise determined by the Board of Directors, the fiscal year of the corporation shall end on December 31 of each year.

2. Seal. The Board of Directors shall have power to adopt and alter the seal of the corporation.

3. Execution of Instruments. All deeds, leases, transfers, contracts, bonds, notes and other obligations authorized to be executed by an officer of the corporation in its behalf shall be signed by the Chief Executive Officer, President, Vice President or Treasurer, or by any other officer of the corporation designated by the Board of Directors, except as the Board of Directors may generally or in particular cases otherwise determine.

4. Voting of Securities. Unless otherwise provided by the Board of Directors, the Chief Executive Officer or President or Vice President or Treasurer may waive notice of and act on behalf of this corporation, or appoint another person or persons to act as proxy or attorney in fact for this corporation with or without discretionary power and/or power of substitution, at any meeting of stockholders or shareholders of any other corporation or organization, any of whose securities are held by this corporation.

5. Resident Agent. The Board of Directors may appoint a resident agent upon whom legal process may be served in any action or proceeding against the corporation.

6. Corporate Records. The original or attested copies of the Certificate of Incorporation, By-laws and records of all meetings of the incorporators, stockholders and the Board of Directors and the stock and transfer records, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, shall be kept at the principal office of the corporation, at the office of its counsel, or at an office of its transfer agent.

7. Certificate of Incorporation. All references in these By-laws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time.

8. Amendments. These By-laws may be amended or repealed or additional By-laws adopted by the stockholders or by the Board of Directors; provided, that (a) the Board of Directors may not amend or repeal Article V or this Section 8 of Article VI or any provision of these By-laws which by law, by the Certificate of Incorporation or by these By-laws requires action by the stockholders, (b) any amendment or repeal of these By-laws by the Board of Directors and any By-law adopted by the Board of Directors may be amended or repealed by the stockholders.

Adopted by the Board of Directors on August 14, 1998

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
AQUARIA, INC.

Robert M. Sherman and Joseph S. Bussing certify that:

1. They are the President and the Secretary, respectively, of Aquaria, Inc., a California corporation (the "Corporation").
2. The Amended and Restated Articles of Incorporation of this Corporation are further amended and restated to read in their entirety as follows:

ARTICLE I

The name of the Corporation is Aquaria, Inc.

ARTICLE II

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

The Corporation is authorized to issue only one class of shares, Common Stock, and the total number of shares the Corporation is authorized to issue is 10,000. The par value per share of Common Stock is \$.01. Upon filing of these amended and restated Articles of Incorporation, (i) a reverse stock split shall become effective whereby every ten authorized shares of Common Stock are converted into one authorized share of Common Stock, thereby reducing the number of authorized shares of Common Stock from 100,000 to 10,000, and (ii) all authorized Convertible Participating Preferred Stock, Redeemable Preferred Stock, Class A Common Stock and Class B Common Stock, each par value of \$.01 per share, of which there are no shares outstanding, shall be cancelled.

ARTICLE IV

1. The liability of directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. Any amendment, modification or repeal of this Article by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

2. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its shareholders through bylaw provision or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

3. The foregoing second amendment and restatement of these Articles of Incorporation has been duly approved by the Board of Directors.

4. The foregoing second amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of this Corporation is at the time of such approval, 1,000 shares of Common Stock. All 1,000 shares of Common Stock voted in favor of the amendment and the restatement, thereby exceeding the vote required. The Common Stock percentage vote required was equal to or greater than 66.67%. There are no outstanding shares of Convertible Participating Preferred Stock, Redeemable Preferred Stock, Class A Common Stock or Class B Common Stock.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate are true and correct of our own knowledge.

Date: December 10, 1999

/s/ Robert M. Sherman

Robert M. Sherman, President

/s/ Joseph S. Bussing

Joseph S. Bussing, Secretary

**AMENDED AND RESTATED  
BY-LAWS**

**of**

**AQUARIA, INC.**

ARTICLE I

Stockholders

1. Annual Meeting. The annual meeting of stockholders shall be held on such date and at such time and place, within or without the State of California, as 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 Amended and Restated Articles of Incorporation, as amended or restated from time to time (the "Articles of Incorporation"), or by these By-laws (the "By-laws"), may be specified by the Board of Directors or the President. If no annual meeting has been held on the date as determined above, a special meeting in lieu thereof may be held or there may be action by written consent of stockholders, and such special meeting or written consent shall have for the purposes of these By-laws or otherwise all the force and effect of an annual meeting.

2. Special Meetings. Special meetings of stockholders may be called by the President or by the Board of Directors; provided that special meetings of stockholders holding particular classes or series of stock may be held as contemplated by the Articles of Incorporation. The call for the meeting may be oral or written and shall state the place, date, hour and purposes of the meeting.

3. Notice of Meetings. A written notice stating the place, date and hour of all meetings of stockholders, and in the case of special meetings, the purpose or purposes of the meeting shall be given by the Secretary (or other person authorized by these By-laws or by law) not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote thereat and to each stockholder who, under the Articles of Incorporation or under these By-laws is entitled to such notice, by delivering such notice to him or by mailing it, postage prepaid, and addressed to such stockholder at his address as it appears in the records of the Corporation. Notice need not be given to a stockholder if a written waiver of notice is executed before or after the meeting by such stockholder, if communication with such stockholder is unlawful, or if such stockholder attends the meeting in question, unless such attendance was for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened. If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at the meeting at which the adjournment is taken, except that

if the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

4. Quorum. The holders of a majority in interest of all stock issued, outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders (whether comprising the stockholders entitled to vote generally or stockholders of a particular class or series, as contemplated by the Articles of Incorporation). Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, whether or not a quorum is present.

5. Voting and Proxies. Stockholders shall have one vote for each share of stock entitled to vote owned by them of record according to the books of the Corporation unless otherwise provided by law or by the Articles of Incorporation, with proportionate votes for fractional shares. Stockholders may vote either in person or by written proxy, but no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies shall be filed with the Secretary of the meeting, or of any adjournment thereof. Except as otherwise limited therein, proxies shall entitle the persons authorized thereby to vote at any adjournment of such meeting. 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.

6. Action at Meeting. When a quorum is present, any matter before the meeting shall be decided by vote of the holders of a majority of the shares of stock voting on such matter except where a larger or different vote is required by law, by the Articles of Incorporation or by these By-laws. Any election by stockholders shall be determined by a plurality of the votes cast, except where a larger or different vote is required by law, by the Articles of Incorporation or by these By-laws. No ballot shall be required for any election unless requested by a stockholder entitled to vote in the election. The Corporation shall not directly or indirectly vote any share of its own stock; provided, however, that the Corporation may vote shares which it holds in a fiduciary capacity to the extent permitted by law.

7. Action without a Meeting. Any action required or permitted by law to be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes specified in the Articles of Incorporation, or, if not so specified, the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent, if and to the extent action by less than unanimous written consent is authorized under the Articles of Incorporation, shall be given to those stockholders who have not consented in writing.

8. Stockholder Lists. The Secretary (or other person authorized by these By-laws or by law) shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order,

and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

## ARTICLE II

### Directors

1. Powers. The business of the Corporation shall be managed by a Board of Directors who may exercise all the powers of the Corporation except as otherwise provided by law, by the Articles of Incorporation 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.

2. Election and Qualification. The number of Directors shall not be less than three nor more than five. Subject to the provisions of the Articles of Incorporation relating to the election of Directors, at each annual meeting of stockholders, or by a consent in lieu thereof, the stockholders, in accordance with Section 153 of the California Corporations Code, shall fix the number of Directors and shall elect not more than the number of Directors so designated. No Director need be a stockholder.

3. Vacancies; Reduction of Board. Subject to the provisions of the Articles of Incorporation relating to the election of Directors, any vacancy in the Board of Directors, however occurring, including a vacancy resulting from the enlargement of the Board of Directors, may be filled by the stockholders or by the Directors then in office or by a sole remaining Director; provided that in lieu of filling any such vacancy the stockholders or Board of Directors may reduce the number of Directors to a number not less than the minimum number required by Paragraph 2 of this Article II. When one or more Directors shall resign from the Board of Directors, effective at a future date, a majority of the Directors then in office, including those who so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, subject to the provisions of the Articles of Incorporation relating to the election of Directors.

4. Enlargement of the Board. Subject to the provisions of the Articles of Incorporation relating to the election of Directors, the Board of Directors may be enlarged by the stockholders.

5. Tenure. Except as otherwise provided by law, by the Articles of Incorporation or by these By-laws, Directors shall hold office until their successors are elected and qualified or until their earlier resignation or removal. Any Director may resign by delivering his written resignation to the Corporation. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.



6. Removal. Subject to the provisions of the Articles of Incorporation relating to the election of Directors, a Director may be removed from office (a) with or without cause by stockholders if the number of votes cast to remove him exceeds the number of votes cast not to remove him or (b) for cause by vote of a majority of Directors then in office. A Director may be removed for cause only after reasonable notice and opportunity to be heard before the body proposing to remove him.

7. Meetings. Regular meetings of the Board of Directors may be held without notice at such time, date and place as the Board of Directors may from time to time determine. Special meetings of the Board of Directors may be called, orally or in writing, by the President, the Secretary or one or more Directors designating the time, date and place thereof. Any matter of business which may properly come before the Board of Directors may be transacted at either a regular or special meeting. Directors may participate in meetings of the Board of Directors by means of conference telephone or similar communications equipment by means of which all Directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting.

8. Notice of Meetings. Notice of the time, date and place of all special meetings of the Board of Directors shall be given to each Director by the Secretary, or Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the President. Notice shall be given to each Director in person or by telephone or by telecopy sent to his business or home address, or by written notice mailed to his business or home address at least forty-eight hours in advance of the meeting. Notice need not be given to any Director if a written waiver of notice is executed by him before or after the meeting, if communication with such Director is unlawful or if all of the Directors are present at the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

9. Quorum. At any meeting of the Board of Directors, a majority of the Directors then in office shall constitute a quorum. Less than a quorum may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice.

10. Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, a majority of the Directors present may take any action on behalf of the Board of Directors, unless a larger number is required by law, by the Articles of Incorporation or by these By-laws.

11. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing, and the writing or writings are filed with the records of the meetings of the Board of Directors. Such consent shall be treated as a vote of the Board of Directors for all purposes.

12. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the Directors of the Corporation. The Board of Directors may designate one or more Directors as alternate members of any committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent delegated by resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority to: (a) approve or adopt, or recommend to the stockholders, any action or matter expressly required by law, by the Articles of Incorporation or by these By-laws to be submitted to the stockholders for approval or (b) adopt, amend, or repeal any of these By-laws. Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but in the absence of such rules, its business shall be conducted so far as possible in the same manner as is provided in these By-laws for the Board of Directors. All members of such committees shall hold their committee offices at the pleasure of the Board of Directors, and the Board may abolish any committee at any time. Each such committee shall report its action to the Board of Directors who shall have power to rescind any action of any committee without retroactive effect.

### ARTICLE III

#### Officers

1. Enumeration. The officers of the Corporation shall consist of a President, a Treasurer, a Secretary, and such other officers, including a Chairman and one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board of Directors may determine.

2. Election. At its annual meeting or by consent in lieu thereof, the Board of Directors shall elect the President, the Treasurer and the Secretary. Other officers may be chosen by the Board of Directors at such meeting or at any other meeting.

3. Qualification. No officer need be a stockholder or Director. Any two or more offices may be held by the same person. Any officer may be required by the Board of Directors to give bond for the faithful performance of his duties in such amount and with such sureties as the Board of Directors may determine.

4. Tenure. Except as otherwise provided by the Articles of Incorporation or by these By-laws, each of the officers of the Corporation shall hold his office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign by delivering his written resignation to the Corporation, and such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

5. Removal. The Board of Directors may remove any officer with or without cause by a vote of a majority of the entire number of Directors then in office; provided that an officer may be removed for cause only after reasonable notice and opportunity to be heard by the Board of Directors.

6. Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

7. President, Chairman and Vice Presidents. The President shall be the chief executive officer of the Corporation and 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. The President shall have such other powers and perform such other duties as the Board of Directors may from time to time designate.

The Chairman (if any, and who may also be the President) and any Vice President shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

8. Treasurer and Assistant Treasurers. The Treasurer shall, subject to the direction of the Chief Executive Officer and 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.

9. Secretary and Assistant Secretaries. The Secretary shall record all of the proceedings of the meetings of the stockholders and the Board of Directors (including committees of the Board) in books kept for that purpose. In his absence from any such meeting or at the request of the Board of Directors, an Assistant Secretary, or if there be none or he is absent, a temporary secretary chosen at the meeting, shall record the proceedings thereof.

The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the Corporation). He shall have custody of the seal of the Corporation, and he, or an Assistant Secretary, shall have authority to affix to it any instrument requiring it, and, when so affixed, the seal may be attested by his signature. He shall have such other duties and powers as may be designated from time to time by the Board of Directors or the President.

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

The Secretary and any Assistant Secretary may certify as to resolutions or consents adopted by the Board of Directors and as to the incumbency of any officer.

10. Other Powers and Duties. Subject to these By-laws, each officer of the Corporation shall have, in addition to the duties and powers specifically set forth in these By-laws, such duties and powers as are customarily incident to his office, and such duties and powers as may be designated from time to time by the Board of Directors.

#### ARTICLE IV

##### Capital Stock

1. Certificates of Stock. Each stockholder shall be entitled to a certificate of the capital stock of the Corporation in such form as may from time to time be prescribed by the Board of Directors. Such certificate shall be signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Such signatures may be facsimile if the certificate is signed by an authorized person on behalf of a transfer agent or registrar, other than the Corporation or its employee. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law.

2. Transfers. Subject to any restrictions on transfer, shares of stock may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate therefor properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require.

3. Record Holders. Except as may otherwise be required by law, by the Articles of Incorporation or by these By-laws, 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.

4. Record Date. In order that the Corporation may determine the stockholders entitled to receive notice of or to vote at any meeting of stockholders or any adjournments thereof, or to express consent to corporate action in writing without a meeting, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon

which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty nor less than ten days before the date of such meeting, or, in the case of corporate action in writing without a meeting, more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which shall not be more than sixty days prior to such other action. In each case, only stockholders of record on such record date shall be so entitled, notwithstanding any transfer of stock on the books of the Corporation after the record date.

If no record date is fixed: (a) the record date for determining stockholders entitled to receive notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (b) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the first day on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation at its principal office; and (c) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

5. Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock, a duplicate certificate may be issued in place thereof, upon such terms as the Board of Directors may prescribe, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or the owner's legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

## ARTICLE V

### Indemnification

1. Definitions. For purposes of this Article:

- (a) "Director" means any person who serves or has served the Corporation as a director on the Board of Directors of the Corporation.
- (b) "Officer" means any person who serves or has served the Corporation as an officer appointed by the Board of Directors of the Corporation;
- (c) "Non-Officer Employee" means any person who serves or has served as an employee of the Corporation, but who is not or was not a Director or Officer;

(d) "Proceeding" means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, inquiry, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative, arbitrative or investigative;

(e) "Expenses" means all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), travel expenses, duplicating costs, printing and binding costs, costs of preparation of demonstrative evidence and other courtroom presentation aids and devices, costs incurred in connection with document review, organization, imaging and computerization, telephone charges, postage, delivery service fees, and all other disbursements, costs or expenses of the type customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or otherwise participating in, a Proceeding;

(f) "Corporate Status" describes the status of a person who (i) in the case of a Director, is or was a director of the Corporation and is or was acting in such capacity, (ii) in the case of an Officer, is or was an officer, employee or agent of the Corporation or is or was a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such Officer is or was serving at the request of the Corporation, and (iii) in the case of a Non-Officer Employee, is or was an employee of the Corporation or is or was a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such Non-Officer Employee is or was serving at the request of the Corporation. For purposes of subsection (ii) of this Section 1(f), an officer or director of the Company who is serving as a director, partner, trustee, officer, employee or agent of a Subsidiary shall be deemed to be serving at the request of the Company;

(g) "Disinterested Director" means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director of the Corporation who is not and was not a party to such Proceeding; and

(h) "Subsidiary" shall mean any corporation, partnership, limited liability company, joint venture, trust or other entity of which the Corporation owns (either directly or through or together with another Subsidiary of the Corporation) either (i) a general partner, managing member or other similar interest or (ii) (A) 50% or more of the voting power of the voting capital equity interests of such corporation, partnership, limited liability company, joint venture or other entity, or (B) 50% or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other entity.

2. Indemnification of Directors and Officers. Subject to the operation of Section 4 of this Article V, each Director and Officer shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of California, 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 such law permitted the Corporation to provide prior to such amendment) against any and all Expenses, judgments, penalties, fines and amounts reasonably paid in settlement that are incurred by such Director or Officer or on such Director's or Officer's behalf in connection with any threatened, pending or completed Proceeding or any claim, issue or matter therein, which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 2 shall continue as to a Director or Officer after he or she has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors, administrators and personal representatives. Notwithstanding the foregoing, the Corporation shall indemnify any Director or Officer seeking indemnification in connection with a Proceeding initiated by such Director or Officer only if such Proceeding was authorized by the Board of Directors of the Corporation, unless such Proceeding was brought to enforce an Officer or Director's rights to Indemnification under these by-laws.

3. Indemnification of Non-Officer Employees. Subject to the operation of Section 4 of this Article V, each Non-Officer Employee may, in the discretion of the Board of Directors of the Corporation, be indemnified by the Corporation to the fullest extent authorized by the General Corporation Law of the State of California, as the same exists or may hereafter be amended, against any or all Expenses, judgments, penalties, fines and amounts reasonably paid in settlement that are incurred by such Non-Officer Employee or on such Non-Officer Employee's behalf in connection with any threatened, pending or completed Proceeding, or any claim, issue or matter therein, which such Non-Officer Employee is, or is threatened to be made, a party to or participant in by reason of such Non-Officer Employee's Corporate Status, if such Non-Officer Employee acted in good faith and in a manner such Non-Officer Employee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 3 shall exist as to a Non-Officer Employee after he or she has ceased to be a Non-Officer Employee and shall inure to the benefit of his or her heirs, personal representatives, executors and administrators. Notwithstanding the foregoing, the Corporation may indemnify any Non-Officer Employee seeking indemnification in connection with a Proceeding initiated by such Non-Officer Employee only if such Proceeding was authorized by the Board of Directors of the Corporation.

4. Good Faith. Unless ordered by a court or required by Section 145(c) of the DGCL, no indemnification shall be provided pursuant to this Article V to a Director, to an Officer or to a Non-Officer Employee unless a determination shall have been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal Proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made by (a) a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (b) a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum), (c) if there are no such Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

5. Advancement of Expenses to Directors Prior to Final Disposition. The Corporation shall advance all Expenses incurred by or on behalf of any Director in connection with any Proceeding in which such Director is involved by reason of such Director's Corporate Status within 10 days after the receipt by the Corporation of a written statement from such Director requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Director and shall be preceded or accompanied by an undertaking by or on behalf of such Director to repay any Expenses so advanced if it shall ultimately be determined that such Director is not entitled to be indemnified against such Expenses.

6. Advancement of Expenses to Officers and Non-Officer Employees Prior to Final Disposition.

(a) Advancement to Officers. The Corporation may, at the discretion of the Board of Directors of the Corporation, advance any or all Expenses incurred by or on behalf of any Officer in connection with any Proceeding in which such is involved by reason of such Officer's Corporate Status upon the receipt by the Corporation of a statement or statements from such Officer requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Officer and shall be preceded or accompanied by an undertaking by or on behalf of such to repay any Expenses so advanced if it shall ultimately be determined that such Officer is not entitled to be indemnified against such Expenses.

(b) Advancement to Non-Officer Employees. The Corporation may, at the discretion of the Board of Directors or of any Officer who is authorized to act on behalf of the Corporation, advance any or all Expenses incurred by or on behalf of any Non-Officer Employee in connection with any Proceeding in which such Non-Officer Employee is involved by reason of such Non-Officer Employee's Corporate Status upon the receipt by the Corporation of a statement or statements from such Non-Officer Employee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Non-Officer Employee and shall be preceded or accompanied by an undertaking by or on behalf of such Non-Officer Employee to repay any Expenses so advanced if it shall ultimately be determined that such Non-Officer Employee is not entitled to be indemnified against such Expenses.

7. Contractual Nature of Rights. The foregoing provisions of this Article V shall be deemed to be a contract between the Corporation and each Director and Officer entitled to the benefits hereof at any time while this Article V is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any Proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts. If a claim for indemnification or advancement of Expenses hereunder by a Director or Officer is not paid in full by the Corporation within (a) 60 days after receipt by the Corporation's of a written claim for indemnification, or (b) in the case of a



Director, 10 days after receipt by the Corporation of documentation of Expenses and the required undertaking, such Director or Officer may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, such Director or Officer shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such indemnification or, in the case of a Director, advancement of Expenses, under this Article V shall not be a defense to the action and shall not create a presumption that such indemnification or advancement is not permissible.

8. Non-Exclusivity of Rights. The rights to indemnification and advancement of Expenses set forth in this Article V shall not be exclusive of any other right which any Director, Officer, or Non-Officer Employee may have or hereafter acquire under any statute, provision of the Certificate or these Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise.

9. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, Officer or Non-Officer Employee against any liability of any character asserted against or incurred by the Corporation or any such Director, Officer or Non-Officer Employee, or arising out of any such person's Corporate Status, whether or not the Corporation would have the power to indemnify such person against such liability under the General Corporation Law of the State of California or the provisions of this Article V.

10. Limitations on Indemnity. The rights to indemnification and advancement of Expenses set forth in this Article V shall in no event apply to the extent that any Director, Officer, or Non-Officer Employee may make, or be required to make any payment pursuant to Section 9 of the Acquisition Agreement, of even date herewith, by and among the Corporation, the Sellers (as defined therein), AQ Holdings, Inc., a Delaware corporation, AQ Acquisition, Inc., a Delaware corporation, and [Eight in One Holdings], Inc., in respect of any Losses (as defined in the Acquisition Agreement), and such person shall have no rights against the Corporation, or any Director, Officer, or Non-Officer Employee thereof (in their capacity as such), whether by reason of contribution, indemnification, subrogation or otherwise, in respect of any such payment, and shall not take any action against the Corporation or any such person with respect thereto.

## Article VI

### Miscellaneous Provisions

1. Fiscal Year. Except as otherwise determined by the Board of Directors, the fiscal year of the Corporation shall end on September 30 of each year.
2. Seal. The Board of Directors shall have power to adopt and alter the seal of the Corporation.

3. Execution of Instruments. All deeds, leases, transfers, contracts, bonds, notes and other obligations authorized to be executed by an officer of the Corporation in its behalf shall be signed by the President or the Treasurer, except as the Board of Directors may generally or in particular cases otherwise determine.

4. Voting of Securities. Unless otherwise provided by the Board of Directors, the President or Treasurer may waive notice of and act on behalf of the Corporation, or appoint another person or persons to act as proxy or attorney in fact for the Corporation with or without discretionary power and/or power of substitution, at any meeting of stockholders of any other corporation or organization, any of whose securities are held by the Corporation.

5. Resident Agent. The Board of Directors may appoint a resident agent upon whom legal process may be served in any action or proceeding against the Corporation.

6. Corporate Records. The original or attested copies of the Articles of Incorporation, By-laws and records of all meetings of the incorporator, stockholders and the Board of Directors and the stock and transfer records, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, shall be kept at the principal office of the Corporation, at the office of its counsel, or at an office of its transfer agent.

7. Articles of Incorporation. All references in these By-laws to the Articles of Incorporation shall be deemed to refer to the Amended and Restated Articles of Incorporation of the Corporation, as amended and in effect from time to time.

8. Amendments. These By-laws may be amended or repealed or additional By-laws adopted by the stockholders or by the Board of Directors except as provided in Article V, Paragraph 9; provided that (a) the Board of Directors may not amend or repeal this Paragraph 8 or any provision of these By-laws which by law, by the Articles of Incorporation or by these By-laws requires action by the stockholders and (b) any amendment or repeal of these By-laws by the Board of Directors and any By-law adopted by the Board of Directors may be amended or repealed by the stockholders.

Adopted and Effective  
as of August 14, 1998.

**WRITTEN CONSENT  
OF  
THE SOLE STOCKHOLDER  
OF  
AQUARIA, INC.**

**July 30, 2004**

The undersigned, being the sole stockholder of Aquaria, Inc., a California corporation (the "Company") hereby, pursuant to Section 603(a) of the California Corporations Code, consents to, adopts, and approves the following resolutions and each and every action effected thereby:

Acceptance of Resignations

RESOLVED, that the director resignations attached hereto as Exhibit A are hereby accepted, effective as of the date set forth therein.

Amendment of Amended and Restated By-Laws

RESOLVED, that Article II, Section 2 of the Amended and Restated By-Laws of the Company be, and it, hereby is, deleted in its entirety and a new Article II, Section 2 be inserted in lieu thereof to read as set forth in Exhibit B attached hereto

Election of Directors

RESOLVED, that Robert L. Caulk and Daniel J. Johnston are hereby elected to serve as members of the Board of Directors of the Company until the election of their qualified successors or their earlier resignation or removal.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Written Consent as of the date first above written.

AQ HOLDINGS, INC.

By: /s/ Daniel J. Johnston

Name: Daniel J. Johnston

Title: Vice President, Treasurer

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**EXHIBIT A**

**DIRECTOR RESIGNATIONS**

**EXHIBIT B**

**AMENDMENT TO AMENDED AND RESTATED BY-LAWS**

**“ARTICLE II**

**Directors**

2. Election and Qualification. The number of Directors shall be no more than two (2). No Director need be a stockholder.”

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AQUARIA, INC.

Amendment No. 1 to the  
Amended and Restated By-Laws  
Effective July 30, 1999

On July 30, 1999, the Board of Directors of Aquaria, Inc. amended the Amended and Restated By-Laws by deleting therefrom the following language from Article V, paragraph 4:

“or required by Section 145(c) of the DGCL.”

CERTIFICATE OF INCORPORATION  
OF  
AQUARIUM SYSTEMS CORPORATION

ARTICLE ONE

The name of the corporation (the "Corporation") is AQUARIUM SYSTEMS CORPORATION.

ARTICLE TWO

The address of the registered office of the Corporation in the State of Delaware is 1013 Centre Road, Wilmington, County of New Castle 19805. The name of the registered agent of the Corporation at such address is The Prentice-Hall Corporation System, Inc.

ARTICLE THREE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "General Corporation Law").

ARTICLE FOUR

The total number of shares of all classes of stock which the Corporation has authority to issue is 1000 shares, all of which are shares of Common Stock, par value \$.01 per share.

ARTICLE FIVE

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them, and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree on any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which



the said application had been made, be binding on all the creditors or class of creditors, or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE SIX

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, but the foregoing provision shall not eliminate or limit the 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 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended after the date of incorporation of the Corporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE SEVEN

The number of directors of the Corporation shall be such as from time to time shall be fixed in the manner provided in the By-laws of the Corporation. The election of directors of the Corporation need not be by ballot unless the By-laws so require.

ARTICLE EIGHT

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

<u>Name</u>	<u>Mailing Address</u>
Brian D. Stephen	O'Sullivan Graev & Karabell, LLP 30 Rockefeller Plaza New York, New York 10112

ARTICLE NINE

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

IN WITNESS WHEREOF, the undersigned has signed this instrument on the 18th day of January, 1996, thereby acknowledging that this instrument is the act and deed of the undersigned and that the facts stated above are true.

/s/ Brian D. Stephen

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Brian D. Stephen  
Sole Incorporator

CERTIFICATE OF CHANGE OF LOCATION OF REGISTERED OFFICE  
AND OF REGISTERED AGENT

It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is Aquarium Systems, Inc.
2. The registered office of the Corporation within the State of Delaware is hereby changed to 9 East Loockerman Street, City of Dover 19901, County of Kent.
3. The registered agent of the Corporation within the State of Delaware is hereby changed to National Registered Agents, Inc., the business office of which is identical with the registered office of the corporation as hereby changed.
4. The Corporation has authorized the changes hereinbefore set forth by resolution of its Board of Directors.

Signed on August 22, 1997.

/s/ P. Jeffrey Leck

\_\_\_\_\_  
P. Jeffrey Leck, President  
Name and Title of Officer

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
AQUARIUM SYSTEMS CORPORATION

AQUARIUM SYSTEMS CORPORATION, a Delaware corporation (the "Corporation"), hereby certifies as follows:

1. The current name of the Corporation is "AQUARIUM SYSTEMS CORPORATION."

2. The Certificate of Incorporation of the Corporation is hereby amended the ("Amendment") by deleting, in its entirety, ARTICLE ONE thereof and inserting in lieu thereof a new ARTICLE ONE to read as follows:

"ARTICLE ONE

The name of the corporation (the "Corporation") is Aquarium Systems, Inc."

3. The Amendment was duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware by the authorization of a majority of the Stockholders entitled to vote thereon.

IN WITNESS WHEREOF, the Corporation had caused this Certificate of Amendment of Certificate of Incorporation to be signed as of the 14<sup>th</sup> day of February, 1996, by its Treasurer, who hereby affirms and acknowledges, under penalty of perjury, that this Certificate is the act and deed of the Corporation and that the facts stated herein are true.

By: /s/ John F. Kirtley

\_\_\_\_\_  
John F. Kirtley  
Treasurer

**AQUARIUM SYSTEMS CORPORATION**

**Incorporated under the laws  
of the State of Delaware**

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**BY-LAWS**

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**As adopted on January 9, 1996**

**AQUARIUM SYSTEMS CORPORATION**

**BY-LAWS**

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**BY-LAWS OF  
AQUARIUM SYSTEMS CORPORATION**

ARTICLE I

Offices

SECTION 1. Registered Office. The registered office of Aquarium Systems Corporation (the "Corporation"), in the State of Delaware shall be at 1013 Centre Road, Wilmington, City of Wilmington, County of New Castle, Delaware 19805, and the registered agent in charge thereof shall be The Prentice-Hall Corporation System.

SECTION 2. Other Offices. The Corporation may also have an office or offices at any other place or places within or outside the State of Delaware.

ARTICLE II

Meeting of Stockholders; Stockholders'  
Consent in Lieu of Meeting

SECTION 1. Annual Meetings. The annual meeting of the stockholders for the election of directors, and for the transaction of such other business as may properly come before the meeting, shall be held at such place, date and hour as shall be fixed by the Board of Directors (the "Board") and designated in the notice or waiver of notice thereof, except that no annual meeting need be held if all actions, including the election of directors, required by the General Corporation Law of the State of Delaware (the "Delaware Statute") to be taken at a stockholders' annual meeting are taken by written consent in lieu of meeting pursuant to Section 10 of this Article II.

SECTION 2. Special Meetings. A special meeting of the stockholders for any purpose or purposes may be called by the Board, the Chairman, the President or the record holders of at least a majority of the issued and outstanding shares of Common Stock of the Corporation, to be held at such place, date and hour as shall be designated in the notice or waiver of notice thereof.

SECTION 3. Notice of Meetings. Except as otherwise required by statute, the Certificate of Incorporation of the Corporation (the "Certificate") or these By-laws, notice of each annual or special meeting of the stockholders shall be given to each stockholder of record entitled to vote at such meeting not less than 10 nor more than 60 days before the day on which the meeting is to be held, by delivering written notice thereof to him personally, or by mailing a copy of such notice, postage prepaid, directly to him at his address as it appears in the records of the Corporation, or by transmitting such notice thereof to him at such address by telegraph, cable or other telephonic transmission. Every such notice shall state the place, the date and hour of the meeting, and, in case of special meeting, the purpose or purposes for which the meeting is called. Notice of any meeting of stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy, or who shall, in person



or by attorney thereunto authorized, waive such notice in writing, either before or after such meeting. Except as otherwise provided in these By-laws, neither the business to be transacted at, nor the purpose of, any meeting of the stockholders need be specified in any such notice or waiver of notice. Notice of any adjourned meeting of stockholders shall not be required to be given, except when expressly required by law.

SECTION 4. Quorum. At each meeting of the stockholders, except where otherwise provided by the Certificate or these By-laws, the holders of a majority of the issued and outstanding shares of Common Stock of the Corporation entitled to vote at such meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. In the absence of a quorum, a majority in interest of the stockholders present in person or represented by proxy and entitled to vote, or, in the absence of all the stockholders entitled to vote, any officer entitled to preside at, or act as secretary of, such meeting, shall have the power to adjourn the meeting from time to time, until stockholders holding the requisite amount of stock to constitute a quorum shall be present or represented. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

SECTION 5. Organization.

(a) Unless otherwise determined by the Board, at each meeting of the stockholders, one of the following shall act as chairman of the meeting and preside thereat, in the following order of precedence:

(i) the Chairman;

(ii) the President;

(iii) any director, officer or stockholder of the Corporation designated by the Board to act as chairman of such meeting and to preside thereat if the Chairman or the President shall be absent from such meeting; or

(iv) a stockholder of record who shall be chosen chairman of such meeting by a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat.

(b) The Secretary or, if he shall be presiding over such meeting in accordance with the provisions of this Section 5 or if he shall be absent from such meeting, the person (who shall be an Assistant Secretary, if an Assistant Secretary has been appointed and is present) whom the chairman of such meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

SECTION 6. Order of Business. The order of business at each meeting of the stockholders shall be determined by the chairman of such meeting, but such order of business may be changed by a majority in voting interest of those present in person or by proxy at such meeting and entitled to vote thereat.

SECTION 7. Voting. Except as otherwise provided by law, the Certificate or these By-laws, at each meeting of the stockholders, every stockholder of the Corporation shall be entitled to one vote in person or by proxy for each share of Common Stock of the Corporation held by him and registered in his name on the books of the Corporation on the date fixed pursuant to Section 7 of Article VI as the record date for the determination of stockholders entitled to vote at such meeting. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. A person whose stock is pledged shall be entitled to vote, unless, in the transfer by the pledgor on the books of the Corporation, he has expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent such stock and vote thereon. If shares or other securities having voting power stand in the record of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary shall be given written notice to the contrary and furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- (a) if only one votes, his act binds all;
- (b) if more than one votes, the act of the majority so voting binds all; and
- (c) if more than one votes, but the vote is evenly split on any particular matter, such shares shall be voted in the manner provided by law.

If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purposes of this Section 7 shall be a majority or even-split in interest. The Corporation shall not vote directly or indirectly any share of its own capital stock. Any vote of stock may be given by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, delivered to the secretary of the meeting; provided, however, that no proxy shall be voted after three years from its date, unless said proxy provides for a longer period. At all meetings of the stockholders, all matters (except where other provision is made by law, the Certificate or these By-laws) shall be decided by the vote of a majority in interest of the stockholders present in person or by proxy at such meeting and entitled to vote thereon, a quorum being present. Unless demanded by a stockholder present in person or by proxy at any meeting and entitled to vote thereon, the vote on any question need not be by ballot. Upon a demand by any such stockholder for a vote by ballot upon any question, such vote by ballot shall be taken. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted.

SECTION 8. Inspection. The chairman of the meeting may at any time appoint one or more inspectors to serve at any meeting of the stockholders. Any inspector may be removed, and a new inspector or inspectors appointed, by the Board at any time. Such inspectors shall decide upon the qualifications of voters, accept and count

votes, declare the results of such vote, and subscribe and deliver to the secretary of the meeting a certificate stating the number of shares of stock issued and outstanding and entitled to vote thereon and the number of shares voted for and against the question, respectively. The inspectors need not be stockholders of the Corporation, and any director or officer of the Corporation may be an inspector on any question other than a vote for or against his election to any position with the Corporation or on any other matter in which he may be directly interested. Before acting as herein provided, each inspector shall subscribe an oath faithfully to execute the duties of an inspector with strict impartiality and according to the best of his ability.

SECTION 9. List of Stockholders. It shall be the duty of the Secretary or other officer of the Corporation who shall have charge of its stock ledger to prepare and make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to any such meeting, during ordinary business hours, for a period of at least 10 days prior to such meeting, either at a place within the city where such meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. Such list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

SECTION 10. Stockholders' Consent in Lieu of Meeting. Any action required by the Delaware Statute to be taken at any annual or special meeting of the stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, by a consent in writing, as permitted by the Delaware Statute.

### ARTICLE III

#### Board of Directors

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate directed or required to be exercised or done by the stockholders.

SECTION 2. Number and Term of Office. The number of directors shall be fixed from time to time by the Board. Directors need not be stockholders. Each director shall hold office until his successor is elected and qualified, or until his earlier death or resignation or removal in the manner hereinafter provided.

SECTION 3. Election of Directors. At each meeting of the stockholders for the election of directors at which a quorum is present, the persons receiving the greatest number of votes, up to the number of directors to be elected, of the

stockholders present in person or by proxy and entitled to vote thereon shall be the directors; provided, however, that for purposes of such vote no stockholder shall be allowed to cumulate his votes. Unless an election by ballot shall be demanded as provided in Section 7 of Article II, election of directors may be conducted in any manner approved at such meeting.

SECTION 4. Resignation, Removal and Vacancies.

(a) Any director may resign at any time by giving written notice to the Board, the Chairman, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof; unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Any director or the entire Board may be removed, with or without cause, at any time by vote of the holders of a majority of the shares then entitled to vote at an election of directors or by written consent of the stockholders pursuant to Section 10 of Article II.

(c) Vacancies occurring on the Board for any reason may be filled by vote of the stockholders or by the stockholders' written consent pursuant to Section 10 of Article II, or by vote of the Board or by the directors' written consent pursuant to Section 6 of this Article III. If the number of directors then in office is less than a quorum, such vacancies may be filled by a vote of a majority of the directors then in office.

SECTION 5. Meetings.

(a) Annual Meetings. As soon as practicable after each annual election of directors, the Board shall meet for the purpose of organization and the transaction of other business, unless it shall have transacted all such business by written consent pursuant to Section 6 of this Article III.

(b) Other Meetings. Other meetings of the Board shall be held at such times and places as the Board, the Chairman, the President or any director shall from time to time determine.

(c) Notice of Meetings. Notice shall be given to each director of each meeting, including the time, place and purpose of such meeting. Notice of each such meeting shall be mailed to each director, addressed to him at his residence or usual place of business, at least two days before the date on which such meeting is to be held, or shall be sent to him at such place by telegraph, cable, wireless or other form of recorded communication, or be delivered personally or by telephone not later than the day before the day on which such meeting is to be held, but notice need not be given to any director who shall attend such meeting. A written waiver of notice, signed by the person entitled thereto, whether before or after the time of the meeting stated therein, shall be deemed equivalent to notice.

(d) Place of Meetings. The Board may hold its meetings at such place or places within or outside the State of Delaware as the Board may from time to time determine, or as shall be designated in the respective notices or waivers of notice thereof.

(e) Quorum and Manner of Acting. A majority of the total number of directors then in office shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and the vote of a majority of those directors present at any such meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board, except as otherwise expressly required by law or these By-laws. In the absence of a quorum for any such meeting, a majority of the directors present thereat may adjourn such meeting from time to time until a quorum shall be present.

(f) Organization. At each meeting of the Board, one of the following shall act as chairman of the meeting and preside thereat, in the following order of precedence:

- (i) the Chairman;
- (ii) the President (if a director); or
- (iii) any director designated by a majority of the directors present.

The Secretary or, in the case of his absence, an Assistant Secretary, if an Assistant Secretary has been appointed and is present, or any person whom the chairman of the meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

SECTION 6. Directors' Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by all the directors then in office and such consent is filed with the minutes of the proceedings of the Board.

SECTION 7. Action by Means of Conference Telephone or Similar Communications Equipment. Any one or more members of the Board may participate in a meeting of the Board by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

SECTION 8. Committees. The Board may, by resolution or resolutions passed by a majority of the whole Board, designate one or more committees, each such committee to consist of one or more directors of the Corporation, which to the extent provided in said resolution or resolutions shall have and may exercise the powers of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it, such

committee or committees to have such name or names as may be determined from time to time by resolution adopted by the Board. A majority of all the members of any such committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. The Board shall have power to change the members of any such committee at any time, to fill vacancies and to discharge any such committee, either with or without cause, at any time.

#### ARTICLE IV

##### Officers

SECTION 1. Executive Officers. The principal officers of the Corporation shall be a Chairman, if one is appointed (and any references to the Chairman shall not apply if a Chairman has not been appointed), a President, a Secretary, and a Treasurer, and may include such other officers as the Board may appoint pursuant to Section 3 of this Article IV. Any two or more offices may be held by the same person.

SECTION 2. Authority and Duties. All officers, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in these By-laws or, to the extent so provided, by the Board.

SECTION 3. Other Officers. The Corporation may have such other officers, agents and employees as the Board may deem necessary, including one or more Assistant Secretaries, one or more Assistant Treasurers and one or more Vice Presidents, each of whom shall hold office for such period, have such authority, and perform such duties as the Board, the Chairman, or the President may from time to time determine. The Board may delegate to any principal officer the power to appoint and define the authority and duties of, or remove, any such officers, agents, or employees.

##### SECTION 4. Term of Office, Resignation and Removal.

(a) All officers shall be elected or appointed by the Board and shall hold office for such term as may be prescribed by the Board. Each officer shall hold office until his successor has been elected or appointed and qualified or until his earlier death or resignation or removal in the manner hereinafter provided. The Board may require any officer to give security for the faithful performance of his duties.

(b) Any officer may resign at any time by giving written notice to the Board, the Chairman, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if the time be not specified, at the time it is accepted by action of the Board. Except as aforesaid, the acceptance of such resignation shall not be necessary to make it effective.

(c) All officers and agents elected or appointed by the Board shall be subject to removal at any time by the Board or by the stockholders of the Corporation with or without cause.

SECTION 5. Vacancies. If the office of Chairman, President, Secretary or Treasurer becomes vacant for any reason, the Board shall fill such vacancy, and if any other office becomes vacant, the Board may fill such vacancy. Any officer so appointed or elected by the Board shall serve only until such time as the unexpired term of his predecessor shall have expired, unless reelected or reappointed by the Board.

SECTION 6. The Chairman. The Chairman shall give counsel and advice to the Board and the officers of the Corporation on all subjects concerning the welfare of the Corporation and the conduct of its business and shall perform such other duties as the Board may from time to time determine. Unless otherwise determined by the Board, he shall preside at meetings of the Board and of the Stockholders at which he is present.

SECTION 7. The President. The President shall be the chief executive officer of the Corporation. The President shall have general and active management and control of the business and affairs of the Corporation subject to the control of the Board and shall see that all orders and resolutions of the Board are carried into effect. The President shall from time to time make such reports of the affairs of the Corporation as the Board of Directors may require and shall perform such other duties as the Board may from time to time determine.

SECTION 8. The Secretary. The Secretary shall, to the extent practicable, attend all meetings of the Board and all meetings of the stockholders and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose. He may give, or cause to be given, notice of all meetings of the stockholders and of the Board, and shall perform such other duties as may be prescribed by the Board, the Chairman or the President, under whose supervision he shall act. He shall keep in safe custody the seal of the Corporation and affix the same to any duly authorized instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of the Treasurer or, if appointed, an Assistant Secretary or an Assistant Treasurer. He shall keep in safe custody the certificate books and stockholder records and such other books and records as the Board may direct, and shall perform all other duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman or the President.

SECTION 9. The Treasurer. The Treasurer shall have the care and custody of the corporate funds and other valuable effects, including securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, shall render to the Chairman, President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation and shall perform all other duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board, the Chairman or the President.

ARTICLE V

Contracts, Checks, Drafts, Bank Accounts, Etc.

SECTION 1. Execution of Documents. The Board shall designate, by either specific or general resolution, the officers, employees and agents of the Corporation who shall have the power to execute and deliver deeds, contracts, mortgages, bonds, debentures, checks, drafts and other orders for the payment of money and other documents for and in the name of the Corporation, and may authorize such officers, employees and agents to delegate such power (including authority to redelegate) by written instrument to other officers, employees or agents of the Corporation; unless so designated or expressly authorized by these By-laws, no officer, employee or agent shall have any power or authority to bind the Corporation by any contract or engagement, to pledge its credit or to render it liable pecuniarily for any purpose or amount.

SECTION 2. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation or otherwise as the Board or Treasurer, or any other officer of the Corporation to whom power in this respect shall have been given by the Board, shall select.

SECTION 3. Proxies with Respect to Stock or Other Securities of Other Corporations. The Board shall designate the officers of the Corporation who shall have authority from time to time to appoint an agent or agents of the Corporation to exercise in the name and on behalf of the Corporation the powers and rights which the Corporation may have as the holder of stock or other securities in any other corporation, and to vote or consent with respect to such stock or securities. Such designated officers may instruct the person or persons so appointed as to the manner of exercising such powers and rights, and such designated officers may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, such written proxies, powers of attorney or other instruments as they may deem necessary or proper in order that the Corporation may exercise its powers and rights.

ARTICLE VI

Shares and Their Transfer; Fixing Record Date

SECTION 1. Certificates for Shares. Every owner of stock of the Corporation shall be entitled to have a certificate certifying the number and class of shares owned by him in the Corporation, which shall be in such form as shall be prescribed by the Board. Certificates shall be numbered and issued in consecutive order and shall be signed by, or in the name of, the Corporation by the Chairman, the President or any Vice President, and by the Treasurer (or an Assistant Treasurer, if appointed) or the Secretary (or an Assistant Secretary, if appointed). In case any officer or officers who shall have signed any such certificate or certificates shall cease to be such officer or officers of the Corporation, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed such certificate had not ceased to be such officer or officers of the Corporation.



SECTION 2. Record. A record in one or more counterparts shall be kept of the name of the person, firm or corporation owning the shares represented by each certificate for stock of the Corporation issued, the number of shares represented by each such certificate, the date thereof and, in the case of cancellation, the date of cancellation. Except as otherwise expressly required by law, the person in whose name shares of stock stand on the stock record of the Corporation shall be deemed the owner thereof for all purposes regarding the Corporation.

SECTION 3. Transfer and Registration of Stock.

(a) The transfer of stock and certificates which represent the stock of the Corporation shall be governed by Article 8 of Subtitle 1 of Title 6 of the Delaware Code (the Uniform Commercial Code), as amended from time to time.

(b) Registration of transfers of shares of the Corporation shall be made only on the books of the Corporation upon request of the registered holder thereof, or of his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation, and upon the surrender of the certificate or certificates for such shares properly endorsed or accompanied by a stock power duly executed.

SECTION 4. Addresses of Stockholders. Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to him, and, if any stockholder shall fail to designate such address, corporate notices may be served upon him by mail directed to him at his post-office address, if any, as the same appears on the share record books of the Corporation or at his last known post-office address.

SECTION 5. Lost, Destroyed and Mutilated Certificates. The holder of any shares of the Corporation shall immediately notify the Corporation of any loss, destruction or mutilation of the certificate therefor, and the Board may, in its discretion, cause to be issued to him a new certificate or certificates for such shares, upon the surrender of the mutilated certificates or, in the case of loss or destruction of the certificate, upon satisfactory proof of such loss or destruction, and the Board may, in its discretion, require the owner of the lost or destroyed certificate or his legal representative to give the Corporation a bond in such sum and with such surety or sureties as it may direct to indemnify the Corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate.

SECTION 6. Regulations. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these By-laws, concerning the issue, transfer and registration of certificates for stock of the Corporation.

SECTION 7. Fixing Date for Determination of Stockholders of Record. (a) In order that the Corporation may determine the stockholders entitled to

notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall be not more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall be not more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by the Delaware Statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by the Delaware Statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

ARTICLE VII

Seal

The Board may provide a corporate seal, which shall be in the form of a circle and shall bear the full name of the Corporation, the year of incorporation of the Corporation and the words and figures “Corporate Seal - Delaware.”

ARTICLE VIII

Fiscal Year

The fiscal year of the Corporation shall be the calendar year unless otherwise determined by the Board.

ARTICLE IX

Indemnification and Insurance

SECTION 1. Indemnification.

(a) As provided in the Charter, to the fullest extent permitted by the Delaware Statute as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for breach of fiduciary duty as a director.

(b) Without limitation of any right conferred by paragraph (a) of this Section 1, each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “proceeding”), by reason of the fact that he or she is or was a director, officer or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer or employee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an “indemnitee”), whether the basis of such proceeding is alleged action in an official capacity while serving as a director, officer or employee or in any other capacity while serving as a director, officer or employee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware Statute, 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 attorneys’ fees, judgments, fines, excise taxes or 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 a director, officer or employee and shall inure to the benefit of the indemnitee’s heirs, testators, intestates, executors and administrators; provided, however, that such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best

interests of the Corporation, and with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided further, however, that no indemnification shall be made in the case of an action, suit or proceeding by or in the right of the Corporation in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director, officer, employee or agent is liable to the Corporation, unless a court having jurisdiction shall determine that, despite such adjudication, such person is fairly and reasonably entitled to indemnification; provided further, however, that, except as provided in Section 1(c) of this Article IX 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) initiated by such indemnitee was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Article IX shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that, if the Delaware Statute requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) 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 Section or otherwise.

(c) If a claim under Section (b) of this Article IX is not paid in full by the Corporation with 60 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 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If 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 any undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) 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, and (ii) 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 Delaware Statute. Neither the failure of the Corporation (including the Board, independent legal counsel, or the 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 Delaware Statute, nor an actual determination by the Corporation (including the Board, independent legal counsel, or the 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 Section or otherwise shall be on the Corporation.

(d) The rights to indemnification and to the advancement of expenses conferred in this Article IX shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Charter, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 2. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was a director, officer, employee or agent of the Corporation or any person who is or was serving at the request of the Corporation as a director, officer, employer 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 Delaware Statute.

## ARTICLE X

### Amendment

Any by-law (including these By-laws) may be adopted, amended or repealed by the vote of the holders of a majority of the shares then entitled to vote or by the stockholders' written consent pursuant to Section 10 of Article II, or by the vote of the Board or by the directors' written consent pursuant to Section 6 of Article III.

\* \* \* \* \*  
\* \* \*  
\*

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
1010 Richards Street
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810

ARTICLES OF ORGANIZATION FOR LIMITED LIABILITY COMPANY
(Section 428-203, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, for the purpose of forming a limited liability company under the laws of the State of Hawaii, do hereby make and execute these Articles of Organization:

I

The name of the company shall be:
DB Online, LLC

(The name must contain the words Limited Liability Company or the abbreviation L.L.C. or LLC)

II

The mailing address of the initial principal office is:
98-030 Hekaha Street, Building 7, Suite 10, Alea, Hawaii 96701

III

The company shall have and continuously maintain in the State of Hawaii an agent and street address of the agent for service of process on the company. The agent may be an individual resident of Hawaii, a domestic entity, or a foreign entity authorized to transact or conduct affairs in this State, whose business office is identical with the registered office.

a. The name of the company's initial agent for process of service is:

United Pet Group, Inc.

(Name of Registered Agent)

Delaware

(State or Country)

b. The street address of the initial registered office in this State is:

98-030 Hekaha Street, Building 7, Suite 10, Alea, Hawaii 96701

IV

The name and address of each organizer is:

John Heil, CEO; Thomas Kasvin, Treasurer,

CFO, President and Assistant Secretary;

John R. LeClaire, Secretary; Mark Stern

Vice President; Joseph A. Bussing, Vice

President; Michael A. Wilson, Vice

President and Assistant Secretary.

c/o United Pet Group, 463 Ohio Pike,

Suite 303, Cincinnati, OH 45255

V

The period of duration is (check one):

At-will

For a specified term to expire on:

\_\_\_\_\_

(Month Day Year)

VI

The company is (check one):

Manager-managed, and the names and addresses of the initial managers are listed below.  
(Number of initial members: \_\_\_\_\_)

Member-managed, and the names and addresses of the initial members are listed below.

United Pet Group, Inc.

463 Ohio Pike, Suite 303

Cincinnati, OH 45255

VII

The members of the company (check one):

Shall not be liable for the debts, obligations and liabilities of the company.

Shall be liable for some or all, *as stated below*, of the specified debts, obligations and liabilities of the company, and have consented in writing to the adoption of this provision or to be bound by this provision.

We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statements and that the same are true and correct.

Signed this 12th day of March, 2004

John Heil

Thomas Kasvin

\_\_\_\_\_  
(Type/Print Name of Organizer)

\_\_\_\_\_  
(Type/Print Name of Organizer)

/s/ John Heil

/s/ Thomas Kasvin

\_\_\_\_\_  
(Signature of Organizer)

\_\_\_\_\_  
(Signature of Organizer)

SEE INSTRUCTIONS PAGE. The articles must be signed and certified by at least one organizer of the company.

## DB Online, LLC

Operating Agreement

This Operating Agreement (this "Agreement") of DB Online, LLC (the "Company") is entered into by United Pet Group Inc., a Delaware corporation, as sole member (in its capacity as the sole member of the Company, the "Member").

WHEREAS, the Company has been formed as a limited liability company under the Hawaii Limited Liability Company Act (§ 428-105 et. seq.), as amended from time to time (the "Act"), by the filing of articles of organization in the Department of Commerce and Consumer Affairs of the State of Hawaii.

The Member hereby agrees as follows:

1. Name. The name of the limited liability company formed hereby is DB Online, LLC.

2. Articles of Organization and Qualification to Do Business. The Member, as an authorized person within the meaning of the Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all articles of organization required or permitted by the Act to be filed in the Department of Commerce and Consumer Affairs of the State of Hawaii. The Member shall also execute, deliver and file any other articles (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any and all jurisdictions in which the Company may wish to conduct business.

3. Purpose and Powers. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act.

The Company will possess and may exercise all the powers and privileges granted by the Act, any other law or this Agreement, together with any powers incidental thereto, and may take any action not prohibited under the Act or other applicable law, so far as such powers and actions are, in the sole discretion of the Member, necessary, convenient or desirable to the conduct, promotion or attainment of the business, purposes or activities of the Company.

4. Term; Fiscal Year. The term of the Company commenced on the date the articles of organization of the Company were filed in the Department of Commerce and Consumer Affairs of the State of Hawaii, and will continue until dissolved as provided herein. The fiscal year end of the Company will be December 31.

5. Principal Business Office. The principal business office of the Company shall be maintained at 98-030 Hekaha Street, Building 7, Suite 10, Aiea, Hawaii 96701.



6. Registered Office and Agent. The registered agent for service of process and the registered office shall be that person and location reflected in the articles of organization of the Company as filed in the Department of Commerce and Consumer Affairs of the State of Hawaii. The Member may, from time to time, change the registered agent or office through appropriate filing with the Department of Commerce and Consumer Affairs of the State of Hawaii. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Member shall promptly designate a replacement registered agent or file a notice of change of address as the case may be.

7. Member. The name and the mailing address of the Member are as follows:

<u>Name</u>	<u>Address</u>
United Pet Group, Inc.	463 Ohio Pike, Suite 303 Cincinnati, OH 45255

8. Limited Liability; Indemnification. (a) Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Member shall not be obligated personally for any such debt, obligation or liability of the Company by reason of being a member of the Company or exercising any rights under this Agreement.

(b) To the fullest extent permitted by law, the Company shall indemnify the Member and the officers, directors and shareholders of the Member, against any and all liability incurred and/or for any act performed by them in good faith and/or for any act in good faith omitted to be performed by them in good faith (including, without limitation, reasonable legal and other professional fees and expenses as the same are incurred) as or on behalf of a Member (or affiliate thereof) of the Company.

9. Admission; Transfer of Membership Interests. The Member is deemed admitted as the Member of the Company upon its execution and delivery of this Agreement.

10. Distributions. Except as otherwise provided by the Act, distributions may be made to the Member at the times and in the aggregate amounts determined by the Member.

11. Management. The business and affairs of the Company shall be managed by the Member in its sole discretion, subject to the provisions of the Act. The Member shall have the power in its sole discretion to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members of a limited liability company under the laws of the State of Hawaii. The Member is an agent of the Company for the purpose of the Company's business, and the actions of the Member taken in accordance with such powers set forth in this Agreement shall bind the Company.

12. Dissolution. The Company shall be dissolved without further action by the Member and its affairs wound up upon the first to occur of any of the following events:

(a) The written consent of the Member;

(b) The sale or distribution of all or substantially all of the Company's assets;

(c) The retirement, resignation or dissolution of the Member or the occurrence of any other event which terminates the continued membership of the Member in the Company unless the business of the Company is continued in a manner permitted by this Agreement or the Act;

(d) An event that makes it unlawful for all or substantially all of the business of the Company to be continued; provided that any cure of illegality within ninety days after notice to the Company of the event shall be effective retroactively to the date of the event; or

(e) Upon application, the entry of a decree of judicial dissolution under Section 428-801 of the Act.

In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order or priority, set forth in Section 428-806 of the Act.

13. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Hawaii (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

14. Amendments. This Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.

15. Binding Effect. Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the Member and its successors, transferees, and assigns.

16. Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

*(The remainder of this page has intentionally been left blank.)*

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the 12<sup>th</sup> day of March, 2004.

United Pet Group, Inc.

By: /s/ John Heil

\_\_\_\_\_  
Name: John Heil

Title: Chief Executive Officer

**ARTICLES OF INCORPORATION**

**OF**

**GROUND ZERO INC.**

The undersigned natural person of the age of eighteen (18) years or more for the purpose of forming a corporation under The General and Business Corporation Law of Missouri adopts the following Articles of Incorporation:

**ARTICLE ONE**

The name of the corporation is: GROUND ZERO INC.

**ARTICLE TWO**

The address, including street and number, if any, of the corporation's initial registered office in this state is Goldstein & Vouga, P.C., 121 Hunter Avenue, Suite 101, St. Louis, Missouri 63124, and the name of the initial registered agent at such address is Steven Goldstein.

**ARTICLE THREE**

The aggregate number, class, and par value of shares that the corporation shall have authority to issue shall be thirty thousand (30,000) shares of common stock having a par value of One Dollar (\$1.00) per share amounting in the aggregate to Thirty Thousand Dollars (\$30,000.00).

**ARTICLE FOUR**

No holder of shares of any class of stock of this corporation, either now or hereafter authorized or issued, shall have any preemptive or preferential right to subscribe for or purchase any shares of any class of stock of this corporation, either now or hereafter authorized whether issued for cash, property or services, or to subscribe for or purchase obligations, bonds, notes, debentures, other securities or stock convertible into stock of any class of this corporation, other than such right, if any, as the Board of Directors in its discretion may from time to time determine, and at such prices as the Board of Directors may from time to time fix.

**ARTICLE FIVE**

The name and place of residence of the incorporator are as follows:

<u>Name</u>	<u>Street</u>	<u>City and State</u>
Steven Goldstein	121 Hunter Avenue Suite 101 712 Swathmore Lane University City, MO 63130	St. Louis, Missouri 63124

**ARTICLE SIX**

The number of directors to constitute the first Board of Directors is four (4). Thereafter, the number of directors shall be fixed by, or in the manner provided in, the bylaws of the corporation. Any changes shall be reported to the Secretary of State within thirty (30) calendar days of such change.

**ARTICLE SEVEN**

No shareholder shall have the right to cumulative voting in the election of directors.

**ARTICLE EIGHT**

The duration of the corporation is perpetual.

**ARTICLE NINE**

The corporation is formed to do any and all legal acts permitted to be done by corporations organized under and pursuant to “The General and Business Corporation Law of Missouri.”

**ARTICLE TEN**

The power to make, alter, amend, or repeal bylaws of the corporation shall be vested exclusively in the Board of Directors.

IN WITNESS WHEREOF, these Articles of Incorporation have been signed this 31st day of December, 1997.

/s/ Steven Goldstein

Steven Goldstein

STATE OF MISSOURI     )  
                                  ) SS.  
COUNTY OF ST. LOUIS    )

I, Donna Honnoll, a notary public, do hereby certify that on the 31st day of December, 1997, personally appeared before me Steven Goldstein, who being by me first duly sworn, declared that he is the person who signed the foregoing document as incorporator, and that the statements therein contained are true.

/s/ Donna L. Honnoll

Notary Public

My commission expires:

DONNA L. HONNOLL  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: May 24, 2001

**State of Missouri**  
**Rebecca McDowell Cook, Secretary of State**  
**P.O. Box 778, Jefferson City, MO 65102**

Corporate Division

**Amendment of Articles of Incorporation**  
*(To be submitted in duplicate)*

Pursuant to the provisions of The General and Business Corporation Law of Missouri, the undersigned Corporation certifies the following:

1. The present name of the Corporation is GROUND ZERO INC..

The Corporate number is 00450207.

The name under which it was originally organized was GROUND ZERO INC..

2. An amendment to the Corporation's Articles of Incorporation was adopted by the shareholder on February 12, 1998.

3. Article Number Six is amended to read as follows:

The number of directors to constitute the Board of Directors is one (1).

4. Of the thirty thousand (30,000) shares authorized, only one-hundred (100) of such shares are outstanding and entitled to vote on such amendment. The number of outstanding shares of any class entitled to vote thereon as a class were as follows:

<i>Class</i>	<i>Number of Outstanding Shares</i>
Common	100

5. The number of shares voted for and against the amendment was as follows:

<i>Class</i>	<i>No. Voted For</i>	<i>No. Voted Against</i>
Common	100	0

6. If the amendment changed the number or par value of authorized shares having a par value, the amount in dollars of authorized shares having a par value as changed is:

If the amendment changed the number of authorized shares without par value, the authorized number of shares without par value as changed and the consideration proposed to be received for such increased authorized shares without par value as are to be presently issued are:

7. If the amendment provides for an exchange, rectification, or cancellation of issued shares, or a reduction of the number of authorized shares of any class below the number of issued shares of that class, the following is a statement of the manner in which such reduction shall be effected:

IN WITNESS WHEREOF, the undersigned, President has executed this instrument and its Secretary has affixed its corporate seal hereto and attested said seal on the 16th day of February, 1998.

(SEAL)

GROUND ZERO INC.

Name of Corporation

**ATTEST:**

/s/ Steven Goldstein

By /s/ Steven Goldstein

Secretary

Steven Goldstein, President

State of Missouri        )  
                                  ) SS  
County of St. Louis     )

I, Donna Honnoll, a Notary Public, do hereby certify that on this 4th day of March, 1998, personally appeared before me Steven Goldstein who, being by me first duly sworn, declared that he is the President and Secretary of Ground Zero Inc., that he signed the foregoing document as President of the corporation, and that the statements therein contained are true.

/s/ Donna L. Honnoll

Notary Public

My commission expires

DONNA L. HONNOLL  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: May 24, 2001



**GROUND ZERO INC.**

**BYLAWS**

(Incorporated under the Laws of Missouri)

Adopted February 16, 1998

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**BYLAWS**

**ARTICLE I. OFFICE**

**SECTION 1.1. PRINCIPAL OFFICE.** The principal office of the corporation shall be located in the of City of St. Louis, State of Missouri. The corporation may have such other offices, either within or without the State of Missouri, as the Board of Directors may designate or as the business of the corporation may from time to time require.

**SECTION 1.2. REGISTERED OFFICE.** The registered office of the corporation, required by The General and Business Corporation Law of Missouri to be maintained in the State of Missouri, may be, but need not be, identical with the principal office of the corporation, and the address of the registered office may be changed from time to time by the Board of Directors or by the registered agent, as provided by law.

**ARTICLE II. MEETINGS OF SHAREHOLDERS**

**SECTION 2.1. ANNUAL MEETING.** An annual meeting of the shareholders for the purpose of electing directors and for the transaction of such other business as may come before the meeting shall be held on the third Wednesday of the month of January in each year, beginning with the year 1998, or on such other day within such month as shall be fixed by the Board of Directors. If the day fixed for the annual meeting shall be a legal holiday in the State of Missouri, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the shareholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as may be convenient.

**SECTION 2.2. SPECIAL MEETINGS.** Special meetings of the shareholders which may be held for any purpose or purposes, unless otherwise prescribed by law, may be called by the Chairman of the Board (if any, if the Chairman of the Board is the chief executive officer), by the President, by the Board of Directors, or by the holders of not less than one-fifth (1/5) of all outstanding shares entitled to vote at such meeting.

**SECTION 2.3. PLACE AND TIME OF MEETINGS.** Meetings of shareholders shall be held at the principal office of the corporation or such other place within or without the State of Missouri as may be designated from time to time by the Board of Directors. The Board of Directors or the person or persons calling such meeting may fix a reasonable hour not earlier than 10:00 a.m. or later than 8:00 p.m. for convening any meeting.

**SECTION 2.4. NOTICE OF MEETINGS.** Unless waived, written or printed notice of each meeting of shareholders stating the place, day, and hour of the meeting and, in the case of a special meeting, or where otherwise required by law, the purpose

or purposes for which the meeting is called, shall be delivered or given not less than ten (10) nor more than seventy (70) days before the date of the meeting, either personally or by mail, by or at the direction of the President, or the Secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If such notice is given by mail, such notice shall be deemed delivered when deposited in the United States mail, with postage thereon prepaid, addressed to the shareholder at the shareholder's address as it appears on the records of the corporation. Attendance of a shareholder at any meeting shall constitute a waiver of notice of such meeting, except where a shareholder attends a meeting for the express purpose of objecting to the transaction of any business thereat, because such meeting is not lawfully called or convened.

**SECTION 2.5. DATE FOR DETERMINING SHAREHOLDERS ENTITLED TO VOTE.** The date for determining the shareholders entitled to vote at a meeting of shareholders shall be established pursuant to Section 5.4 if action thereunder shall have been taken to establish the controlling date; otherwise, only the shareholders who are shareholders of record at the close of business on the twentieth (20th) day preceding the date of the meeting shall be entitled to notice of, and to vote at, the meeting, and any adjournment of the meeting; except that, if prior to the meeting, written waivers of notice of the meeting are signed and delivered to the corporation by all of the shareholders of record at the time the meeting is convened, only the shareholders who are shareholders of record at the time the meeting is convened shall be entitled to vote at the meeting, and any adjournment of the meeting.

**SECTION 2.6. VOTING RECORD.** The officer having charge of the transfer book for shares of the corporation shall make, at least ten (10) days before each meeting of the shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order with the address of and the number of shares held by each, which list shall be kept on file at the registered office of the corporation for a period of ten (10) days prior to such meeting and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in the State of Missouri, shall be prima facie evidence of the identity of the shareholders entitled to examine such list, share ledger, or transfer book and to vote at any meeting of the shareholders. Failure to comply with this Section shall not affect the validity of any action taken at any meeting of shareholders.

**SECTION 2.7. QUORUM.** Unless a larger number is provided by law, the Articles of Incorporation of the corporation, or these Bylaws, a majority of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders and the decision of a majority of a quorum shall be valid as a corporate act. If less than a majority of the outstanding shares entitled to vote are represented at any such meeting, a majority of the shares so represented may adjourn the meeting to a specified date not longer than ninety (90) days after such adjournment, from time to time without further notice. At

such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that could have been transacted at the meeting as originally noticed. The shareholders present at a duly organized meeting may continue to transact business until the adjournment thereof notwithstanding the subsequent withdrawal of shareholders representing enough shares to leave less than a quorum.

**SECTION 2.8. PROXIES.** A shareholder, at any meeting of shareholders, may vote either in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power of attorney. The interest with which it is coupled need not be an interest in the shares themselves. Proxies shall be filed with the Secretary of the corporation before or at the time of such meeting.

**SECTION 2.9. CONVENING SHAREHOLDERS MEETINGS.** The Chairman of the Board (if any), or in the Chairman of the Board's absence, the President, or in the President's absence, the Secretary, or in the absence of any of the foregoing, any other officer or any of the persons calling the meeting by a notice given as herein provided (in the order of seniority of age) shall call meetings of shareholders to order and act as chairman thereof; provided, however, that notwithstanding the foregoing, the shareholders present may elect the chairman of such meeting from among their members. The Secretary shall act as secretary of all meetings of shareholders, but in the absence of the Secretary, or if the Secretary is serving as chairman, the chairman may appoint any person to act as secretary.

**SECTION 2.10. VOTING AT MEETINGS.** Except as otherwise provided by law or the Articles of Incorporation, every shareholder entitled to vote at a meeting of shareholders upon a particular question, shall have one (1) vote for each share of voting stock standing in the shareholder's name on the books of the corporation at the time fixed by law or pursuant to these Bylaws for the determination of the right to vote at such meeting. No person shall be admitted to vote on any shares belonging or hypothecated to the corporation.

**SECTION 2.11. PERSONS WHO MAY VOTE CERTAIN SHARES.** Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe or, in the absence of a governing provision, as the board of directors of such corporation may determine. Shares standing in the name of a deceased person may be voted by the deceased person's personal representative, either in person or by proxy. Shares standing in the name of a conservator or trustee may be voted by such fiduciary, either in person or by proxy, but no conservator or trustee shall be entitled, as such fiduciary, to vote shares held by him or her without a transfer of such shares into his or her name. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority to do so is contained in an

appropriate order of the court by which such receiver was appointed. Unless the corporation shall have been given written notice to the contrary, executed by the shareholder and the pledgee of any shares of the corporation, a shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

**SECTION 2.12. ACTIONS WITHOUT MEETINGS.** Any action required by law to be taken at a meeting of the shareholders, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if consents in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consents shall have the same force and effect as a unanimous vote of the shareholders at a meeting duly held. The Secretary shall file such consents with the minutes of the meetings of the shareholders.

### **ARTICLE III. BOARD OF DIRECTORS**

**SECTION 3.1. GENERAL POWERS.** The property and business of the corporation shall be controlled and managed by the Board of Directors. The Board of Directors may exercise all powers of the corporation and do all lawful acts and things as are not by law, the Articles of Incorporation, or these Bylaws, directed or required to be exercised or done by the shareholders or some particular officer of the corporation.

**SECTION 3.2. NUMBER, TERM, AND ELECTION.** The number of directors constituting the full Board of Directors of the corporation shall be one (1). The corporation may have fewer than three (3) directors only if the number of directors to constitute the full Board of Directors is also stated in the Articles of Incorporation. Directors need not be residents of the State of Missouri or the state of the corporation's principal place of business and need not be shareholders of the corporation, unless the Articles of Incorporation so require. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders entitled to vote shall elect directors to hold office until the next succeeding annual meeting. Each director shall hold office for the term for which he or she is elected or until his or her successor shall have been elected and qualified, except as otherwise provided by law or these Bylaws. Unless otherwise provided in the Articles of Incorporation, vacancies on the Board of Directors and newly created directorships resulting from any increase in the number of directors to constitute the Board of Directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, until the next election of directors by the shareholders of the corporation.

**SECTION 3.3. REMOVAL OF DIRECTORS.** Directors may be removed, with or without cause, in the manner and subject to the limitations provided by law at a meeting of shareholders called expressly for such purpose. Such meeting shall be held at the registered office or principal business office of the corporation in Missouri or at such other place in the City or county in Missouri in which the principal business office of the corporation is located as may be established by the person or persons calling such meeting and stated in the notice thereof. Unless otherwise provided in the Articles

of Incorporation, one or more directors or the entire Board of Directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

Any director of the corporation may also be removed for cause by action of a majority of the entire Board of Directors if the director to be removed shall, at the time of removal, fail to meet the qualifications, if any, stated herein or in the Articles of Incorporation for election as a director or shall be in breach of any agreement between such director and the corporation relating to such director's services as a director or employee of the corporation. Notice of the proposed removal shall be given to all directors of the corporation prior to action thereon.

**SECTION 3.4. REGULAR MEETINGS.** A regular meeting of the Board of Directors shall be held without notice immediately after, and at the same place as, the annual meeting of shareholders. The Board of Directors may provide, by resolution fixing the time and place thereof, for the holding of additional regular meetings, which may thereafter be held at the designated time and place, without further notice thereof to the directors.

**SECTION 3.5. SPECIAL MEETINGS.** Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board (if any), the President, or any two (2) directors. Unless waived, written notice of any special meeting, stating the place, day, and hour thereof shall be given at least three (3) days prior thereto by the person or persons calling the meeting, either personally, by mail, or by telegram, to each director either at the most recent address which he or she has furnished the Secretary or at his or her last known residence address. If notice is given by mail, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Attendance of a director at any special meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business thereat, because such meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

**SECTION 3.6. PLACE OF MEETINGS.** Unless otherwise provided in the Articles of Incorporation, meetings of the Board of Directors or of any committee designated by the Board of Directors may be held at any place either within or without the State of Missouri. Members of the Board of Directors or of any committee designated by the Board of Directors may participate in the meeting of the Board of Directors or of any committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.



**SECTION 3.7. QUORUM.** Unless a greater number is required by law, the Articles of Incorporation, or these Bylaws, a majority of the number of directors fixed as the full Board of Directors by the Articles of Incorporation or these Bylaws, as the case may be, shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present at a meeting, or the director if there be only one (1) present, or the Secretary if there be no director present, may successively adjourn the meeting from time to time, not to exceed thirty (30) days in the aggregate, until a quorum is obtained, and no notice other than an announcement at the meeting need be given of such adjournment.

**SECTION 3.8. COMMITTEES.** The Board of Directors, by resolution adopted by a majority of the number of directors fixed as the full Board of Directors by the Articles of Incorporation or these Bylaws, as the case may be, may designate two (2) or more directors to constitute a committee. Each such committee, to the extent provided herein or in the resolution, shall have and exercise all of the authority of the Board of Directors in the management of the corporation; provided, however, that any or all members of each such committee may be removed at any time, with or without cause, by vote of a majority of the number of directors fixed as the full Board of Directors by the Articles of Incorporation or these Bylaws, as the case may be. Unless the Board of Directors provides for a greater number, a majority of the members constituting each such committee shall be a quorum and the act of such majority shall be the act of such committee.

**SECTION 3.9. COMPENSATION.** Each director may be reimbursed for the expenses, if any, incurred by him or her in attending each meeting of the Board of Directors, and may be paid such compensation as the Board of Directors may from time to time determine.

**SECTION 3.10. ACTIONS WITHOUT MEETINGS.** Any action which is required to or may be taken at a meeting of the Board of Directors or of any committee of the directors, may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by all of the members of the Board of Directors or of the committee, as the case may be. The consents shall have the same force and effect as a unanimous vote at a meeting duly held. The Secretary shall file the consents with the minutes of the meetings of the Board of Directors or of the committee, as the case may be.

#### **ARTICLE IV. OFFICERS**

**SECTION 4.1. GENERAL.** The principal executive officers of the corporation (in addition to the Chairman of the Board, if any) shall be a President, one (1) or more Vice-Presidents (any of whom may be designated with descriptive titles), a Secretary, and a Treasurer; provided, that the Board of Directors may, in its discretion, limit the principal executive officers of the corporation to a President and a Secretary, unless otherwise required by law. The Board of Directors may appoint such other officers and agents (including, but not limited to, a Chairman of the Board and one or more Assistant

Vice-Presidents, Assistant Secretaries, and Assistant Treasurers), as it shall deem necessary, who shall have such authority and shall perform such duties as are set out in these Bylaws or as from time to time shall be prescribed by the Board of Directors. Any two (2) or more of the aforesaid offices may be filled by the same person. The Board of Directors, at its first annual meeting and thereafter from time to time, shall elect the principal executive officers and other officers of the corporation, who shall serve at the pleasure of the Board of Directors. Any officer or agent may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. The Board of Directors shall determine the salary and other compensation of all officers and agents of the corporation.

**SECTION 4.2. CHIEF EXECUTIVE OFFICER.** The chief executive officer of the corporation shall have general and active management of the corporation and shall see that all orders and resolutions of the Board of Directors are carried out.

**SECTION 4.3. CHAIRMAN OF THE BOARD.** The Chairman of the Board (if any) shall preside at meetings of the Board of Directors. If expressly designated as such by the Board of Directors, the Chairman of the Board shall be chief executive officer of the corporation, with the powers and duties which attach to such position, and a duly attested written notice of such designation shall be filed with the Missouri Secretary of State; otherwise, the Chairman of the Board shall have such other powers and duties as the Board of Directors shall assign to the Chairman of the Board.

**SECTION 4.4. PRESIDENT.** If no Chairman of the Board is serving, or if the Chairman of the Board has not been expressly designated chief executive officer, the President shall be the chief executive officer of the corporation, with the powers and duties which attach to such position. If the Chairman of the Board is chief executive officer, the President shall be the chief operating officer of the corporation, being responsible at all times to the Chairman of the Board. If no Chairman of the Board is serving, or in the absence of the Chairman of the Board, the President shall preside at meetings of the Board of Directors.

**SECTION 4.5. VICE-PRESIDENTS.** Vice-Presidents shall perform such duties and exercise such powers as shall be delegated by the chief executive officer or as shall be designated by the Board of Directors.

**SECTION 4.6. SECRETARY.** The Secretary shall attend all meetings of the Board of Directors and the shareholders, and except as otherwise provided in these Bylaws, shall act as clerk thereof and record all votes and the minutes of all proceedings in the book to be kept for that purpose. The President shall keep in safe custody the seal of the corporation and, when authorized by the Board of Directors, affix the seal to any instrument requiring the same and when so ordered, add the Secretary's signature as an attestation thereof. The Secretary shall give, or cause to be given, a notice as required of all meetings of the shareholders and of the Board of Directors; the Secretary shall keep or cause to be kept a stock certificate and transfer book and a list

of all the shareholders and their respective addresses and shall perform such other duties as may be prescribed by the Board of Directors or by the chief executive officer, under whose supervision the Secretary shall be.

**SECTION 4.7. TREASURER.** The Treasurer shall have the custody of the corporation's funds and securities and shall keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all monies and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements and shall render to the chief executive officer and directors at the regular meetings of the Board of Directors and to the shareholders at the annual meeting of the shareholders or whenever the Board of Directors may require it, an account of all the Treasurer's transactions as the Treasurer and of the financial condition of the corporation.

**SECTION 4.8. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS.** The Assistant Secretary or Secretaries, if one (1) or more shall be elected by the Board of Directors, shall perform such duties and exercise such powers as shall be delegated by the Secretary or as shall be designated by the chief executive officer or by the Board of Directors. An Assistant Secretary may, in the absence or disability of the Secretary, perform all the duties and exercise all the powers of the Secretary. The Assistant Treasurer or Treasurers, if one (1) or more shall be elected by the Board of Directors, shall perform such duties and exercise such powers as shall be delegated by the Treasurer or as shall be designated by the chief executive officer or by the Board of Directors. An Assistant Treasurer may, in the absence or disability of the Treasurer, perform all the duties and exercise all the powers of the Treasurer.

**SECTION 4.9. VACANCIES.** If the office of any officer of the corporation becomes vacant because of death, resignation, removal, or for any other reason or if any officer of the corporation is unable to perform the duties of his or her office for any reason, the Board of Directors may choose a successor who shall replace such officer or the Board of Directors may delegate the duties of any such vacant office to any other officer or to any Director of the corporation for the unexpired portion of the term.

## **ARTICLE V. CAPITAL STOCK**

**SECTION 5.1. CERTIFICATES.** Certificates of stock evidencing that the person therein named is the holder of record of the share or shares therein described, in such form as may be approved by the officers signing the same and meeting all statutory requirements, shall be issued and signed by the Chairman of the Board (if any, if the Chairman of the Board is the chief executive officer) or the President or a Vice-President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and shall be sealed with the seal of the corporation. Such seal may be a facsimile, engraved, or printed. If such certificate is countersigned (1) by a transfer agent other than the corporation or its employee, or (2) by a registrar other than the corporation or its employee, any other signature on the certificate may be facsimile,

engraved, or printed. In case any such officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may nevertheless be issued by the corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue. Certificates shall be numbered consecutively, dated, and registered as they are issued.

**SECTION 5.2. LOST OR DESTROYED CERTIFICATES.** Any person claiming a certificate of stock to be lost or destroyed shall make an affidavit or affirmation of that fact and shall give the corporation an indemnity agreement in such form and with such security, if any, as the Board of Directors may require, whereupon a new certificate may, in the absolute discretion of the Board of Directors, be issued of the same tenor and for the same number of shares as the one alleged to be lost or destroyed.

**SECTION 5.3. STOCK TRANSFERS.** The corporation shall register transfer of a certificate of stock, together with the date of such transfer, if such certificate is (a) delivered and endorsed by the person appearing by the certificate to be the owner of the shares represented thereby, or (b) delivered together with a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same, signed by the person appearing by the certificate to be the owner of the shares represented thereby, or (c) delivered together with a separate document containing a written assignment of the certificate signed by the trustee in bankruptcy, receiver, guardian, executor, administrator, custodian, or other person duly authorized by law (and presenting evidence of such authority satisfactory to the corporation) to transfer the certificate on behalf of the person appearing by the certificate to be the owner of the shares represented thereby. Every stock certificate surrendered to the corporation for transfer or otherwise in exchange for a new certificate shall be marked "CANCELED" with the date of cancellation, and no new certificate(s) in lieu thereof shall be issued until the former certificate(s) for an equivalent number of shares have been surrendered and canceled, except as otherwise provided in Section 5.2 of these Bylaws.

**SECTION 5.4. CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE.** For the purposes of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or the allotment of rights, or any change or conversion or exchange of shares, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors may provide that the stock transfer books of the corporation shall be closed for a stated period but not to exceed, in any case, fifty (50) days preceding the date of any such meeting, payment, allotment, change, conversion, or exchange, or other event requiring a determination of shareholders. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date, not exceeding fifty (50) days preceding the date of any such meeting, payment, allotment, or of any change or conversion or exchange of shares, as a record date for the determination of the shareholders entitled to notice of, and to vote at the meeting, and any adjournment thereof, or entitled to receive payment of a dividend, or allotment of rights, or entitled to exercise the rights in respect of the change, conversion, or

exchange of shares. In such case only the shareholders who are shareholders of record on the date of closing the transfer books or on the record date so fixed shall be entitled to notice of, and to vote at, the meeting, and any adjournment thereof, or to receive payment of the dividend, or to receive the allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the date of closing of the transfer books or the record date fixed as aforesaid.

**SECTION 5.5. RECORD HOLDERS OF STOCK.** The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided for by law.

**SECTION 5.6. DIVIDENDS.** The Board of Directors may declare and the corporation may pay dividends on its outstanding shares of capital stock in accordance with law and the Articles of Incorporation.

**SECTION 5.7. TREASURY STOCK.** All issued and outstanding stock of the corporation that may be purchased or otherwise acquired by the corporation shall be treasury stock, and shall be subject to disposal by action of the Board of Directors. Such stock shall neither vote nor participate in dividends while held by the corporation.

## **ARTICLE VI. INDEMNIFICATION**

**SECTION 6.1. LIABILITIES COVERED.** The corporation

(i) shall indemnify, to the fullest extent permitted by law, any person who was or is a party (other than a party plaintiff suing on his or her own behalf or in the right of the corporation) or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of the corporation), by reason of the fact that such person is or was or has agreed to become a director or officer of the corporation, or is or was serving or has agreed to serve at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, in the manner set forth by The General and Business Corporation Law of Missouri, as from time to time in effect, and

(ii) may indemnify, to the fullest extent permitted by law, any person who was or is a party (other than a party plaintiff suing on his or her own behalf or in the right of the corporation) or is threatened to be made a party to such action, suit or proceeding by reason of the fact that such person is or was or has agreed to become an employee or agent of the corporation, or is or was serving or has agreed to serve at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, upon a determination of the Board of Directors of the corporation that such person should be indemnified,

against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding. Any and all indemnification provided by the corporation shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

The corporation may also from time to time enter into agreements providing for indemnification of any such person upon a vote of the shareholders or upon the vote of a majority of the disinterested directors of the corporation, to the fullest extent permitted by law.

**SECTION 6.2. ADVANCE PAYMENT OF EXPENSES.** Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount unless it shall ultimately be determined that he or she is lawfully entitled to be indemnified by the corporation.

**SECTION 6.3. INSURANCE.** The Board of Directors shall have the power to cause the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of these Bylaws.

**SECTION 6.4. CONSOLIDATIONS AND MERGERS.** For the purpose of this Article VI of these Bylaws, references to "the corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee, or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise shall stand in the same position under the provisions of this Article of these Bylaws with respect to the resulting or surviving corporation as he or she would if he or she had served the resulting or surviving corporation in the same capacity.

**SECTION 6.5. OTHER DEFINITIONS.** For the purpose of this Article of these Bylaws, the term "other enterprises" shall include employee benefit plans; the term "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and the term "serving at the request of the corporation" shall include any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries.

## ARTICLE VII. MISCELLANEOUS

**SECTION 7.1. NEGOTIABLE INSTRUMENTS AND CONTRACTS.** All checks, drafts, notes, demands for money, and all other commercial paper and contracts and other obligations of the corporation shall be executed in such manner and by such officer or officers or persons as the Board of Directors may, from time to time, designate. In the absence of specific designation, the President of the corporation shall have the power to execute all such documents and instruments.

**SECTION 7.2. RESIGNATIONS.** Any director or officer of the corporation may resign at any time by giving written notice to the chief executive officer or the Secretary. Such resignation shall take effect on the date on which the notice thereof is received or at any later time specified therein, and unless otherwise specified herein, the acceptance of such resignation by the corporation shall not be necessary to make it effective.

**SECTION 7.3. FISCAL YEAR.** The Board of Directors shall, by resolution, determine the fiscal year of the corporation.

**SECTION 7.4. AMENDMENTS.** The Board of Directors, to the extent permitted by the Articles of Incorporation of the corporation and by law, by the affirmative vote of a majority of the number of directors fixed as the full Board of Directors by the Articles of Incorporation or these Bylaws, may, at any regular meeting or upon notice at any special meeting, alter, amend, or repeal these Bylaws.

**SECTION 7.5. WAIVER OF NOTICE.** Whenever any notice is required to be given under the provisions of The General and Business Corporation Law of Missouri or the Articles of Incorporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**SECTION 7.6. INSPECTION OF RECORDS.** A shareholder, if the shareholder be entitled and demands to inspect the records of the corporation pursuant to any statutory or other legal right, shall be privileged to inspect such records only during the usual and customary hours of business and in such manner as will not unduly interfere with the regular conduct of the business of the corporation. No shareholder shall use, permit to be used, or acquiesce in the use by others of any information so obtained to the detriment competitively of the corporation, nor shall any shareholder furnish or permit to be furnished any information so obtained to any competitor or prospective competitor of the corporation.

**SECTION 7.7. ACTION WITH RESPECT TO SECURITIES OF OTHER CORPORATIONS.** Unless otherwise provided by the Board of Directors, the chief executive officer of the corporation shall have the power to vote and otherwise act on

behalf of the corporation, in person or by proxy, at any meeting of the shareholders of or with respect to any action of the shareholders of any other corporation in which the corporation may hold securities, and otherwise to exercise any and all rights and powers that this corporation may possess by reason of its ownership of securities in such other corporation.

**SECTION 7.8. COMPUTATION OF TIME.** In applying any provision of these Bylaws relating to the number of days prior or subsequent to an event that an act be done or notice be given, calendar days shall be the basis of the computation of the time period, excluding the day on which the act is done or the notice is given and including the day of the event to which the act or notice relates.



**STATE OF DELAWARE**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**IB NITROGEN INC.**

I, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, do hereby certify as follows:

FIRST: The name of the corporation is IB NITROGEN INC. (the "Corporation").

SECOND: The registered office of the Corporation in the State of Delaware is to be located at 1013 Centre Road, Wilmington County of New Castle, Delaware 19805. The name of its registered agent at such address is Corporation Service Company,

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

FOURTH: The total number of shares which the Corporation is authorized to issue is 3000 shares, no par value, itemized as follows:

<u>CLASS</u>	<u>NUMBER OF SHARES</u>	<u>PAR VALUE/SHARE</u>
Common	3000	No Par Value

FIFTH: The name and mailing address of the incorporator is as follows:

Thomas J. Keable  
Kavinoky & Cook, LLP  
120 Delaware Avenue  
Buffalo, New York 14202

SIXTH: The personal liability of a director of the Corporation to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director is eliminated to the fullest extent allowed under the laws of the State of Delaware in effect as of the date of this Certificate. This provision shall not eliminate the personal 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 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit.

IN WITNESS WHEREOF, I have hereunto signed this Certificate of Incorporation this 21st day of July, 1998.

/s/ Thomas J. Keable

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Thomas J. Keable, Incorporator

BY-LAWS  
OF  
IB NITROGEN INC.

ARTICLE I  
OFFICES

Section 1. Principal Office. The registered office of the Corporation shall be located in the County of the State of Delaware designated in the Certificate of Incorporation. The Corporation may also maintain offices at such other places within or without the United States as the Board of Directors may, from time to time, determine.

ARTICLE II  
STOCKHOLDERS

Section 1. Time and Place of Meetings. The Board of Directors may designate any time and any place, either within or without the State of Delaware, as the time and place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all stockholders entitled to vote at a meeting may designate any time and any place, either within or without the State of Delaware, as the time and place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the time and place of the meeting shall be the principal office of the Corporation at 10:00 a.m.

Section 2. Annual Meeting. Annual meetings of stockholders shall be held on the first Wednesday in February of each year if not a legal holiday, and if a legal holiday, then on the next secular day following at 10:00 a.m., at which the stockholders shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The annual meeting of the stockholders may be held on a date different than that given above if the Board so determines and so states in the notice of the meeting or in a duly executed waiver thereof.

Section 3. Special Meetings. Special meetings of the stockholders for any purpose or purposes, unless otherwise prescribed by law or by the Certificate of Incorporation, may be called by the President, the Board of Directors or the holders of not less than a majority of all of the stock entitled to vote at the meetings. Business transacted at all special meetings shall be confined to the purpose or purposes stated in the call.

Section 4. Notice. Written or printed notice of all meetings of stockholders stating the place, day and hour thereof, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting to the stockholders of record entitled to vote at such meeting either personally or by mail, by or at the direction of the person or persons calling the meeting, unless it is an annual meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the shareholder at the address that appears on the stock transfer books of the Corporation.

Section 5. Closing of Transfer Books and Fixing of Record Date. For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, sixty (60) days. If the stock transfer books shall be closed for the purpose of determining stockholders entitled to notice of or to vote at a meeting of stockholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than sixty (60) days and, in case of a meeting of stockholders, not less than ten (10) days prior to the date on which the particular action requiring such determination of stockholders is to be taken, and the determination of stockholders on such record date shall apply with respect to the particular action requiring the same notwithstanding any transfer of stock on the books of the Corporation after such record date.

Section 6. List of Stockholders. The officer who as charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of a least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 7. Quorum. The holders of a majority of the stock entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by law, by the Certificate of Incorporation or by these By-laws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote at such meeting, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally convened. If the adjournment is for more than thirty (30) days, or if after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of the record entitled to vote at the meeting.

Section 8. Organization. The Chairman of the Board, if one shall be elected, shall preside at all meetings of the stockholders. In his absence, the President or a Vice President shall preside. In the absence of all of these officers, any stockholder or the duly appointed proxy of any stockholder may call the meeting to order and a chairman shall be elected from among the stockholders present. The Secretary of the Corporation shall act as secretary at all meetings of stockholders. In his or her absence an Assistant Secretary shall so act and in the absence of all of these officers the presiding officer may appoint any person to act as secretary of the meeting.

Section 9. Proxies. At any meeting of the stockholders, every stockholder entitled to vote at such meeting shall be entitled to vote in person or by proxy executed in writing by such stockholder or by his duly authorized attorney-in-fact. No proxy shall be valid after three (3) years from the date of its execution unless such proxy otherwise provides. A proxy shall be revocable unless expressly provided therein to be irrevocable or unless otherwise made irrevocable by law.

Section 10. Voting. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, each stockholder shall have one (1) vote for each share having rights registered in his name on the books of the Corporation at the time of the closing of the stock transfer books (or at the record date) for such meeting. When a quorum is present at any meeting the vote of holders of a majority of the stock entitled to vote, present in person or represented by proxy, shall decide any matter submitted to such meeting, unless the matter is one upon which by law or by express provision of the Certificate of Incorporation or of these By-laws the vote of a greater number is required, in which case the vote of such greater number shall govern and control the decision of such matter.

Section 11. Voting of Stock by Certain Holders. Stock standing in the name of another corporation may be voted by such officer, agent or proxy as the By-laws of such corporation may authorize or, in the absence of such authorization, as the Board of Directors of such corporation may determine.

Stock held by an administrator, executor, guardian or conservator may be voted by him so long as such stock forming a part of an estate are in the possession and form a part of the estate being served by him, either in person or by proxy, without a transfer of such stock into his name. Stock standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote stock held by him without a transfer of such stock into his name as trustee.

Stock standing in the name of a receiver may be voted by such receiver, and stock held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority to do so be contained in an appropriate order of the court by which such receiver was appointed.

A stockholder whose stock is pledged shall be entitled to vote such stock until the stock have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the stock so transferred.

Shares of its own stock belonging to the Corporation, shares of its own stock owned by another corporation the majority of the voting stock of which is owned or controlled by the Corporation, and shares of its own stock held by the Corporation in a fiduciary capacity shall not be voted, directly, or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding stock at any given time.

Section 12. Action. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the Certificate of Incorporation, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 13. Election of Directors. At each election for Directors, each stockholder entitled to vote at such election shall, unless otherwise provided by the Certificate of Incorporation or by applicable law, have the right to vote the number of shares owned by him for as many persons as there are to be elected and for whose election he has a right to vote. Unless otherwise provided by the Certificate of Incorporation, no stockholder shall have the right or be permitted to cumulate his votes on any basis.

Section 14. Action Without Meeting. Any action required by any provision of law or of the Certificate of Incorporation or these By-laws to be taken at a meeting of the stockholders or any action which may be taken at a meeting of the stockholders may be taken without a meeting without prior written notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the stockholders entitled to vote with respect to the subject matter thereof holding the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

### ARTICLE III DIRECTORS

Section 1. Number of Directors. The property, business and affairs of the Corporation shall be managed and controlled by a Board of Directors composed of not less than one (1) nor more than five (5) members who shall be elected by the stockholders. Directors need not be residents of the State of Delaware or stockholders of the Corporation. The number of Directors may be increased or decreased by resolution adopted by a majority of the Board of Directors.

Section 2. Election and Term of Office. The Directors shall be elected at the annual meeting of the stockholders (except as provided in Section 5 of this Article). Each Director elected shall hold office until his successor shall be elected at an appropriate annual meeting of the stockholders and shall qualify, or until his death, his resignation or his removal in the manner hereinafter provided.

Section 3. Resignation. Any Director may resign at any time by giving written notice to the President or Secretary. Such resignation shall take effect at the time specified therein and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

Section 4. Removal. At any special meeting of the stockholders called expressly for that purpose, any Director or Directors, including the entire Board of Directors,

may be removed, either with or without cause, and another person or persons may be elected to serve for the remainder of his or their term by a vote of the holders of a majority of all stock outstanding and entitled to vote at an election of directors. In case any vacancy so created shall not be filled by the stockholders at such meeting, such vacancy may be filled by the Directors as provided in Section 5 of this Article.

Section 5. Vacancies. If any vacancy shall occur in the Board of Directors, such vacancy may, subject to the provisions of Section 4 of this Article, be filled by the affirmative vote of the remaining Directors though less than a quorum of the Board of Directors or by a sole remaining Director, and the Directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no Directors in office, then an election of Directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created Directorship, the Directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten (10%) percent of the total number of the shares at the time outstanding having the right to vote for such Directors, summarily order an election to be held to fill any such vacancies or newly created Directorships, or to replace the Directors chosen by the Directors then in office. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 6. General Powers. In addition to the powers and authorities expressly conferred upon them by these By-laws, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the stockholders.

Section 7. Place of Meetings. The Directors of the Corporation may hold their meetings, both regular and special, either within or without the State of Delaware.

Section 8. Annual Meeting. The first meeting of each newly elected Board shall be held immediately following the adjournment of the annual meeting of the stockholders and no notice of such meeting shall be necessary to the newly elected Directors in order legally to constitute the meeting, provided a quorum shall be present, or they may meet at such time and place as shall be fixed by the consent in writing of all of the Directors.

Section 9. Regular Meetings. Regular meetings of the Board may be held with or without notice immediately after, and at the same place as, the annual meeting of stockholders. The Board of Directors may provide by resolution, the time and place for the holding of additional regular meetings without notice other than such resolution.

Section 10. Special Meetings. Special meetings of the Board may be called by the President on two (2) days' notice to each Director given either personally, by mail or by telegram. Special meetings shall be called by the President or Secretary in like manner and like notice on the written request of any Director. The purpose of or the business to be transacted at any special meeting of the Board of Directors shall be specified in the notice of such meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 11. Quorum and Action. At all meetings of the Board the presence of a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the Directors at any meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Certificate of Incorporation or these By-laws. If a quorum shall not be present at any meeting of Directors, the Directors present may adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present.

Section 12. Presumption of Assent to Action. A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 13. Committees. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the Directors of the Corporation. The board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

In the absence of disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, (except, that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of Directors as provided in Section 151(a) of the General Corporation Law fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of any such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation), adopting an agreement of merger or consolidation, recommending to the Stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the Stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the By-laws of the Corporation; and, unless the resolution or the Certificate of Incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger. Such committee or



committees shall have such name and names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors.

Section 14. Compensation. Directors may receive a stated salary for their services in an amount unanimously agreed by the Board of Directors. By resolution of the Board a fixed sum for expenses of attendance, if any, may be allowed for attendance at any regular or special meeting of the Board provided that nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 15. Telephone Meetings. Directors may participate in and hold a meeting of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 16. Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the Board of Directors, as the case may be, and such consent shall have the same force and effect as a unanimous vote at a meeting.

#### ARTICLE IV NOTICES

Section 1. Form of Notice. Whenever under the provisions of any applicable statute, the Articles of Incorporation or these By-laws, notice is required to be given to any director or shareholder, and no provision is made as to how such notice shall be given, it shall not be construed to mean personal notice exclusively, but any such notice may be given in writing, by mail, postage prepaid, addressed to such director or shareholder at such address as appears on the books of the Corporation. Any notice required or permitted to be given by mail shall be deemed to be given three (3) days after the time when the same be thus deposited, postage prepaid, in the United States mail as aforesaid.

Section 2. Waiver. Whenever any notice is required to be given to any director or shareholder of the Corporation, under the provisions of any applicable statute, the Articles of Incorporation or these By-laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated in such notice, shall be equivalent to the giving of such notice.

#### ARTICLE V OFFICERS

Section 1. General. The officers of the Corporation shall be elected by the Board of Directors and shall be a President, a Vice President, a Secretary and a Treasurer. The

Board of Directors may also, if it chooses to do so, elect a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers, all of whom shall also be officers. Two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office and Qualification. The officers of the Corporation shall be elected by the Board of Directors at its first meeting after each annual meeting of stockholders. The Board shall elect a President, Vice President, Treasurer, and Secretary, and any Assistant Officers the Board has determined are needed, none of whom need to be a member of the Board. Each officer so elected shall hold office until his successor has been duly chosen and has qualified or until his death or his resignation or removal in the manner hereinafter provided.

Section 3. Subordinate Officers. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms, have such authority and perform such duties as the Board of Directors may from time to time determine. The Board of Directors may delegate to any officer the power to appoint any such subordinate officer or agent.

Section 4. Resignation. Any officer may resign at any time by giving written notice thereof to the Board of Directors. Any such resignation shall take effect at the time specified therein and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Removal. Any officer elected or appointed by the Board of Directors may be removed by the Board at any time with or without cause. Any other officer may be removed with or without cause, by the person or persons who appointed the officer or by the Board.

Section 6. Vacancies. A vacancy in any office shall be filled for the unexpired portion of the term by the Board of Directors, but in case of a vacancy occurring in an office filled in accordance with the provisions of section 3 of this Article, such vacancy may be filled by the superior officer upon whom such power may be conferred by the Board of Directors.

Section 7. Chairman. The Chairman of the Board, if one shall be elected, shall preside at all meetings of the stockholders and directors. In addition, the Chairman of the Board shall perform whatever duties and shall exercise all powers that are given to him by the Board of Directors.

Section 8. President. The President shall be the chief executive officer of the Corporation; shall (in absence of the Chairman of the Board) preside at meetings of the stockholders and Directors; shall have general and active management of the business of the Corporation; and shall see that all orders and resolutions of the Board of Directors are carried into effect. He may sign, with any other proper officer, certificates for shares of the Corporation and any deeds, bonds, mortgages, contracts and other documents which the Board of Directors has authorized to be executed, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors or these By-laws, to some other officer or agent of the Corporation.

Section 9. Vice President. In the absence of or inability of the President to act, the Vice President shall perform the duties and exercise the powers of the President and shall perform such other functions as the Board of Directors may from time to time prescribe.

Section 10. Secretary. The Secretary, when available, shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors as required by law or these By-laws, be custodian of the Corporate records and have general charge of the stock books of the Corporation and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. He may sign, with any other proper officer, certificates for stock of the Corporation and shall keep in safe custody the seal of the Corporation, and, when authorized by the Board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature.

Section 11. Assistant Secretaries. Any Assistant Secretary shall, in the absence or disability of the Secretary perform the duties and exercise the powers of the Secretary and shall perform such other duties as may be prescribed by the Board of Directors or the President.

Section 12. Treasurer. The Treasurer shall have the care and custody of and be responsible for all of the funds and securities of the Corporation and shall deposit such funds in the name and to the credit of the Corporation in such a bank and safe deposit vaults as the Directors may designate. He shall exhibit at all reasonable times his books and accounts to any Director or stockholder of the Corporation upon application at the office of the Corporation during business hours. He shall render a statement of the condition of the finances of the Corporation at each stated meeting of the Board of Directors if called upon to do so, and a full report at the annual meeting of stockholders. He shall keep at the office of the Corporation correct books of account of all of its business and transactions and such books of account as the Board of Directors may require. He shall do and perform all other duties incident to the office of Treasurer as may be prescribed by the President or Board of Directors from time to time.

Section 13. Assistant Treasurers. Any Assistant Treasurer shall, in the absence or disability of the Treasurer perform the duties and exercise the powers of the Treasurer and shall perform such other duties as may be prescribed by the Board of Directors or the President.

Section 14. Bonding. If required by the Board of Directors all or certain of the officers shall give the Corporation a bond in such form, in such sum and with such surety or sureties as shall be satisfactory to the Board, for the faithful performance of the duties of their office and for the restoration to the Corporation, in case of their death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation.

Section 15. Salaries. The salary or other compensation of officers shall be fixed from time to time by the Board of Directors. The Board of Directors may delegate to any officer the power to fix from time to time the salary or other compensation of officers and agents appointed in accordance with the provisions of Section 3 of this Article.

Section 16. Voting Upon Shares Held by The Corporation. The Board of Directors may authorize any officer to act on behalf of the Corporation in regard to shares of other corporations owned by this Corporation in which event he shall have full power and authority to attend and to act and to vote at any meeting of stockholders of any corporation in which this Corporation may hold shares and at any such meeting shall possess and may exercise any and all of the rights and powers incident to the ownership of such shares which, as the owner thereof, the Corporation might have possessed and exercised, if present. The Board of Directors by resolution from time to time may confer like powers upon any other person or persons.

## ARTICLE VI CERTIFICATES REPRESENTING STOCK

Section 1. Form of Certificates. The certificates representing stock of the Corporation shall be in such form, not inconsistent with statutory provisions and the Certificate of Incorporation, as shall be approved by the Board of Directors. The certificates shall be signed by the President of the Corporation and sealed with the corporate seal or a facsimile thereof. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued with the same effect as if he were such officer at the date of its issuance. All certificates shall be consecutively numbered and the name of the person owning the stock represented thereby, with the number of such shares and the date of issue, shall be entered on the Corporation's books.

Section 2. Ownership of Stock. The Corporation shall be entitled to treat the holder of record of any share or as the owner of such stock with all of the rights of ownership and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 3. Lost Certificates. The Corporation may direct that a new certificate be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost or destroyed. When authorizing the issue of a new certificate, the Board of Directors, in its discretion and as a condition precedent to the issuance thereof, may require the owner of the lost or destroyed certificate, or his legal representative, to advertise the same in such manner as it shall require and/or give the Corporation a bond in such form, in such sum, and with such surety or sureties as it may direct, as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed.

Section 4. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and

record the transaction upon its books. Upon receipt of proper transfer instructions from the registered owner of the uncertified shares such uncertificated shares shall be canceled and issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the Corporation.

ARTICLE VII  
GENERAL PROVISIONS

Section 1. Dividends. The Board of Directors may, from time to time, declare, and the Corporation may pay, dividends on its outstanding stock in the manner and upon the terms and conditions provided by the Certificate of Incorporation, the By-laws and the applicable laws of the State of Delaware.

Section 2. Reserves. There may be created by resolution of the Board of Directors out of the earned surplus of the Corporation such reserve or reserves as the Board of Directors from time to time, in its discretion, deems proper to provide for contingencies, or to equalize dividends, or to repair or maintain any property of the Corporation, or for such other proper purpose as the Board shall deem beneficial to the Corporation, and the Board may modify or abolish any reserve in the same manner in which it was created.

Section 3. Seal. If one be adopted, the corporate seal shall have inscribed thereon the name of the Corporation and shall be in such form as may be approved by the Board of Directors. Said seal may be used by causing it or a facsimile of it to be impressed or affixed or in any manner reproduced. Any officer of the Corporation shall have authority to affix the seal to any document requiring it.

Section 4. Fiscal Year. Unless another fiscal year shall be fixed by resolution of the Board of Directors, the fiscal year of the Corporation shall commence on the 1st day of October and terminate on the 30th day of September of each year.

Section 5. Reports of Situation and Amount of Business. The Board of Directors shall, when requested by the holders of at least one-tenth (1/10) of the outstanding voting stock of the Corporation, present written reports of the situation and amount of business of the Corporation and shall present a full and clear statement of the business and condition of the Corporation at every annual meeting.

Section 6. Checks, Notes, etc. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 7. Examination of Books and Records. Any person who shall have been a shareholder of record for at least six (6) months immediately preceding his demand, or who shall be the holder of record of at least ten percent (10%) of all the outstanding shares of the Corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, the books and records of account, minutes, and record of stockholders of the Corporation, and shall be entitled to make extracts therefrom.

Section 8. Indemnification of Directors. Subject to the applicable laws of the State of Delaware, the Corporation shall indemnify any director, officer, or employee, or former director, officer, or employee of the Corporation, or any person who may have served at its request as a director, officer, or employee of another corporation in which it owns stock, or of which it is a creditor, against expenses actually and necessarily incurred by him and any amount paid in satisfaction of judgments in connection with any action, suit or proceeding whether civil or criminal in nature, in which he is made a party by reason of being or having been such a director, officer or employee (whether or not a director, officer, or employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to the matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The Corporation may also reimburse to any director, officer, or employee the reasonable costs of settlement of any action, suit or proceeding, if it shall be found by a majority of the Board of the Directors not involved in the matter in controversy, whether or not a quorum, that it was to the interest of the Corporation that such settlement be made and that such director, officer or employee was not guilty of gross negligence or willful misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such director, officer, or employee may be entitled by law or under any By-law, agreement, vote of stockholders, or otherwise.

ARTICLE VIII  
MISCELLANEOUS

Section 1. Compliance With By-Laws. Any action taken or determination made in good faith by the stockholders or the Board of Directors shall be effective, valid and binding although the same may not have been taken or made in strict compliance with the By-laws of the Corporation.

ARTICLE IX  
AMENDMENTS

Section 1. Amendments. These By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the stockholders or by the Board of Directors, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such special meeting.

Dated: July 31, 1998

CERTIFICATE OF INCORPORATION

OF

JUNGLE TALK ACQUISITION CORP.

ARTICLE ONE

The name of the corporation (the "Corporation") is JUNGLE TALK ACQUISITION CORP.

ARTICLE TWO

The address of the registered office of the Corporation in the State of Delaware is 1013 Centre Road, City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Prentice-Hall Corporation System, Inc.

ARTICLE THREE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "General Corporation Law").

ARTICLE FOUR

The total number of shares of all classes of stock which the Corporation has authority to issue is 1,000 shares, all of which are shares of Common Stock, par value \$.01 per share.

ARTICLE FIVE

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them, and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court

directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree on any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

#### ARTICLE SIX

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, but the foregoing provision shall not eliminate or limit the 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 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended after the date of incorporation of the Corporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

#### ARTICLE SEVEN

The number of directors of the Corporation shall be such as from time to time shall be fixed in the manner provided in the By-laws of the Corporation. The election of directors of the Corporation need not be by ballot unless the By-laws so require.

#### ARTICLE EIGHT

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

<u>Name</u>	<u>Mailing Address</u>
Migdalia Franklin	O'Sullivan Graev & Karabell, LLP 30 Rockefeller Plaza New York, New York 10112

#### ARTICLE NINE

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



IN WITNESS WHEREOF, the undersigned has signed instrument on the 28th day of August, 1996 thereby acknowledging that this instrument is the act and deed of the undersigned and that the facts stated above are true.

/s/ Migdalia Franklin

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Migdalia Franklin  
Sole incorporator

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
JUNGLE TALK ACQUISITION CORP.

JUNGLE TALK ACQUISITION CORP., a Delaware corporation (the "Corporation"), hereby certifies as follows:

1. The current name of the Corporation is "JUNGLE TALK ACQUISITION CORP."

2. The Certificate of Incorporation of the Corporation is hereby amended the ("Amendment") by deleting, in its entirety, ARTICLE ONE thereof and inserting in lieu thereof a new ARTICLE ONE to read as follows:

"ARTICLE ONE

The name of the corporation (the "Corporation") is JungleTalk International, Inc."

3. The Amendment was duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware by the authorization of a majority of the stock entitled to vote thereon.

IN WITNESS WHEREOF, the Corporation had caused this Certificate of Amendment of Certificate of Incorporation to be signed as of the 16th day of September, 1996, by its Vice President, who hereby affirms and acknowledges, under penalty of perjury, that this Certificate is the act and deed of the Corporation and that the facts stated herein are true.

/s/ P. Jeffrey Leck

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P. Jeffrey Leck  
Vice President

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Incorporated under the laws  
of the State of Delaware

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BY-LAWS

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As adopted on August 28, 1996

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BY-LAWS OF  
JUNGLE TALK ACQUISITION CORP.

ARTICLE I

Offices

SECTION 1. Registered Office. The registered office of Jungle talk Acquisition Corp. (the "Corporation"), in the State of Delaware shall be at 9 Loockerman Street, City of Dover, County of Kent, Delaware 19901, and the registered agent in charge thereof shall be National Registered Agents, Inc.

SECTION 2. Other Offices. The Corporation may also have an office or offices at any other place or places within or outside the State of Delaware.

ARTICLE II

Meeting of Stockholders; Stockholders'  
Consent in Lieu of Meeting

SECTION 1. Annual Meetings. The annual meeting of the stockholders for the election of directors, and for the transaction of such other business as may properly come before the meeting, shall be held at such place, date and hour as shall be fixed by the Board of Directors (the "Board") and designated in the notice or waiver of notice thereof, except that no annual meeting need be held if all actions, including the election of directors, required by the General Corporation Law of the State of Delaware (the "Delaware Statute") to be taken at a stockholders' annual meeting are taken by written consent in lieu of meeting pursuant to Section 10 of this Article II.

SECTION 2. Special Meetings. A special meeting of the stockholders for any purpose or purposes may be called by the Board, the Chairman, the President or the record holders of at least a majority of the issued and outstanding shares of Common Stock of the Corporation, to be held at such place, date and hour as shall be designated in the notice or waiver of notice thereof.

SECTION 3. Notice of Meetings. Except as otherwise required by statute, the Certificate of Incorporation of the Corporation (the "Certificate") or these By-laws, notice of each annual or special meeting of the stockholders shall be given to each stockholder of record entitled to vote at such meeting not less than 10 nor more than 60 days before the day on which the meeting is to be held, by delivering written notice thereof to him personally, or by mailing a copy of such notice, postage prepaid, directly to him at his address as it appears in the records of the Corporation, or by transmitting such notice thereof to him at such address by telegraph, cable or other telephonic transmission. Every such notice shall state the place, the date and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called. Notice of any meeting of stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy, or who shall, in person

or by attorney thereunto authorized, waive such notice in writing, either before or after such meeting. Except as otherwise provided in these By-laws, neither the business to be transacted at, nor the purpose of, any meeting of the stockholders need be specified in any such notice or waiver of notice. Notice of any adjourned meeting of stockholders shall not be required to be given, except when expressly required by law.

SECTION 4. Quorum. At each meeting of the stockholders, except where otherwise provided by the Certificate or these By-laws, the holders of a majority of the issued and outstanding shares of Common Stock of the Corporation entitled to vote at such meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. In the absence of a quorum, a majority in interest of the stockholders present in person or represented by proxy and entitled to vote, or, in the absence of all the stockholders entitled to vote, any officer entitled to preside at, or act as secretary of, such meeting, shall have the power to adjourn the meeting from time to time, until stockholders holding the requisite amount of stock to constitute a quorum shall be present or represented. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

SECTION 5. Organization.

(a) Unless otherwise determined by the Board, at each meeting of the stockholders, one of the following shall act as chairman of the meeting and preside thereat, in the following order of precedence:

(i) the Chairman;

(ii) the President;

(iii) any director, officer or stockholder of the Corporation designated by the Board to act as chairman of such meeting and to preside thereat if the Chairman or the President shall be absent from such meeting; or

(iv) a stockholder of record who shall be chosen chairman of such meeting by a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat.

(b) The Secretary or, if he shall be presiding over such meeting in accordance with the provisions of this Section 5 or if he shall be absent from such meeting, the person (who shall be an Assistant Secretary, if an Assistant Secretary has been appointed and is present) whom the chairman of such meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

SECTION 6. Order of Business. The order of business at each meeting of the stockholders shall be determined by the chairman of such meeting, but such order of business may be changed by a majority in voting interest of those present in person or by proxy at such meeting and entitled to vote thereat.

SECTION 7. Voting. Except as otherwise provided by law, the Certificate or these By-laws, at each meeting of the stockholders, every stockholder of the Corporation shall be entitled to one vote in person or by proxy for each share of Common Stock of the Corporation held by him and registered in his name on the books of the Corporation on the date fixed pursuant to Section 7 of Article VI as the record date for the determination of stockholders entitled to vote at such meeting. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. A person whose stock is pledged shall be entitled to vote, unless, in the transfer by the pledgor on the books of the Corporation, he has expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent such stock and vote thereon. If shares or other securities having voting power stand in the record of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary shall be given written notice to the contrary and furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- (a) if only one votes, his act binds all;
- (b) if more than one votes, the act of the majority so voting binds all; and
- (c) if more than one votes, but the vote is evenly split on any particular matter, such shares shall be voted in the manner provided by law.

If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purposes of this Section 7 shall be a majority or even-split in interest. The Corporation shall not vote directly or indirectly any share of its own capital stock. Any vote of stock may be given by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, delivered to the secretary of the meeting; provided, however, that no proxy shall be voted after three years from its date, unless said proxy provides for a longer period. At all meetings of the stockholders, all matters (except where other provision is made by law, the Certificate or these By-laws) shall be decided by the vote of a majority in interest of the stockholders present in person or by proxy at such meeting and entitled to vote thereon, a quorum being present. Unless demanded by a stockholder present in person or by proxy at any meeting and entitled to vote thereon, the vote on any question need not be by ballot. Upon a demand by any such stockholder for a vote by ballot upon any question, such vote by ballot shall be taken. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted.

SECTION 8. Inspection. The chairman of the meeting may at any time appoint one or more inspectors to serve at any meeting of the stockholders. Any inspector may be removed, and a new inspector or inspectors appointed, by the Board at any time. Such inspectors shall decide upon the qualifications of voters, accept and count



votes, declare the results of such vote, and subscribe and deliver to the secretary of the meeting a certificate stating the number of shares of stock issued and outstanding and entitled to vote thereon and the number of shares voted for and against the question, respectively. The inspectors need not be stockholders of the Corporation, and any director or officer of the Corporation may be an inspector on any question other than a vote for or against his election to any position with the Corporation or on any other matter in which he may be directly interested. Before acting as herein provided, each inspector shall subscribe an oath faithfully to execute the duties of an inspector with strict impartiality and according to the best of his ability.

SECTION 9. List of Stockholders. It shall be the duty of the Secretary or other officer of the Corporation who shall have charge of its stock ledger to prepare and make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to any such meeting, during ordinary business hours, for a period of at least 10 days prior to such meeting, either at a place within the city where such meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. Such list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

SECTION 10. Stockholders' Consent in Lieu of Meeting. Any action required by the Delaware Statute to be taken at any annual or special meeting of the stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, by a consent in writing, as permitted by the Delaware Statute.

### ARTICLE III

#### Board of Directors

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate directed or required to be exercised or done by the stockholders.

SECTION 2. Number and Term of Office. The number of directors shall be fixed from time to time by the Board. Directors need not be stockholders. Each director shall hold office until his successor is elected and qualified, or until his earlier death or resignation or removal in the manner hereinafter provided.

SECTION 3. Election of Directors. At each meeting of the stockholders for the election of directors at which a quorum is present, the persons receiving the greatest number of votes, up to the number of directors to be elected, of the stockholders present in person or by proxy and entitled to vote thereon shall be the directors; provided,

however, that for purposes of such vote no stockholder shall be allowed to cumulate his votes. Unless an election by ballot shall be demanded as provided in Section 7 of Article II, election of directors may be conducted in any manner approved at such meeting.

SECTION 4. Resignation, Removal and Vacancies.

(a) Any director may resign at any time by giving written notice to the Board, the Chairman, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof; unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Any director or the entire Board may be removed, with or without cause, at any time by vote of the holders of a majority of the shares then entitled to vote at an election of directors or by written consent of the stockholders pursuant to Section 10 of Article II.

(c) Vacancies occurring on the Board for any reason may be filled by vote of the stockholders or by the stockholders' written consent pursuant to Section 10 of Article II, or by vote of the Board or by the directors' written consent pursuant to Section 6 of this Article III. If the number of directors then in office is less than a quorum, such vacancies may be filled by a vote of a majority of the directors then in office.

SECTION 5. Meetings.

(a) Annual Meetings. As soon as practicable after each annual election of directors, the Board shall meet for the purpose of organization and the transaction of other business, unless it shall have transacted all such business by written consent pursuant to Section 6 of this Article III.

(b) Other Meetings. Other meetings of the Board shall be held at such times and places as the Board, the Chairman, the President or any director shall from time to time determine.

(c) Notice of Meetings. Notice shall be given to each director of each meeting, including the time, place and purpose of such meeting. Notice of each such meeting shall be mailed to each director, addressed to him at his residence or usual place of business, at least two days before the date on which such meeting is to be held, or shall be sent to him at such place by telegraph, cable, wireless or other form of recorded communication, or be delivered personally or by telephone not later than the day before the day on which such meeting is to be held, but notice need not be given to any director who shall attend such meeting. A written waiver of notice, signed by the person entitled thereto, whether before or after the time of the meeting stated therein, shall be deemed equivalent to notice.

(d) Place of Meetings. The Board may hold its meetings at such place or places within or outside the State of Delaware as the Board may from time to time determine, or as shall be designated in the respective notices or waivers of notice thereof.

(e) Quorum and Manner of Acting. A majority of the total number of directors then in office shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and the vote of a majority of those directors present at any such meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board, except as otherwise expressly required by law or these By-laws. In the absence of a quorum for any such meeting, a majority of the directors present thereat may adjourn such meeting from time to time until a quorum shall be present.

(f) Organization. At each meeting of the Board, one of the following shall act as chairman of the meeting and preside thereat, in the following order of precedence:

- (i) the Chairman;
- (ii) the President (if a director); or
- (iii) any director designated by a majority of the directors present.

The Secretary or, in the case of his absence, an Assistant Secretary, if an Assistant Secretary has been appointed and is present, or any person whom the chairman of the meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

SECTION 6. Directors' Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by all the directors then in office and such consent is filed with the minutes of the proceedings of the Board.

SECTION 7. Action by Means of Conference Telephone or Similar Communications Equipment. Any one or more members of the Board may participate in a meeting of the Board by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

SECTION 8. Committees. The Board may, by resolution or resolutions passed by a majority of the whole Board, designate one or more committees, each such committee to consist of one or more directors of the Corporation, which to the extent provided in said resolution or resolutions shall have and may exercise the powers of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it, such committee or committees to have such name or names as may be determined from time to time by resolution adopted by the Board. A majority of all the members of any such

committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. The Board shall have power to change the members of any such committee at any time, to fill vacancies and to discharge any such committee, either with or without cause, at any time.

#### ARTICLE IV

##### Officers

SECTION 1. Executive Officers. The principal officers of the Corporation shall be a Chairman, if one is appointed (and any references to the Chairman shall not apply if a Chairman has not been appointed), a President, a Secretary, and a Treasurer, and may include such other officers as the Board may appoint pursuant to Section 3 of this Article IV. Any two or more offices may be held by the same person.

SECTION 2. Authority and Duties. All officers, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in these By-laws or, to the extent so provided, by the Board.

SECTION 3. Other Officers. The Corporation may have such other officers, agents and employees as the Board may deem necessary, including one or more Assistant Secretaries, one or more Assistant Treasurers and one or more Vice Presidents, each of whom shall hold office for such period, have such authority, and perform such duties as the Board, the Chairman, or the President may from time to time determine. The Board may delegate to any principal officer the power to appoint and define the authority and duties of, or remove, any such officers, agents, or employees.

##### SECTION 4. Term of Office, Resignation and Removal.

(a) All officers shall be elected or appointed by the Board and shall hold office for such term as may be prescribed by the Board. Each officer shall hold office until his successor has been elected or appointed and qualified or until his earlier death or resignation or removal in the manner hereinafter provided. The Board may require any officer to give security for the faithful performance of his duties.

(b) Any officer may resign at any time by giving written notice to the Board, the Chairman, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if the time be not specified, at the time it is accepted by action of the Board. Except as aforesaid, the acceptance of such resignation shall not be necessary to make it effective.

(c) All officers and agents elected or appointed by the Board shall be subject to removal at any time by the Board or by the stockholders of the Corporation with or without cause.

SECTION 5. Vacancies. If the office of Chairman, President, Secretary or Treasurer becomes vacant for any reason, the Board shall fill such vacancy, and if any

other office becomes vacant, the Board may fill such vacancy. Any officer so appointed or elected by the Board shall serve only until such time as the unexpired term of his predecessor shall have expired, unless reelected or reappointed by the Board.

SECTION 6. The Chairman. The Chairman shall give counsel and advice to the Board and the officers of the Corporation on all subjects concerning the welfare of the Corporation and the conduct of its business and shall perform such other duties as the Board may from time to time determine. Unless otherwise determined by the Board, he shall preside at meetings of the Board and of the Stockholders at which he is present.

SECTION 7. The President. The President shall be the chief executive officer of the Corporation. The President shall have general and active management and control of the business and affairs of the Corporation subject to the control of the Board and shall see that all orders and resolutions of the Board are carried into effect. The President shall from time to time make such reports of the affairs of the Corporation as the Board of Directors may require and shall perform such other duties as the Board may from time to time determine.

SECTION 8. The Secretary. The Secretary shall, to the extent practicable, attend all meetings of the Board and all meetings of the stockholders and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose. He may give, or cause to be given, notice of all meetings of the stockholders and of the Board, and shall perform such other duties as may be prescribed by the Board, the Chairman or the President, under whose supervision he shall act. He shall keep in safe custody the seal of the Corporation and affix the same to any duly authorized instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of the Treasurer or, if appointed, an Assistant Secretary or an Assistant Treasurer. He shall keep in safe custody the certificate books and stockholder records and such other books and records as the Board may direct, and shall perform all other duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman or the President.

SECTION 9. The Treasurer. The Treasurer shall have the care and custody of the corporate funds and other valuable effects, including securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, shall render to the Chairman, President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation and shall perform all other duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board, the Chairman or the President.

ARTICLE V

Contracts, Checks, Drafts, Bank Accounts, Etc.

SECTION 1. Execution of Documents. The Board shall designate, by either specific or general resolution, the officers, employees and agents of the Corporation who shall have the power to execute and deliver deeds, contracts, mortgages, bonds, debentures, checks, drafts and other orders for the payment of money and other documents for and in the name of the Corporation, and may authorize such officers, employees and agents to delegate such power (including authority to redelegate) by written instrument to other officers, employees or agents of the Corporation; unless so designated or expressly authorized by these By-laws, no officer, employee or agent shall have any power or authority to bind the Corporation by any contract or engagement, to pledge its credit or to render it liable pecuniarily for any purpose or amount.

SECTION 2. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation or otherwise as the Board or Treasurer, or any other officer of the Corporation to whom power in this respect shall have been given by the Board, shall select.

SECTION 3. Proxies with Respect to Stock or Other Securities of Other Corporations. The Board shall designate the officers of the Corporation who shall have authority from time to time to appoint an agent or agents of the Corporation to exercise in the name and on behalf of the Corporation the powers and rights which the Corporation may have as the holder of stock or other securities in any other corporation, and to vote or consent with respect to such stock or securities. Such designated officers may instruct the person or persons so appointed as to the manner of exercising such powers and rights, and such designated officers may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, such written proxies, powers of attorney or other instruments as they may deem necessary or proper in order that the Corporation may exercise its powers and rights.

ARTICLE VI

Shares and Their Transfer; Fixing Record Date

SECTION 1. Certificates for Shares. Every owner of stock of the Corporation shall be entitled to have a certificate certifying the number and class of shares owned by him in the Corporation, which shall be in such form as shall be prescribed by the Board. Certificates shall be numbered and issued in consecutive order and shall be signed by, or in the name of, the Corporation by the Chairman, the President or any Vice President, and by the Treasurer (or an Assistant Treasurer, if appointed) or the Secretary (or an Assistant Secretary, if appointed). In case any officer or officers who shall have signed any such certificate or certificates shall cease to be such officer or officers of the Corporation, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed such certificate had not ceased to be such officer or officers of the Corporation.

SECTION 2. Record. A record in one or more counterparts shall be kept of the name of the person, firm or corporation owning the shares represented by each certificate for stock of the Corporation issued, the number of shares represented by each such certificate, the date thereof and, in the case of cancellation, the date of cancellation. Except as otherwise expressly required by law, the person in whose name shares of stock stand on the stock record of the Corporation shall be deemed the owner thereof for all purposes regarding the Corporation.

SECTION 3. Transfer and Registration of Stock.

(a) The transfer of stock and certificates which represent the stock of the Corporation shall be governed by Article 8 of Subtitle 1 of Title 6 of the Delaware Code (the Uniform Commercial Code), as amended from time to time.

(b) Registration of transfers of shares of the Corporation shall be made only on the books of the Corporation upon request of the registered holder thereof, or of his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation, and upon the surrender of the certificate or certificates for such shares properly endorsed or accompanied by a stock power duly executed.

SECTION 4. Addresses of Stockholders. Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to him, and, if any stockholder shall fail to designate such address, corporate notices may be served upon him by mail directed to him at his post-office address, if any, as the same appears on the share record books of the Corporation or at his last known post-office address.

SECTION 5. Lost, Destroyed and Mutilated Certificates. The holder of any shares of the Corporation shall immediately notify the Corporation of any loss, destruction or mutilation of the certificate therefor, and the Board may, in its discretion, cause to be issued to him a new certificate or certificates for such shares, upon the surrender of the mutilated certificates or, in the case of loss or destruction of the certificate, upon satisfactory proof of such loss or destruction, and the Board may, in its discretion, require the owner of the lost or destroyed certificate or his legal representative to give the Corporation a bond in such sum and with such surety or sureties as it may direct to indemnify the Corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate.

SECTION 6. Regulations. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these By-laws, concerning the issue, transfer and registration of certificates for stock of the Corporation.

SECTION 7. Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall be not more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall be not more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by the Delaware Statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by the Delaware Statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.



ARTICLE VII

Seal

The Board may provide a corporate seal, which shall be in the form of a circle and shall bear the full name of the Corporation, the year of incorporation of the Corporation and the words and figures "Corporate Seal - Delaware."

ARTICLE VIII

Fiscal Year

The fiscal year of the Corporation shall be the calendar year unless otherwise determined by the Board.

ARTICLE IX

Indemnification and Insurance

SECTION 1. Indemnification.

(a) As provided in the Charter, to the fullest extent permitted by the Delaware Statute as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for breach of fiduciary duty as a director.

(b) Without limitation of any right conferred by paragraph (a) of this Section 1, each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director, officer or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer or employee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity while serving as a director, officer or employee or in any other capacity while serving as a director, officer or employee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware Statute, 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 attorneys' fees, judgments, fines, excise taxes or 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 a director, officer or employee and shall inure to the benefit of the indemnitee's heirs, testators, intestates, executors and administrators; provided, however, that such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best

interests of the Corporation, and with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided further, however, that no indemnification shall be made in the case of an action, suit or proceeding by or in the right of the Corporation in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director, officer, employee or agent is liable to the Corporation, unless a court having jurisdiction shall determine that, despite such adjudication, such person is fairly and reasonably entitled to indemnification; provided further, however, that, except as provided in Section 1(c) of this Article IX 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) initiated by such indemnitee was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Article IX shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that, if the Delaware Statute requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) 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 Section or otherwise.

(c) If a claim under Section (b) of this Article IX is not paid in full by the Corporation with 60 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 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If 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 any undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) 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, and (ii) 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 Delaware Statute. Neither the failure of the Corporation (including the Board, independent legal counsel, or the 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 Delaware Statute, nor an actual determination by the Corporation (including the Board, independent legal counsel, or the 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 Section or otherwise shall be on the Corporation.

(d) The rights to indemnification and to the advancement of expenses conferred in this Article IX shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Charter, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 2. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was a director, officer, employee or agent of the Corporation or any person who is or was serving at the request of the Corporation as a director, officer, employer 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 Delaware Statute.

## ARTICLE X

### Amendment

Any by-law (including these By-laws) may be adopted, amended or repealed by the vote of the holders of a majority of the shares then entitled to vote or by the stockholders' written consent pursuant to Section 10 of Article II, or by the vote of the Board or by the directors' written consent pursuant to Section 6 of Article III.

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STATE OF DELAWARE  
 CERTIFICATE OF INCORPORATION  
 OF  
 NU-GRO AMERICA CORP.

I, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, do hereby certify as follows:

FIRST: The name of the corporation is NU-GRO AMERICA CORP. (the "Corporation").

SECOND: The registered office of the Corporation in the State of Delaware is to be located at 1013 Centre Road, Wilmington County of New Castle, Delaware 19805. The name of its registered agent at such address is Corporation Service Company.

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

FOURTH: The total number of shares which the Corporation is authorized to issue is 3000 shares, no par value, itemized as follows:

<u>CLASS</u>	<u>NUMBER OF SHARES</u>	<u>PAR VALUE/SHARE</u>
Common	3000	No Par Value

FIFTH: The name and mailing address of the incorporator is as follows:

Thomas J. Keable  
 Kavinoky & Cook, LLP  
 120 Delaware Avenue  
 Buffalo, New York 14202

SIXTH: The personal liability of a director of the Corporation to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director is eliminated to the fullest extent allowed under the laws of the State of Delaware in effect as of the date of this Certificate. This provision shall not eliminate the personal 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 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit.

IN WITNESS WHEREOF, I have hereunto signed this Certificate of Incorporation this 21st day of July, 1998.

/s/ Thomas J. Keable

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Thomas J. Keable, Incorporator

CERTIFICATE OF MERGER  
OF  
NU-GRO TECHNOLOGIES, INC.,  
a New York corporation  
INTO  
NU-GRO AMERICA CORP.,  
a Delaware corporation  
(Pursuant to Section 252 of the Delaware General Corporation Law)

It is hereby certified that:

1. The constituent business corporations participating in the merger herein are:

- (i) NU-GRO AMERICA CORP., which is incorporated under the laws of the State of Delaware; and
- (ii) NU-GRO TECHNOLOGIES, INC., which is incorporated under the laws of the State of New York.

2. A Plan and Agreement of Merger has been approved, adopted, certified, executed, and acknowledged by each of the aforesaid constituent corporations in accordance with the provisions of Section 252(c) of the General Corporation Law of the State of Delaware.

3. The name of the surviving corporation in the merger herein is Nu-Gro America Corp., a Delaware corporation, which shall continue its existence as said surviving corporation upon the effective date of said merger pursuant to the provisions of the General Corporation Law of the State of Delaware.

4. The Certificate of Incorporation of Nu-Gro America Corp. as of the effective date of the merger shall continue in full force and effect until amended and changed in the manner prescribed by the provisions of the General Corporation Law of the State of Delaware.

5. The executed Plan and Agreement of Merger between the aforesaid constituent corporations is on file at the principal place of business of the aforesaid surviving corporation, the address of which is as follows:

Nu-Gro America Corp.  
10 Craig Street  
Brantford, Ontario N3R 7J1

6. A copy of the aforesaid Plan and Agreement of Merger will be furnished by the aforesaid surviving corporation, on request and without cost, to any stockholder of any of the aforesaid constituent corporations.

7. The authorized capital stock of Nu-Gro Technologies, Inc. is 200 shares, all of which are common shares of one class, of which 160 are issued and outstanding.

8. The effective date of the merger shall be October 1, 1999.

Dated: September 28, 1999

NU-GRO TECHNOLOGIES, INC.

By /s/ John D. Hill

\_\_\_\_\_  
John D. Hill, President

NU-GRO AMERICA CORP.

By /s/ John D. Hill

\_\_\_\_\_  
John D. Hill, President

BY-LAWS  
OF  
NU-GRO AMERICA CORP.

ARTICLE I  
OFFICES

Section 1. Principal Office. The registered office of the Corporation shall be located in the County of the State of Delaware designated in the Certificate of Incorporation. The Corporation may also maintain offices at such other places within or without the United States as the Board of Directors may, from time to time, determine.

ARTICLE II  
STOCKHOLDERS

Section 1. Time and Place of Meetings. The Board of Directors may designate any time and any place, either within or without the State of Delaware, as the time and place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all stockholders entitled to vote at a meeting may designate any time and any place, either within or without the State of Delaware, as the time and place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the time and place of the meeting shall be the principal office of the Corporation at 10:00 a.m.

Section 2. Annual Meeting. Annual meetings of stockholders shall be held on the first Wednesday in February of each year if not a legal holiday, and if a legal holiday, then on the next secular day following at 10:00 a.m., at which the stockholders shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The annual meeting of the stockholders may be held on a date different than that given above if the Board so determines and so states in the notice of the meeting or in a duly executed waiver thereof.

Section 3. Special Meetings. Special meetings of the stockholders for any purpose or purposes, unless otherwise prescribed by law or by the Certificate of Incorporation, may be called by the President, the Board of Directors or the holders of not less than a majority of all of the stock entitled to vote at the meetings. Business transacted at all special meetings shall be confined to the purpose or purposes stated in the call.

Section 4. Notice. Written or printed notice of all meetings of stockholders stating the place, day and hour thereof, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting to the stockholders of record entitled to vote at such meeting either personally or by mail, by or at the direction of the person or persons calling the meeting, unless it is an annual meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the shareholder at the address that appears on the stock transfer books of the Corporation.



Section 5. Closing of Transfer Books and Fixing of Record Date. For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, sixty (60) days. If the stock transfer books shall be closed for the purpose of determining stockholders entitled to notice of or to vote at a meeting of stockholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than sixty (60) days and, in case of a meeting of stockholders, not less than ten (10) days prior to the date on which the particular action requiring such determination of stockholders is to be taken, and the determination of stockholders on such record date shall apply with respect to the particular action requiring the same notwithstanding any transfer of stock on the books of the Corporation after such record date.

Section 6. List of Stockholders. The officer who as charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of a least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 7. Quorum. The holders of a majority of the stock entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by law, by the Certificate of Incorporation or by these By-laws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote at such meeting, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally convened. If the adjournment is for more than thirty (30) days, or if after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of the record entitled to vote at the meeting.

Section 8. Organization. The Chairman of the Board, if one shall be elected, shall preside at all meetings of the stockholders. In his absence, the President or a Vice President shall preside. In the absence of all of these officers, any stockholder or the duly appointed proxy of any stockholder may call the meeting to order and a chairman shall be elected from among the stockholders present. The Secretary of the Corporation shall act as secretary at all meetings of stockholders. In his or her absence an Assistant Secretary shall so act and in the absence of all of these officers the presiding officer may appoint any person to act as secretary of the meeting.

Section 9. Proxies. At any meeting of the stockholders, every stockholder entitled to vote at such meeting shall be entitled to vote in person or by proxy executed in writing by such stockholder or by his duly authorized attorney-in-fact. No proxy shall be valid after three (3) years from the date of its execution unless such proxy otherwise provides. A proxy shall be revocable unless expressly provided therein to be irrevocable or unless otherwise made irrevocable by law.

Section 10. Voting. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, each stockholder shall have one (1) vote for each share having rights registered in his name on the books of the Corporation at the time of the closing of the stock transfer books (or at the record date) for such meeting. When a quorum is present at any meeting the vote of holders of a majority of the stock entitled to vote, present in person or represented by proxy, shall decide any matter submitted to such meeting, unless the matter is one upon which by law or by express provision of the Certificate of Incorporation or of these By-laws the vote of a greater number is required, in which case the vote of such greater number shall govern and control the decision of such matter.

Section 11. Voting of Stock by Certain Holders. Stock standing in the name of another corporation may be voted by such officer, agent or proxy as the By-laws of such corporation may authorize or, in the absence of such authorization, as the Board of Directors of such corporation may determine.

Stock held by an administrator, executor, guardian or conservator may be voted by him so long as such stock forming a part of an estate are in the possession and form a part of the estate being served by him, either in person or by proxy, without a transfer of such stock into his name. Stock standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote stock held by him without a transfer of such stock into his name as trustee.

Stock standing in the name of a receiver may be voted by such receiver, and stock held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority to do so be contained in an appropriate order of the court by which such receiver was appointed.

A stockholder whose stock is pledged shall be entitled to vote such stock until the stock have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the stock so transferred.

Shares of its own stock belonging to the Corporation, shares of its own stock owned by another corporation the majority of the voting stock of which is owned or controlled by the Corporation, and shares of its own stock held by the Corporation in a fiduciary capacity shall not be voted, directly, or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding stock at any given time.

Section 11. Action. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the Certificate of Incorporation, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 12. Election of Directors. At each election for Directors, each stockholder entitled to vote at such election shall, unless otherwise provided by the Certificate of Incorporation or by applicable law, have the right to vote the number of shares owned by him for as many persons as there are to be elected and for whose election he has a right to vote. Unless otherwise provided by the Certificate of Incorporation, no stockholder shall have the right or be permitted to cumulate his votes on any basis.

Section 13. Action Without Meeting. Any action required by any provision of law or of the Certificate of Incorporation or these By-laws to be taken at a meeting of the stockholders or any action which may be taken at a meeting of the stockholders may be taken without a meeting without prior written notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the stockholders entitled to vote with respect to the subject matter thereof holding the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

### ARTICLE III DIRECTORS

Section 1. Number of Directors. The property, business and affairs of the Corporation shall be managed and controlled by a Board of Directors composed of not less than one (1) nor more than five (5) members who shall be elected by the stockholders. Directors need not be residents of the State of Delaware or stockholders of the Corporation. The number of Directors may be increased or decreased by resolution adopted by a majority of the Board of Directors.

Section 2. Election and Term of Office. The Directors shall be elected at the annual meeting of the stockholders (except as provided in Section 5 of this Article). Each Director elected shall hold office until his successor shall be elected at an appropriate annual meeting of the stockholders and shall qualify, or until his death, his resignation or his removal in the manner hereinafter provided.

Section 3. Resignation. Any Director may resign at any time by giving written notice to the President or Secretary. Such resignation shall take effect at the time specified therein and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

Section 4. Removal. At any special meeting of the stockholders called expressly for that purpose, any Director or Directors, including the entire Board of Directors, may be removed, either with or without cause, and another person or persons may be elected to serve for the remainder of his or their term by a vote of the holders of a majority of all stock outstanding and entitled to vote at an election of directors. In case any vacancy so created shall not be filled by the stockholders at such meeting, such vacancy may be filled by the Directors as provided in Section 5 of this Article.

Section 5. Vacancies. If any vacancy shall occur in the Board of Directors, such vacancy may, subject to the provisions of Section 4 of this Article, be filled by the affirmative vote of the remaining Directors though less than a quorum of the Board of Directors or by a sole remaining Director, and the Directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no Directors in office, then an election of Directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created Directorship, the Directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten (10%) percent of the total number of the shares at the time outstanding having the right to vote for such Directors, summarily order an election to be held to fill any such vacancies or newly created Directorships, or to replace the Directors chosen by the Directors then in office. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 6. General Powers. In addition to the powers and authorities expressly conferred upon them by these By-laws, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the stockholders.

Section 7. Place of Meetings. The Directors of the Corporation may hold their meetings, both regular and special, either within or without the State of Delaware.

Section 8. Annual Meeting. The first meeting of each newly elected Board shall be held immediately following the adjournment of the annual meeting of the stockholders and no notice of such meeting shall be necessary to the newly elected Directors in order legally to constitute the meeting, provided a quorum shall be present, or they may meet at such time and place as shall be fixed by the consent in writing of all of the Directors.

Section 9. Regular Meetings. Regular meetings of the Board may be held with or without notice immediately after, and at the same place as, the annual meeting of stockholders. The Board of Directors may provide by resolution, the time and place for the holding of additional regular meetings without notice other than such resolution.

Section 10. Special Meetings. Special meetings of the Board may be called by the President on two (2) days' notice to each Director given either personally, by mail or by telegram. Special meetings shall be called by the President or Secretary in like manner and like notice on the written request of any Director. The purpose of or the business to be transacted at any special meeting of the Board of Directors shall be specified in the notice of such meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 11. Quorum and Action. At all meetings of the Board the presence of a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the Directors at any meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Certificate of Incorporation or these By-laws. If a quorum shall not be present at any meeting of Directors, the Directors present may adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present.

Section 12. Presumption of Assent to Action. A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 13. Committees. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the Directors of the Corporation. The board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

In the absence of disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of

Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, (except, that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of Directors as provided in Section 151(a) of the General Corporation Law fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of any such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation), adopting an agreement of merger or consolidation, recommending to the Stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the Stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the By-laws of the Corporation; and, unless the resolution or the Certificate of Incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger. Such committee or committees shall have such name and names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors.

Section 14. Compensation. Directors may receive a stated salary for their services in an amount unanimously agreed by the Board of Directors. By resolution of the Board a fixed sum for expenses of attendance, if any, may be allowed for attendance at any regular or special meeting of the Board provided that nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 15. Telephone Meetings. Directors may participate in and hold a meeting of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 16. Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the Board of Directors, as the case may be, and such consent shall have the same force and effect as a unanimous vote at a meeting.

#### ARTICLE IV NOTICES

Section 1. Form of Notice. Whenever under the provisions of any applicable statute, the Articles of Incorporation or these By-laws, notice is required to be

given to any director or shareholder, and no provision is made as to how such notice shall be given, it shall not be construed to mean personal notice exclusively, but any such notice may be given in writing, by mail, postage prepaid, addressed to such director or shareholder at such address as appears on the books of the Corporation. Any notice required or permitted to be given by mail shall be deemed to be given three (3) days after the time when the same be thus deposited, postage prepaid, in the United States mail as aforesaid.

Section 2. Waiver. Whenever any notice is required to be given to any director or shareholder of the Corporation, under the provisions of any applicable statute, the Articles of Incorporation or these By-laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated in such notice, shall be equivalent to the giving of such notice.

## ARTICLE V OFFICERS

Section 1. General. The officers of the Corporation shall be elected by the Board of Directors and shall be a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also, if it chooses to do so, elect a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers, all of whom shall also be officers. Two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office and Qualification. The officers of the Corporation shall be elected by the Board of Directors at its first meeting after each annual meeting of stockholders. The Board shall elect a President, Vice President, Treasurer, and Secretary, and any Assistant Officers the Board has determined are needed, none of whom need to be a member of the Board. Each officer so elected shall hold office until his successor has been duly chosen and has qualified or until his death or his resignation or removal in the manner hereinafter provided.

Section 3. Subordinate Officers. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms, have such authority and perform such duties as the Board of Directors may from time to time determine. The Board of Directors may delegate to any officer the power to appoint any such subordinate officer or agent.

Section 4. Resignation. Any officer may resign at any time by giving written notice thereof to the Board of Directors. Any such resignation shall take effect at the time specified therein and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Removal. Any officer elected or appointed by the Board of Directors may be removed by the Board at any time with or without cause. Any other officer may be removed with or without cause, by the person or persons who appointed the officer or by the Board.

Section 6. Vacancies. A vacancy in any office shall be filled for the unexpired portion of the term by the Board of Directors, but in case of a vacancy occurring in an office filled in accordance with the provisions of section 3 of this Article, such vacancy may be filled by the superior officer upon whom such power may be conferred by the Board of Directors.

Section 7. Chairman. The Chairman of the Board, if one shall be elected, shall preside at all meetings of the stockholders and directors. In addition, the Chairman of the Board shall perform whatever duties and shall exercise all powers that are given to him by the Board of Directors.

Section 8. President. The President shall be the chief executive officer of the Corporation; shall (in absence of the Chairman of the Board) preside at meetings of the stockholders and Directors; shall have general and active management of the business of the Corporation; and shall see that all orders and resolutions of the Board of Directors are carried into effect. He may sign, with any other proper officer, certificates for shares of the Corporation and any deeds, bonds, mortgages, contracts and other documents which the Board of Directors has authorized to be executed, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors or these By-laws, to some other officer or agent of the Corporation.

Section 9. Vice President. In the absence of or inability of the President to act, the Vice President shall perform the duties and exercise the powers of the President and shall perform such other functions as the Board of Directors may from time to time prescribe.

Section 10. Secretary. The Secretary, when available, shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors as required by law or these By-laws, be custodian of the Corporate records and have general charge of the stock books of the Corporation and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. He may sign, with any other proper officer, certificates for stock of the Corporation and shall keep in safe custody the seal of the Corporation, and, when authorized by the Board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature.

Section 11. Assistant Secretaries. Any Assistant Secretary shall, in the absence or disability of the Secretary perform the duties and exercise the powers of the Secretary and shall perform such other duties as may be prescribed by the Board of Directors or the President.

Section 12. Treasurer. The Treasurer shall have the care and custody of and be responsible for all of the funds and securities of the Corporation and shall deposit such funds in the name and to the credit of the Corporation in such a bank and safe



deposit vaults as the Directors may designate. He shall exhibit at all reasonable times his books and accounts to any Director or stockholder of the Corporation upon application at the office of the Corporation during business hours. He shall render a statement of the condition of the finances of the Corporation at each stated meeting of the Board of Directors if called upon to do so, and a full report at the annual meeting of stockholders. He shall keep at the office of the Corporation correct books of account of all of its business and transactions and such books of account as the Board of Directors may require. He shall do and perform all other duties incident to the office of Treasurer as may be prescribed by the President or Board of Directors from time to time.

Section 13. Assistant Treasurers. Any Assistant Treasurer shall, in the absence or disability of the Treasurer perform the duties and exercise the powers of the Treasurer and shall perform such other duties as may be prescribed by the Board of Directors or the President.

Section 14. Bonding. If required by the Board of Directors all or certain of the officers shall give the Corporation a bond in such form, in such sum and with such surety or sureties as shall be satisfactory to the Board, for the faithful performance of the duties of their office and for the restoration to the Corporation, in case of their death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation.

Section 15. Salaries. The salary or other compensation of officers shall be fixed from time to time by the Board of Directors. The Board of Directors may delegate to any officer the power to fix from time to time the salary or other compensation of officers and agents appointed in accordance with the provisions of Section 3 of this Article.

Section 16. Voting Upon Shares Held by The Corporation. The Board of Directors may authorize any officer to act on behalf of the Corporation in regard to shares of other corporations owned by this Corporation in which event he shall have full power and authority to attend and to act and to vote at any meeting of stockholders of any corporation in which this Corporation may hold shares and at any such meeting shall possess and may exercise any and all of the rights and powers incident to the ownership of such shares which, as the owner thereof, the Corporation might have possessed and exercised, if present. The Board of Directors by resolution from time to time may confer like powers upon any other person or persons.

## ARTICLE VI CERTIFICATES REPRESENTING STOCK

Section 1. Form of Certificates. The certificates representing stock of the Corporation shall be in such form, not inconsistent with statutory provisions and the Certificate of Incorporation, as shall be approved by the Board of Directors. The certificates shall be signed by the President of the Corporation and sealed with the corporate seal or a facsimile thereof. In case any officer who has signed or whose

facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued with the same effect as if he were such officer at the date of its issuance. All certificates shall be consecutively numbered and the name of the person owning the stock represented thereby, with the number of such shares and the date of issue, shall be entered on the Corporation's books.

Section 2. Ownership of Stock. The Corporation shall be entitled to treat the holder of record of any share or as the owner of such stock with all of the rights of ownership and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 3. Lost Certificates. The Corporation may direct that a new certificate be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost or destroyed. When authorizing the issue of a new certificate, the Board of Directors, in its discretion and as a condition precedent to the issuance thereof, may require the owner of the lost or destroyed certificate, or his legal representative, to advertise the same in such manner as it shall require and/or give the Corporation a bond in such form, in such sum, and with such surety or sureties as it may direct, as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed.

Section 4. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Upon receipt of proper transfer instructions from the registered owner of the uncertificated shares such uncertificated shares shall be canceled and issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the Corporation.

## ARTICLE VII GENERAL PROVISIONS

Section 1. Dividends. The Board of Directors may, from time to time, declare, and the Corporation may pay, dividends on its outstanding stock in the manner and upon the terms and conditions provided by the Certificate of Incorporation, the By-laws and the applicable laws of the State of Delaware.

Section 2. Reserves. There may be created by resolution of the Board of Directors out of the earned surplus of the Corporation such reserve or reserves as the Board of Directors from time to time, in its discretion, deems proper to provide for contingencies, or to equalize dividends, or to repair or maintain any property of the Corporation, or for such other proper purpose as the Board shall deem beneficial to the Corporation, and the Board may modify or abolish any reserve in the same manner in which it was created.

Section 3. Seal. If one be adopted, the corporate seal shall have inscribed thereon the name of the Corporation and shall be in such form as may be approved by the Board of Directors. Said seal may be used by causing it or a facsimile of it to be impressed or affixed or in any manner reproduced. Any officer of the Corporation shall have authority to affix the seal to any document requiring it.

Section 4. Fiscal Year. Unless another fiscal year shall be fixed by resolution of the Board of Directors, the fiscal year of the Corporation shall commence on the 1st day of October and terminate on the 30th day of September of each year.

Section 5. Reports of Situation and Amount of Business. The Board of Directors shall, when requested by the holders of at least one-tenth (1/10) of the outstanding voting stock of the Corporation, present written reports of the situation and amount of business of the Corporation and shall present a full and clear statement of the business and condition of the Corporation at every annual meeting.

Section 6. Checks, Notes, etc. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 7. Examination of Books and Records. Any person who shall have been a shareholder of record for at least six (6) months immediately preceding his demand, or who shall be the holder of record of at least ten percent (10%) of all the outstanding shares of the Corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, the books and records of account, minutes, and record of stockholders of the Corporation, and shall be entitled to make extracts therefrom.

Section 8. Indemnification of Directors. Subject to the applicable laws of the State of Delaware, the Corporation shall indemnify any director, officer, or employee, or former director, officer, or employee of the Corporation, or any person who may have served at its request as a director, officer, or employee of another corporation in which it owns stock, or of which it is a creditor, against expenses actually and necessarily incurred by him and any amount paid in satisfaction of judgments in connection with any action, suit or proceeding whether civil or criminal in nature, in which he is made a party by reason of being or having been such a director, officer or employee (whether or not a director, officer, or employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to the matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The Corporation may also reimburse to any director, officer, or employee the reasonable costs of settlement of any action, suit or proceeding, if it shall be found by a majority of the Board of the Directors not involved in the matter in controversy, whether or not a quorum, that it was to the interest of the Corporation that such settlement be made and that such director, officer or employee was not guilty of

gross negligence or willful misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such director, officer, or employee may be entitled by law or under any By-law, agreement, vote of stockholders, or otherwise.

ARTICLE VIII  
MISCELLANEOUS

Section 1. Compliance With By-Laws. Any action taken or determination made in good faith by the stockholders or the Board of Directors shall be effective, valid and binding although the same may not have been taken or made in strict compliance with the By-laws of the Corporation.

ARTICLE IX  
AMENDMENTS

Section 1. Amendments. These By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the stockholders or by the Board of Directors, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such special meeting.

Dated: July , 1998

STATE OF DELAWARE  
 CERTIFICATE OF INCORPORATION  
 OF  
 NU-GRO TECHNOLOGIES, INC.

I, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, do hereby certify as follows:

FIRST: The name of the corporation is NU-GRO TECHNOLOGIES, INC. (the "Corporation").

SECOND: The registered office of the Corporation in the State of Delaware is to be located at 1013 Centre Road, Wilmington County of New Castle, Delaware 19805. The name of its registered agent at such address is Corporation Service Company.

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

FOURTH: The total number of shares which the Corporation is authorized to issue is 3,000 shares, no par value, itemized as follows:

<u>CLASS</u>	<u>SERIES (IF ANY)</u>	<u>NUMBER OF SHARES</u>	<u>PAR VALUE/SHARE</u>
Common		3,000	No Par Value

FIFTH: The name and mailing address of the incorporator is as follows:

Kimberly J. Schwinge, Esq.  
 Kavinoky & Cook, LLP  
 120 Delaware Avenue  
 Buffalo, NY 14202

SIXTH: The personal liability of a director of the Corporation to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director is eliminated to the fullest extent allowed under the laws of the State of Delaware in effect as of the date of this Certificate. This provision shall not eliminate the personal 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 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit.

IN WITNESS WHEREOF, I have hereunto signed this Certificate of Incorporation this 21<sup>st</sup> day of September, 1999.

/s/ Kimberly J. Schwinge

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Kimberly J. Schwinge, Incorporator

BY-LAWS  
OF  
NU-GRO TECHNOLOGIES, INC.

ARTICLE I

OFFICES

Section 1. Principal Office. The registered office of the Corporation shall be located in the County of the State of Delaware designated in the Certificate of Incorporation. The Corporation may also maintain offices at such other places within or without the United States as the Board of Directors may, from time to time, determine.

ARTICLE II

STOCKHOLDERS

Section 1. Time and Place of Meetings. The Board of Directors may designate any time and any place, either within or without the State of Delaware, as the time and place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all stockholders entitled to vote at a meeting may designate any time and any place, either within or without the State of Delaware, as the time and place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the time and place of the meeting shall be the principal office of the Corporation at 10:00 a.m.

Section 2. Annual Meeting. Annual meetings of stockholders shall be held on the first Wednesday in February of each year if not a legal holiday, and if a legal holiday, then on the next secular day following at 10:00 a.m., at which the stockholders shall elect a Board of Directors, and transact such other business as may properly be brought before the meeting. The annual meeting of the stockholders may be held on a date different than that given above if the Board so determines and so states in the notice of the meeting or in a duly executed waiver thereof.

Section 3. Special Meetings. Special meetings of the stockholders for any purpose or purposes, unless otherwise prescribed by law or by the Certificate of Incorporation, may be called by the President, the Board of Directors or the holders of not less than a majority of all of the stock entitled to vote at the meetings. Business transacted at all special meetings shall be confined to the purpose or purposes stated in the call.

Section 4. Notice. Written or printed notice of all meetings of stockholders stating the place, day and hour thereof, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered not less than

ten (10) days nor more than sixty (60) days prior to the date of the meeting to the stockholders of record entitled to vote at such meeting either personally or by mail, by or at the direction of the person or persons calling the meeting, unless it is an annual meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the shareholder at the address that appears on the stock transfer books of the Corporation.

Section 5. Closing of Transfer Books and Fixing of Record Date. For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, sixty (60) days. If the stock transfer books shall be closed for the purpose of determining stockholders entitled to notice of or to vote at a meeting of stockholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than sixty (60) days and, in case of a meeting of stockholders, not less than ten (10) days prior to the date on which the particular action requiring such determination of stockholders is to be taken, and the determination of stockholders on such record date shall apply with respect to the particular action requiring the same notwithstanding any transfer of stock on the books of the Corporation after such record date.

Section 6. List of Stockholders. The officer who as charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of a least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 7. Quorum. The holders of a majority of the stock entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by law, by the Certificate of Incorporation or by these By-laws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote at such meeting, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally convened. If the adjournment is for more than thirty (30) days, or if after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of the record entitled to vote at the meeting.



Section 8. Organization. The Chairman of the Board, if one shall be elected, shall preside at all meetings of the stockholders. In his absence, the President or a Vice President shall preside. In the absence of all of these officers, any stockholder or the duly appointed proxy of any stockholder may call the meeting to order and a chairman shall be elected from among the stockholders present. The Secretary of the Corporation shall act as secretary at all meetings of stockholders. In his or her absence an Assistant Secretary shall so act and in the absence of all of these officers the presiding officer may appoint any person to act as secretary of the meeting.

Section 9. Proxies. At any meeting of the stockholders, every stockholder entitled to vote at such meeting shall be entitled to vote in person or by proxy executed in writing by such stockholder or by his duly authorized attorney-in-fact. No proxy shall be valid after three (3) years from the date of its execution unless such proxy otherwise provides. A proxy shall be revocable unless expressly provided therein to be irrevocable or unless otherwise made irrevocable by law.

Section 10. Voting. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, each stockholder shall have one (1) vote for each share having rights registered in his name on the books of the Corporation at the time of the closing of the stock transfer books (or at the record date) for such meeting. When a quorum is present at any meeting the vote of holders of a majority of the stock entitled to vote, present in person or represented by proxy, shall decide any matter submitted to such meeting, unless the matter is one upon which by law or by express provision of the Certificate of Incorporation or of these By-laws the vote of a greater number is required, in which case the vote of such greater number shall govern and control the decision of such matter.

Section 11. Voting of Stock by Certain Holders. Stock standing in the name of another corporation may be voted by such officer, agent or proxy as the By-laws of such corporation may authorize or, in the absence of such authorization, as the Board of Directors of such corporation may determine.

Stock held by an administrator, executor, guardian or conservator may be voted by him so long as such stock forming a part of an estate are in the possession and form a part of the estate being served by him, either in person or by proxy, without a transfer of such stock into his name. Stock standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote stock held by him without a transfer of such stock into his name as trustee.

Stock standing in the name of a receiver may be voted by such receiver, and stock held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority to do so be contained in an appropriate order of the court by which such receiver was appointed.

A stockholder whose stock is pledged shall be entitled to vote such stock until the stock have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the stock so transferred.

Shares of its own stock belonging to the Corporation, shares of its own stock owned by another corporation the majority of the voting stock of which is owned or controlled by the Corporation, and shares of its own stock held by the Corporation in a fiduciary capacity shall not be voted, directly, or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding stock at any given time.

Section 12. Action. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the Certificate of Incorporation, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 13. Election of Directors. At each election for Directors, each stockholder entitled to vote at such election shall, unless otherwise provided by the Certificate of Incorporation or by applicable law, have the right to vote the number of shares owned by him for as many persons as there are to be elected and for whose election he has a right to vote. Unless otherwise provided by the Certificate of Incorporation, no stockholder shall have the right or be permitted to cumulate his votes on any basis.

Section 14. Action Without Meeting. Any action required by any provision of law or of the Certificate of Incorporation or these By-laws to be taken at a meeting of the stockholders or any action which may be taken at a meeting of the stockholders may be taken without a meeting without prior written notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the stockholders entitled to vote with respect to the subject matter thereof holding the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing .

### ARTICLE III

#### DIRECTORS

Section 1. Number of Directors. The property, business and affairs of the Corporation shall be managed and controlled by a Board of Directors composed of not less than one (1) nor more than five (5) members who shall be elected by the stockholders. Directors need not be residents of the State of Delaware or stockholders of the Corporation. The number of Directors may be increased or decreased by resolution adopted by a majority of the Board of Directors.

Section 2. Election and Term of Office. The Directors shall be elected at the annual meeting of the stockholders (except as provided in Section 5 of this Article). Each Director elected shall hold office until his successor shall be elected at an appropriate annual meeting of the stockholders and shall qualify, or until his death, his resignation or his removal in the manner hereinafter provided.

Section 3. Resignation. Any Director may resign at any time by giving written notice to the President or Secretary. Such resignation shall take effect at the time specified therein and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

Section 4. Removal. At any special meeting of the stockholders called expressly for that purpose, any Director or Directors, including the entire Board of Directors, may be removed, either with or without cause, and another person or persons may be elected to serve for the remainder of his or their term by a vote of the holders of a majority of all stock outstanding and entitled to vote at an election of directors. In case any vacancy so created shall not be filled by the stockholders at such meeting, such vacancy may be filled by the Directors as provided in Section 5 of this Article.

Section 5. Vacancies. If any vacancy shall occur in the Board of Directors, such vacancy may, subject to the provisions of Section 4 of this Article, be filled by the affirmative vote of the remaining Directors though less than a quorum of the Board of Directors or by a sole remaining Director, and the Directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no Directors in office, then an election of Directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created Directorship, the Directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten (10%) percent of the total number of the shares at the time outstanding having the right to vote for such Directors, summarily order an election to be held to fill any such vacancies or newly created Directorships, or to replace the Directors chosen by the Directors then in office. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 6. General Powers. In addition to the powers and authorities expressly conferred upon them by these By-laws, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the stockholders.

Section 7. Place of Meetings. The Directors of the Corporation may hold their meetings, both regular and special, either within or without the State of Delaware.

Section 8. Annual Meeting. The first meeting of each newly elected Board shall be held immediately following the adjournment of the annual meeting of the

stockholders and no notice of such meeting shall be necessary to the newly elected Directors in order legally to constitute the meeting, provided a quorum shall be present, or they may meet at such time and place as shall be fixed by the consent in writing of all of the Directors.

Section 9. Regular Meetings. Regular meetings of the Board may be held with or without notice immediately after, and at the same place as, the annual meeting of stockholders. The Board of Directors may provide by resolution, the time and place for the holding of additional regular meetings without notice other than such resolution.

Section 10. Special Meetings. Special meetings of the Board may be called by the President on two (2) days' notice to each Director given either personally, by mail or by telegram. Special meetings shall be called by the President or Secretary in like manner and like notice on the written request of any Director. The purpose of or the business to be transacted at any special meeting of the Board of Directors shall be specified in the notice of such meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 11. Quorum and Action. At all meetings of the Board the presence of a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the Directors at any meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Certificate of Incorporation or these By-laws. If a quorum shall not be present at any meeting of Directors, the Directors present may adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present.

Section 12. Presumption of Assent to Action. A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 13. Committees. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the Directors of the Corporation. The board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

In the absence of disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, (except, that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of Directors as provided in Section 151(a) of the General Corporation Law fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of any such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation), adopting an agreement of merger or consolidation, recommending to the Stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the Stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the By-laws of the Corporation; and, unless the resolution or the Certificate of Incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger. Such committee or committees shall have such name and names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors.

Section 14. Compensation. Directors may receive a stated salary for their services in an amount unanimously agreed by the Board of Directors. By resolution of the Board a fixed sum for expenses of attendance, if any, may be allowed for attendance at any regular or special meeting of the Board provided that nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 15. Telephone Meetings. Directors may participate in and hold a meeting of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 16. Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the Board of Directors, as the case may be, and such consent shall have the same force and effect as a unanimous vote at a meeting.

ARTICLE IV

NOTICES

Section 1. Form of Notice. Whenever under the provisions of any applicable statute, the Articles of Incorporation or these By-laws, notice is required to be given to any director or shareholder, and no provision is made as to how such notice shall be given, it shall not be construed to mean personal notice exclusively, but any such notice may be given in writing, by mail, postage prepaid, addressed to such director or shareholder at such address as appears on the books of the Corporation. Any notice required or permitted to be given by mail shall be deemed to be given three (3) days after the time when the same be thus deposited, postage prepaid, in the United States mail as aforesaid.

Section 2. Waiver. Whenever any notice is required to be given to any director or shareholder of the Corporation, under the provisions of any applicable statute, the Articles of Incorporation or these By-laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated in such notice, shall be equivalent to the giving of such notice.

ARTICLE V

OFFICERS

Section 1. General. The officers of the Corporation shall be elected by the Board of Directors and shall be a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also, if it chooses to do so, elect a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries, one or more General Managers and one or more Assistant Treasurers, all of whom shall also be officers. Two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office and Qualification. The officers of the Corporation shall be elected by the Board of Directors at its first meeting after each annual meeting of stockholders. The Board shall elect a President, Vice President, Treasurer, and Secretary, and any Assistant Officers the Board has determined are needed, none of whom need to be a member of the Board. Each officer so elected shall hold office until his successor has been duly chosen and has qualified or until his death or his resignation or removal in the manner hereinafter provided.

Section 3. Subordinate Officers. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms, have such authority and perform such duties as the Board of Directors may from time to time determine. The Board of Directors may delegate to any officer the power to appoint any such subordinate officer or agent.

Section 4. Resignation. Any officer may resign at any time by giving written notice thereof to the Board of Directors. Any such resignation shall take effect at the time specified therein and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Removal. Any officer elected or appointed by the Board of Directors may be removed by the Board at any time with or without cause. Any other officer may be removed with or without cause, by the person or persons who appointed the officer or by the Board.

Section 6. Vacancies. A vacancy in any office shall be filled for the unexpired portion of the term by the Board of Directors, but in case of a vacancy occurring in an office filled in accordance with the provisions of section 3 of this Article, such vacancy may be filled by the superior officer upon whom such power may be conferred by the Board of Directors.

Section 7. Chairman. The Chairman of the Board, if one shall be elected, shall preside at all meetings of the stockholders and directors. In addition, the Chairman of the Board shall perform whatever duties and shall exercise all powers that are given to him by the Board of Directors.

Section 8. President. The President shall be the chief executive officer of the Corporation; shall (in absence of the Chairman of the Board) preside at meetings of the stockholders and Directors; shall have general and active management of the business of the Corporation; and shall see that all orders and resolutions of the Board of Directors are carried into effect. He may sign, with any other proper officer, certificates for shares of the Corporation and any deeds, bonds, mortgages, contracts and other documents which the Board of Directors has authorized to be executed, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors or these By-laws, to some other officer or agent of the Corporation.

Section 9. Vice President. In the absence of or inability of the President to act, the Vice President shall perform the duties and exercise the powers of the President and shall perform such other functions as the Board of Directors may from time to time prescribe.

Section 10. Secretary. The Secretary, when available, shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings

of the Board of Directors as required by law or these By-laws, be custodian of the Corporate records and have general charge of the stock books of the Corporation and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. He may sign, with any other proper officer, certificates for stock of the Corporation and shall keep in safe custody the seal of the Corporation, and, when authorized by the Board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature.

Section 11. Assistant Secretaries. Any Assistant Secretary shall, in the absence or disability of the Secretary perform the duties and exercise the powers of the Secretary and shall perform such other duties as may be prescribed by the Board of Directors or the President.

Section 12. Treasurer. The Treasurer shall have the care and custody of and be responsible for all of the funds and securities of the Corporation and shall deposit such funds in the name and to the credit of the Corporation in such a bank and safe deposit vaults as the Directors may designate. He shall exhibit at all reasonable times his books and accounts to any Director or stockholder of the Corporation upon application at the office of the Corporation during business hours. He shall render a statement of the condition of the finances of the Corporation at each stated meeting of the Board of Directors if called upon to do so, and a full report at the annual meeting of stockholders. He shall keep at the office of the Corporation correct books of account of all of its business and transactions and such books of account as the Board of Directors may require. He shall do and perform all other duties incident to the office of Treasurer as may be prescribed by the President or Board of Directors from time to time.

Section 13. Assistant Treasurers. Any Assistant Treasurer shall, in the absence or disability of the Treasurer perform the duties and exercise the powers of the Treasurer and shall perform such other duties as may be prescribed by the Board of Directors or the President.

Section 14. General Manager. The General Manager, if one is elected, shall be elected, shall have general and active management of the business of the Corporation. In addition, the General Manager shall perform whatever duties as may be prescribed by the Board of Directors or the President.

Section 15. Bonding. If required by the Board of Directors all or certain of the officers shall give the Corporation a bond in such form, in such sum and with such surety or sureties as shall be satisfactory to the Board, for the faithful performance of the duties of their office and for the restoration to the Corporation, in case of their death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation.

Section 16. Salaries. The salary or other compensation of officers shall be fixed from time to time by the Board of Directors. The Board of Directors may delegate to any officer the power to fix from time to time the salary or other compensation of officers and agents appointed in accordance with the provisions of Section 3 of this Article.



Section 17. Voting Upon Shares Held by The Corporation . The Board of Directors may authorize any officer to act on behalf of the Corporation in regard to shares of other corporations owned by this Corporation in which event he shall have full power and authority to attend and to act and to vote at any meeting of stockholders of any corporation in which this Corporation may hold shares and at any such meeting shall possess and may exercise any and all of the rights and powers incident to the ownership of such shares which, as the owner thereof, the Corporation might have possessed and exercised, if present. The Board of Directors by resolution from time to time may confer like powers upon any other person or persons.

## ARTICLE VI

### CERTIFICATES REPRESENTING STOCK

Section 1. Form of Certificates. The certificates representing stock of the Corporation shall be in such form, not inconsistent with statutory provisions and the Certificate of Incorporation, as shall be approved by the Board of Directors. The certificates shall be signed by the President of the Corporation and sealed with the corporate seal or a facsimile thereof. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued with the same effect as if he were such officer at the date of its issuance. All certificates shall be consecutively numbered and the name of the person owning the stock represented thereby, with the number of such shares and the date of issue, shall be entered on the Corporation's books.

Section 2. Ownership of Stock. The Corporation shall be entitled to treat the holder of record of any share or as the owner of such stock with all of the rights of ownership and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 3. Lost Certificates. The Corporation may direct that a new certificate be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost or destroyed. When authorizing the issue of a new certificate, the Board of Directors, in its discretion and as a condition precedent to the issuance thereof, may require the owner of the lost or destroyed certificate, or his legal representative, to advertise the same in such manner as it shall require and/or give the Corporation a bond in such form, in such sum, and with such surety or sureties as it may direct, as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed.

Section 4. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Upon receipt of proper transfer instructions from the registered owner of the uncertified shares such uncertificated shares shall be canceled and issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the Corporation.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Dividends. The Board of Directors may, from time to time, declare, and the Corporation may pay, dividends on its outstanding stock in the manner and upon the terms and conditions provided by the Certificate of Incorporation, the By-laws and the applicable laws of the State of Delaware.

Section 2. Reserves. There may be created by resolution of the Board of Directors out of the earned surplus of the Corporation such reserve or reserves as the Board of Directors from time to time, in its discretion, deems proper to provide for contingencies, or to equalize dividends, or to repair or maintain any property of the Corporation, or for such other proper purpose as the Board shall deem beneficial to the Corporation, and the Board may modify or abolish any reserve in the same manner in which it was created.

Section 3. Seal. If one be adopted, the corporate seal shall have inscribed thereon the name of the Corporation and shall be in such form as may be approved by the Board of Directors. Said seal may be used by causing it or a facsimile of it to be impressed or affixed or in any manner reproduced. Any officer of the Corporation shall have authority to affix the seal to any document requiring it.

Section 4. Fiscal Year. Unless another fiscal year shall be fixed by resolution of the Board of Directors, the fiscal year of the Corporation shall commence on the 1st day of October and terminate on the 30th day of September of each year.

Section 5. Reports of Situation and Amount of Business. The Board of Directors shall, when requested by the holders of at least one-tenth (1/10) of the outstanding voting stock of the Corporation, present written reports of the situation and amount of business of the Corporation and shall present a full and clear statement of the business and condition of the Corporation at every annual meeting.

Section 6. Checks, Notes, etc. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 7. Examination of Books and Records. Any person who shall have been a shareholder of record for at least six (6) months immediately preceding his demand, or who shall be the holder of record of at least ten percent (10%) of all the outstanding shares of the Corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, the books and records of account, minutes, and record of stockholders of the Corporation, and shall be entitled to make extracts therefrom.

Section 8. Indemnification of Directors. Subject to the applicable laws of the State of Delaware, the Corporation shall indemnify any director, officer, or employee, or former director, officer, or employee of the Corporation, or any person who may have served at its request as a director, officer, or employee of another corporation in which it owns stock, or of which it is a creditor, against expenses actually and necessarily incurred by him and any amount paid in satisfaction of judgments in connection with any action, suit or proceeding whether civil or criminal in nature, in which he is made a party by reason of being or having been such a director, officer or employee (whether or not a director, officer, or employee at the time such costs or expenses are incurred by or imposed upon him) except in relation to the matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The Corporation may also reimburse to any director, officer, or employee the reasonable costs of settlement of any action, suit or proceeding, if it shall be found by a majority of the Board of the Directors not involved in the matter in controversy, whether or not a quorum, that it was to the interest of the Corporation that such settlement be made and that such director, officer or employee was not guilty of gross negligence or willful misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such director, officer, or employee may be entitled by law or under any By-law, agreement, vote of stockholders, or otherwise.

#### ARTICLE VIII

#### MISCELLANEOUS

Section 1. Compliance With By-Laws. Any action taken or determination made in good faith by the stockholders or the Board of Directors shall be effective, valid and binding although the same may not have been taken or made in strict compliance with the By-laws of the Corporation.

#### ARTICLE IX

#### AMENDMENTS

Section 1. Amendments. These By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the stockholders or by the Board of Directors, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such special meeting.

Dated: October 1, 1999

## CERTIFICATE OF INCORPORATION

OF

## NU-GRO US HOLDCO CORPORATION

THE UNDERSIGNED, being a natural person for the purpose of organizing a corporation under the General Corporation Law of the State of Delaware, hereby certifies that:

FIRST: The name of the Corporation is Nu-Gro US Holdco Corporation.

SECOND: The address of its registered office in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, County of New Castle. The name of its registered agent for service of process in the State of Delaware at such address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as from time to time amended.

FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is 3,000, all of which shares shall be Common Stock having a par value of \$ 0.01.

FIFTH: The name and mailing address of the incorporator are Heather Mellem c/o Weil, Gotshal & Manges, LLP, 100 Federal Street, 34th Floor, Boston, MA 02110.

SIXTH: In furtherance and not in limitation of the powers conferred by law, subject to any limitations contained elsewhere in these articles of incorporation, by-laws of the Corporation may be adopted, amended or repealed by a majority of the board of directors of the Corporation, but any by-laws adopted by the board of directors may be amended or repealed by the stockholders entitled to vote thereon. Election of directors need not be by written ballot.

SEVENTH: (a) A director of the Corporation shall not be personally liable either to the Corporation or to any stockholder for monetary damages for breach of fiduciary duty as a director, except (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, or (ii) for acts or omissions which are not in good faith or which involve intentional misconduct or knowing violation of the law, or (iii) for any matter in respect of which such director shall be liable under Section 174 of Title 8 of the General Corporation Law of the State of Delaware or any amendment thereto or successor provision thereto, or (iv) for any transaction from which the director shall have

derived an improper personal benefit. Neither amendment nor repeal of this paragraph (a) nor the adoption of any provision of the Certificate of Incorporation inconsistent with this paragraph (a) shall eliminate or reduce the effect of this paragraph (a) in respect of any matter occurring, or any cause of action, suit or claim that, but for this paragraph (a) of this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

(b) The Corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to, or testifies in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature, by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding to the full extent permitted by law, and the Corporation may adopt By-laws or enter into agreements with any such person for the purpose of providing for such indemnification.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Incorporation on this 6th day of April, 2004.

/s/ Heather Mellem

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Heather Mellem  
Sole Incorporator

BY-LAWS  
OF  
NU-GRO US HOLDCO CORPORATION  
(A DELAWARE CORPORATION)

ARTICLE I

Stockholders

SECTION 1. Annual Meetings. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year at such date and time, within or without the State of Delaware, as the Board of Directors shall determine.

SECTION 2. Special Meetings. Special meetings of stockholders for the transaction of such business as may properly come before the meeting may be called by order of the Board of Directors or by stockholders holding together at least a majority of all the shares of the Corporation entitled to vote at the meeting, and shall be held at such date and time, within or without the State of Delaware, as may be specified by such order.

SECTION 3. Notice of Meetings. Written notice of all meetings of the stockholders shall be mailed or delivered to each stockholder not less than 10 nor more than 60 days prior to the meeting. Notice of any special meeting shall state in general terms the purpose or purposes for which the meeting is to be held.

SECTION 4. Stockholder Lists. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

SECTION 5. Quorum. Except as otherwise provided by law or the Corporation's Certificate of Incorporation, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the issued and outstanding shares of the capital stock of the Corporation entitled to vote at the meeting, present in person or by proxy. At all meetings of the stockholders at which a quorum is present, all matters, except as otherwise provided by law or the Certificate of Incorporation, shall be decided by the vote of the holders of a majority of the shares entitled to vote thereat present in person or by proxy. If there be no such quorum, the holders of a majority of such shares so present or represented may adjourn the meeting from time to time, without further notice, until a quorum shall have been obtained. When a quorum is once present it is not broken by the subsequent withdrawal of any stockholder.

SECTION 6. Organization. Meetings of stockholders shall be presided over by the Chairman, if any, or if none or in the Chairman's absence the Vice-Chairman, if any, or if none or in the Vice-Chairman's absence the Chief Executive Officer, if any, or if none or in the Chief Executive Officer's absence the President, if any, or if none or in the President's absence a Vice-President, or, if none of the foregoing is present, by a chairman to be chosen by the stockholders entitled to vote who are present in person or by proxy at the meeting. The Secretary of the Corporation, or in the Secretary's absence an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the presiding officer of the meeting shall appoint any person present to act as secretary of the meeting.

SECTION 7. Voting; Proxies; Required Vote. (a) At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by such stockholder's duly authorized attorney-in-fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period), and, unless the Certificate of Incorporation provides otherwise, shall have one vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these By-laws. At all elections of directors the voting may but need not be by ballot and a plurality of the votes cast there shall elect. Except as otherwise required by law or the Certificate of Incorporation, any other action shall be authorized by a majority of the votes cast.

(b) Any action required or permitted to be taken at any meeting of stockholders may, except as otherwise required by law or the Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of record of the issued and outstanding capital stock of the Corporation having a majority of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

SECTION 8. Inspectors. The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.



ARTICLE II

Board of Directors

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors.

SECTION 2. Qualification; Number; Term; Remuneration. (a) Each director shall be at least 18 years of age. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The number of directors constituting the entire Board shall be 2, or such larger number as may be fixed from time to time by action of the stockholders or Board of Directors, one of whom may be selected by the Board of Directors to be its Chairman. The use of the phrase "entire Board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

(b) Directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier resignation or removal.

(c) Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

SECTION 3. Quorum and Manner of Voting. Except as otherwise provided by law, a majority of the entire Board shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 4. Places of Meetings. Meetings of the Board of Directors may be held at any place within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

SECTION 5. Annual Meeting. Following the annual meeting of stockholders, the newly elected Board of Directors shall meet for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting. Such meeting may be held without notice immediately after the annual meeting of stockholders at the same place at which such stockholders' meeting is held.

SECTION 6. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine.

SECTION 7. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, Chief Executive Officer or President or by a majority of the directors then in office.

SECTION 8. Notice of Meetings. A notice of the place, date and time and the purpose or purposes of each meeting of the Board of Directors shall be given to each director by mailing the same at least two days before the [special] meeting, or by telegraphing or telephoning the same or by delivering the same personally not later than the day before the day of the meeting.

SECTION 9. Organization. At all meetings of the Board of Directors, the Chairman, if any, or if none or in the Chairman's absence or inability to act the Chief Executive Officer, if any, or if none or in the Chief Executive Officer's absence or inability to act the President, or in the President's absence or inability to act any Vice-President who is a member of the Board of Directors, or in such Vice-President's absence or inability to act a chairman chosen by the directors, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as secretary.

SECTION 10. Resignation. Any director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer, President or Secretary, unless otherwise specified in the resignation. Any or all of the directors may be removed, with or without cause, by the holders of a majority of the shares of stock outstanding and entitled to vote for the election of directors.

SECTION 11. Vacancies. Unless otherwise provided in these By-laws, vacancies on the Board of Directors, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of directors or otherwise, may be filled by the affirmative vote of a majority of the remaining directors, although less than a quorum, or by a sole remaining director, or at a special meeting of the stockholders, by the holders of shares entitled to vote for the election of directors.

SECTION 12. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

### ARTICLE III

#### Committees

SECTION 1. Appointment. From time to time the Board of Directors by a resolution adopted by a majority of the entire Board may appoint any committee or committees for any purpose or purposes, to the extent lawful, which shall have powers as shall be determined and specified by the Board of Directors in the resolution of appointment.

SECTION 2. Procedures, Quorum and Manner of Acting. Each committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a committee shall constitute a quorum for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. Each committee shall keep minutes of its proceedings, and actions taken by a committee shall be reported to the Board of Directors.

SECTION 3. Action by Written Consent. Any action required or permitted to be taken at any meeting of any committee of the Board of Directors may be taken without a meeting if all the members of the committee consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the committee.

SECTION 4. Term; Termination. In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

#### ARTICLE IV

##### Officers

SECTION 1. Election and Qualifications. The Board of Directors shall elect the officers of the Corporation, which shall include a President and a Secretary, and may include, by election or appointment, a Chief Executive Officer, one or more Vice-Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such Assistant Secretaries, such Assistant Treasurers and such other officers as the Board may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these By-laws and as may be assigned by the Board of Directors, the President or the Chief Executive Officer.

SECTION 2. Term of Office and Remuneration. The term of office of all officers shall be one year and until their respective successors have been elected and qualified, but any officer may be removed from office, either with or without cause, at any time by the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. Resignation; Removal. Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer, President or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by vote of a majority of the entire Board.

SECTION 4. Chairman of the Board. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

SECTION 5. Chief Executive Officer. The Board of Directors may designate a chief executive officer. The chief executive officer shall have such duties as customarily pertain to that office, including the implementation of the policies of the Corporation as determined by the Board of Directors, and shall have such other authority as from time to time may be assigned by the Board of Directors.

SECTION 6. President. The President shall have such duties as customarily pertain to that office, including the general management and supervision of the property, business and affairs of the Corporation and shall have such other authority as from time to time may be assigned by the Board of Directors.

SECTION 7. Vice-President. A Vice-President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board of Directors, the President or the Chief Executive Officer.

SECTION 8. Treasurer. The Treasurer shall in general have all duties incident to the position of Treasurer and such other duties as may be assigned by the Board of Directors, the President or the Chief Executive Officer.

SECTION 9. Secretary. The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors, the President or the Chief Executive Officer.

SECTION 10. Assistant Officers. Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

## ARTICLE V

### Books and Records

SECTION 1. Location. The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in the By-laws and by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. Addresses of Stockholders. Notices of meetings and all other corporate notices may be delivered personally or mailed to each stockholder at the stockholder's address as it appears on the records of the Corporation.

SECTION 3. Fixing Date for Determination of Stockholders of Record. (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in this State, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by this chapter, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

## ARTICLE VI

### Certificates Representing Stock

SECTION 1. Certificates; Signatures. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon

request every holder of uncertificated shares shall be entitled to have a certificate, signed by or in the name of the Corporation by the Chairman or Vice-Chairman of the Board of Directors, or the President or Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

SECTION 2. Transfers of Stock. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, shares of capital stock shall be transferable on the books of the Corporation only by the holder of record thereof in person, or by duly authorized attorney, upon surrender and cancellation of certificates for a like number of shares, properly endorsed, and the payment of all taxes due thereon.

SECTION 3. Fractional Shares. The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a stockholder except as therein provided.

The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the Corporation.

SECTION 4. Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or his legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

## ARTICLE VII

### Dividends

Subject always to the provisions of law and the Certificate of Incorporation, the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any

time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

#### ARTICLE VIII

##### Ratification

Any transaction, questioned in any law suit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

#### ARTICLE IX

##### Fiscal Year

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall be the calendar year.

#### ARTICLE X

##### Waiver of Notice

Whenever notice is required to be given by these By-laws or by the Certificate of Incorporation or by law, a written waiver thereof, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

#### ARTICLE XI

##### Bank Accounts, Drafts, Contracts, Etc.

SECTION 1. Bank Accounts and Drafts. In addition to such bank accounts as may be authorized by the Board of Directors, the primary financial officer or any person designated by said primary financial officer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as he may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check of the Corporation in accordance with the written instructions of said primary financial officer, or other person so designated by the Treasurer.

SECTION 2. Contracts. The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

SECTION 3. Proxies; Powers of Attorney; Other Instruments. The Chairman, the Chief Executive Officer, the President or any other person designated by any of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the rights and powers incident to the ownership of stock by the Corporation. The Chairman, the Chief Executive Officer, the President or any other person authorized by proxy or power of attorney executed and delivered by any of them on behalf of the Corporation may attend and vote at any meeting of stockholders of any company in which the Corporation may hold stock, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock at any such meeting, or otherwise as specified in the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

SECTION 4. Financial Reports. The Board of Directors may appoint the primary financial officer or other fiscal officer and/or the Secretary or any other officer to cause to be prepared and furnished to stockholders entitled thereto any special financial notice and/or financial statement, as the case may be, which may be required by any provision of law.

## ARTICLE XII

### Amendments

The Board of Directors shall have power to adopt, amend or repeal By-laws. By-laws adopted by the Board of Directors may be repealed or changed, and new By-laws made, by the stockholders, and the stockholders may prescribe that any By-law made by them shall not be altered, amended or repealed by the Board of Directors.



**FOURTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**PERFECTO HOLDING CORP.**

An original Certificate of Incorporation by Perfecto Holding Corp. (the "Corporation") was filed with the Secretary of State on May 23, and an Amended and Restated Certificate of Incorporation was filed on June 27, 1997 (the "Certificate of Incorporation"). This Second Amended and Restated Certificate of Incorporation (the "Certificate") amends, restates and integrates the provisions of the Certificate of Incorporation, has been duly adopted by the Corporation in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").

The text of the Certificate of Incorporation, as amended to date, is hereby amended and restated in its entirety to provide as herein set forth in full.

ARTICLE I

The name of the Corporation is Perfecto Holding Corp.

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 10,000 shares of Class A Common Stock, \$.01 par value per share ("Common Stock").

ARTICLE V

In furtherance of and not in limitation of powers conferred by statute, it is further provided:

1. Election of Directors need not be by written ballot unless the by-laws of the Corporation so provide.

2. The Board of Directors is expressly authorized to adopt, amend or repeal the by-laws of the Corporation to the extent specified therein.

ARTICLE VI

Meetings of stockholders may be held within or without the State of Delaware, as the by-laws may provide.

ARTICLE VII

To the extent permitted by law, the books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated in the by-laws of the Corporation or from time to time by its Board of Directors.

ARTICLE VIII

If a Director or officer of the Corporation is made a party to any civil or criminal action or proceeding in any matter arising from the performance by such Director or officer or his or her duties for or on behalf of the Corporation, then, to the full extent permitted by law, the Corporation shall: (a) advance to such Director, or upon approval of the Board of Directors to any officer, all sums necessary and appropriate to enable the Director or officer to conduct his or her defense or appeal, in the action or proceeding, and (b) indemnify such Director or officer for all sums paid by him or her in the way of judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred, in connection with the action or proceeding, or appeal therein, subject to the proper application of credit for any sums advances to the Director or officer pursuant to clause (a) of this paragraph.

The indemnification and advancement of expenses provided by this Article VIII shall not be deemed exclusive of any other rights to which a Director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in the Second Amended and Restated Certificate of Incorporation, the by-laws, a resolution of shareholders, a resolution of the Board of Directors, an agreement providing for such indemnification or otherwise provided by law, provided that no indemnification may be made to or on behalf of any Director or officer if a judgment or other final adjudication adverse to the Director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

ARTICLE IX

A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as a director of the Corporation, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve

intentional misconduct or a knowing violation of law, (c) under Section 174 of the General Corporation Law of the State of Delaware, or (d) for any transaction from which the Director derived an improper personal benefit. If the General Corporation Law of the State of Delaware is amended after the effective date of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of each past or present Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

Any repeal or modification of this Article IX by (a) the stockholders of the Corporation or (b) an amendment to the General Corporation Law of the State of Delaware (unless such statutory amendment specifically provides to the contrary) shall not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring either before or after such repeal or modification, of a person serving as a Director prior to or at the time of such repeal or modification.

ARTICLE X

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

I, Michael Wilson, Assistant Secretary of the Corporation, for the purpose of amending and restating the Corporation's Amended and Restated Certificate of Incorporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that it is my free act and deed on behalf of the Corporation this 10th day of August, 1999.

/s/ Michael Wilson

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Michael Wilson  
Assistant Secretary

## AMENDED AND RESTATED BY-LAWS

of

## PERFECTO HOLDING CORP.

ARTICLE IStockholders

1. Annual Meeting. The annual meeting of stockholders shall be held at the place, date and time determined by the Board of Directors. The purposes for which the annual meeting is to be held, in addition to those prescribed by law, by the Certificate of Incorporation or by these By-laws, may be specified by the Board of Directors or the President or Chief Executive Officer. If no annual meeting has been held on the date fixed above, a special meeting in lieu thereof may be held or there may be action by written consent of the stockholders on matters to be voted on at the annual meeting, and such special meeting or written consent shall have for the purposes of these By-Laws or otherwise all the force and effect of an annual meeting.

2. Special Meetings. Special meetings of stockholders may be called by the President or Chief Executive Officer or by the Board of Directors. Special meetings shall be called by the Secretary, or in case of death, absence, incapacity or refusal of the Secretary, by any other officer, upon written application of one or more stockholders who hold at least fifty percent (50%) in interest of the capital stock entitled to vote at such meeting. The call for the meeting shall state the place, date, hour and purposes of the meeting. Only the purposes specified in the notice of special meeting shall be considered or dealt with at such special meeting.

3. Notice of Meetings. A written notice stating the place, date and hour of all meetings of stockholders, and in the case of special meetings, the purposes of the meeting shall be given by the Secretary (or other person authorized by these By-Laws or by law) not less than ten (10) nor more than sixty (60) days before the meeting to each stockholder entitled to vote thereat and to each stockholder who, under the Certificate of Incorporation or under these By-laws is entitled to such notice, by delivering such notice to him or by mailing it, postage prepaid, and addressed to such stockholder at his address as it appears in the records of the corporation. Notice need not be given to a stockholder if a written waiver of notice is executed before or after the meeting by such stockholder, if communication with such stockholder is unlawful, or if such stockholder attends the meeting in question, unless such attendance was for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened. If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at the meeting at which the adjournment is taken, except that if the adjournment is for

more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

4. Quorum. The holders of a majority in interest of all stock issued, outstanding and entitled to vote at a meeting shall constitute a quorum. Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, whether or not a quorum is present. The stockholders present at a duly constituted meeting may continue to transact business until adjournment notwithstanding the withdrawal of enough stockholders to reduce the voting shares below a quorum.

5. Voting and Proxies. Stockholders shall have one vote for each share of stock entitled to vote owned by them of record according to the books of the corporation unless otherwise provided by law or by the Certificate of Incorporation. Stockholders may vote either in person or by written proxy or express directly or by written proxy their consent or dissent to a corporate action taken without a meeting, but no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period or is irrevocable and coupled with an interest. Proxies shall be filed with the Secretary of the meeting, or of any adjournment thereof. Except as otherwise limited therein, proxies shall entitle the persons authorized thereby to vote at any adjournment of such meeting.

6. Action at Meeting. When a quorum is present, any matter before the meeting shall be decided by vote of the holders of a majority of the shares of stock voting on such matter except where a larger vote is required by law, by the Certificate of Incorporation or by these By-laws. Any election by stockholders shall be determined by a plurality of the votes cast, except where a larger vote is required by law, by the Certificate of Incorporation or by these By-laws. The corporation shall not directly or indirectly vote any share of its own stock; provided, however, that the corporation may vote shares which it holds in a fiduciary capacity to the extent permitted by law.

7. Action without a Meeting. Any action required or permitted by law to be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of the outstanding shares of stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office, by hand or by certified mail, return receipt requested or to the corporation's principal place of business or to the officer of the corporation having custody of the minute book. Every written consent shall bear the date of signature and no written consent shall be effective unless, within sixty days of the earliest dated consent delivered pursuant to these By-laws, written consents signed by a sufficient number of stockholders entitled to take action are delivered to the corporation in the manner set forth in these By-laws. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

8. Stockholder Lists. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

## ARTICLE II

### Directors

1. Powers. The business of the corporation shall be managed by or under the direction of a Board of Directors who may exercise all the powers of the corporation except as otherwise provided by law, by the Certificate of Incorporation 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.

2. Election and Qualification. Unless otherwise provided in the Certificate of Incorporation or in these By-laws, the number of Directors which shall constitute the whole board shall be determined by vote of the Board of Directors or by the stockholders at the annual meeting. Directors need not be stockholders.

3. Vacancies; Reduction of Board. A majority of the Directors then in office, although less than a quorum, or a sole remaining Director, may fill vacancies in the Board of Directors occurring for any reason and newly created directorships resulting from any increase in the authorized number of Directors. In lieu of filling any vacancy the stockholders or the Board of Directors may reduce the number of Directors.

4. Enlargement of the Board. The Board of Directors may be enlarged by the stockholders at any meeting or by vote of a majority of the Directors then in office.

5. Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these By-laws, Directors shall hold office until their successors are elected and qualified or until their earlier resignation or removal. Any Director may resign by delivering his written resignation to the corporation. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

6. Removal. To the extent permitted by law, a Director may be removed from office with or without cause by vote of the holders of a majority of the shares of stock entitled to vote in the election of Directors. A Director may be removed for cause only after reasonable notice and opportunity to be heard before the body proposing to remove him.

7. Meetings. Regularly scheduled meetings of the Board of Directors may be held without notice at such time, date and place as the Board of Directors may from time to time determine. Special meetings of the Board of Directors may be called, orally or in writing, by the President, Chief Executive Officer, Treasurer or two or more Directors, designating the time, date and place thereof. Directors may participate in meetings of the Board of Directors by means of conference telephone or similar communications equipment by means of which all Directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting.

8. Notice of Meetings. Notice of the time, date and place of all special meetings of the Board of Directors shall be given to each Director by the Secretary, or Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the officer or one of the Directors calling the meeting. Notice shall be given to each Director in person or by telephone or by telegram sent to his business or home address at least twenty-four hours in advance of the meeting, or by written notice mailed to his business or home address at least forty-eight hours in advance of the meeting. Notice need not be given to any Director if a written waiver of notice is executed by him before or after the meeting, or if communication with such Director is unlawful. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

9. Quorum. At any meeting of the Board of Directors, a majority of the Directors then in office shall constitute a quorum. Less than a quorum may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice.

10. Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, a majority of the Directors present may take any action on behalf of the Board of Directors, unless a larger number is required by law, by the Certificate of Incorporation or by these By-laws.

11. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a written consent thereto is signed by all the Directors and filed with the records of the meetings of the Board of Directors. Such consent shall be treated as a vote of the Board of Directors for all purposes.

12. Committees. The Board of Directors, by vote of a majority of the Directors then in office, may establish one or more committees, each committee to consist of one or more Directors, and may delegate thereto some or all of its powers except those which by law, by the Certificate of Incorporation, 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 in the absence of such rules its business shall be conducted so far as possible in the same manner as is provided in these By-laws for the Board of Directors. All members of such committees shall hold their committee offices at the pleasure of the Board of Directors, and the Board may abolish any committee at any time. Each such committee shall report its action to the Board of Directors who shall have power to rescind any action of any committee without retroactive effect.



## ARTICLE III

### Officers

1. Enumeration. The officers of the corporation shall consist of a Chief Executive Officer, a President, a Treasurer, a Secretary, and such other officers, including one or more Vice Chairmen, Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board of Directors may determine.

2. Election. The Chief Executive Officer, President, Treasurer and Secretary shall be elected annually by the Board of Directors at their first meeting following the annual meeting of stockholders. Other officers may be chosen by the Board of Directors at such meeting or at any other meeting.

3. Qualification. No officer need be a stockholder or Director. Any two or more offices may be held by the same person. Any officer may be required by the Board of Directors to give bond for the faithful performance of his duties in such amount and with such sureties as the Board of Directors may determine.

4. Tenure. Except as otherwise provided by the Certificate of Incorporation or by these By-laws, each of the officers of the corporation shall hold his office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign by delivering his written resignation to the corporation, and such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

5. Removal. The Board of Directors may remove any officer with or without cause by a vote of a majority of the entire number of Directors then in office; provided, that an officer may be removed for cause only after reasonable notice and opportunity to be heard by the Board of Directors.

6. Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

7. Chairman of the Board and Chief Executive Officer. The Chief Executive Officer of the corporation shall be the Chairman of the Board and shall have general supervision and control of its business and affairs, subject to the direction of the Board of Directors. Unless otherwise provided by the Board of Directors, the Chief Executive Officer shall preside, when present, at all meetings of the stockholders and the Board of Directors.

8. President and Vice Presidents. In the absence of the Chief Executive Officer, the President shall preside, when present, at all meetings of stockholders and the Board of Directors. The Board of Directors shall have the authority to appoint a temporary presiding officer to serve at any meeting of the stockholders or Board of Directors if the Chief Executive Officer or the President is unable to do so for any reason.

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

9. Treasurer and Assistant Treasurers. 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. The Treasurer 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.

10. Secretary and Assistant Secretaries. The Secretary shall record the proceedings of all meetings of the stockholders and the Board of Directors in books kept for that purpose. In the event the Secretary is absent from any such meeting an Assistant Secretary, or if the Assistant Secretary is absent, a temporary secretary chosen at the meeting, shall record the proceedings thereof.

The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the corporation) and shall have such other duties and powers as may be designated from time to time by the Board of Directors or the President.

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

11. Other Powers and Duties. Subject to these By-laws, each officer of the corporation shall have, in addition to the duties and powers specifically set forth in these By-laws, such duties and powers as are customarily incident to his office, and such duties and powers as may be designated from time to time by the Board of Directors.

#### ARTICLE IV

##### Capital Stock

1. Certificates of Stock. Each stockholder shall be entitled to a certificate of the capital stock of the corporation in such form as may from time to time be prescribed by the Board of Directors. Such certificate shall be signed by the Chief Executive Officer, President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Such signatures may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law. The corporation shall be permitted to issue fractional shares.

2. Transfers. Subject to any restrictions on transfer, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate therefor properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the corporation or its transfer agent may reasonably require.

3. Record Holders. Except as may otherwise be required by law, by the Certificate of Incorporation or by these By-laws, 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.

4. Record Date. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not precede the date on which it is established, and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, more than ten (10) days after the date on which the record date for stockholder consent without a meeting is established, nor more than sixty (60) days prior to any other action. In such case only stockholders of record on such record date shall be so entitled notwithstanding any transfer of stock on the books of the corporation after the record date.

If no record date is fixed, (a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, (b) the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in this state, to its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded, and (c) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

5. Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock, a duplicate certificate may be issued in place thereof, upon such terms as the Board of Directors may prescribe.

## ARTICLE V

### Indemnification

1. Indemnification of Directors and Officers. The corporation shall indemnify, to the fullest extent permitted by the General Corporation Law of the State of Delaware any person who was or is a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, and whether by or in the right of the corporation, its stockholders, a third party or otherwise (a "Proceeding"), by reason of the fact that he is or was a Director or officer of the corporation, or is or was a Director or officer of the corporation serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against all expense (including, but not limited to, attorneys' fees), liability, loss, judgments, fines, excise taxes, penalties and amounts paid in settlement actually and reasonably incurred by him in connection with such Proceeding, including expenses incurred in seeking such indemnification. In addition, the corporation shall grant such indemnification to each of its Directors and officers with respect to any matter in a Proceeding as to which his liability is limited pursuant to Section 9 of the Certificate of Incorporation of the corporation. However, such indemnification shall exclude (i) indemnification with respect to any improper personal benefit which a Director or officer is determined to have received and the expenses of defending against an improper personal benefit claim unless the Director or officer is successful on the merits in said defense, and (ii) indemnification of present or former officers, directors, employees or agents of a constituent corporation absorbed in a merger or consolidation transaction with this corporation with respect to their activities prior to said transaction, unless specifically authorized by the Board of Directors or stockholders of this corporation. Such indemnification shall include prompt payment of expenses incurred by a Director or officer in defending a Proceeding in advance of the final disposition of such Proceeding, upon receipt of an undertaking by or on behalf of the Director or officer to repay such amounts if it shall ultimately be determined that he is not entitled to be indemnified by the corporation under this Article V, which undertaking shall be an unsecured general obligation of the Director or officer and may be accepted without regard to his ability to make repayment.

2. Indemnification of Employees and Agents. 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, pursuant to the provisions of this Article V, to any person who was or is a party or is threatened to be made a party to or is otherwise involved in any Proceeding by reason of the fact that he is or was an employee or agent of the corporation or is or was serving at the request of the corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

3. Nature of Indemnification Rights. The indemnification rights provided in this Article V shall be a contract right and shall not be deemed exclusive of any other rights to which any person, whether or not entitled to be indemnified hereunder, may be entitled under any statute, by-law, agreement, vote of stockholders or Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and inure to the benefit of the heirs, executors and administrators of such a person. A Director or officer shall be entitled to the benefit of any amendment of the Delaware General Corporation Law which enlarges indemnification rights hereunder, but any such amendment which adversely affects indemnification rights with respect to prior activities shall not apply to him without his consent unless otherwise required by law. Each person who is or becomes a Director or officer of the corporation shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Article V.

4. Amendment. The provisions of this Article V may be amended as provided in Article VI; however, no amendment or repeal of such provisions which adversely affects the rights of a Director or officer under this Article V with respect to his acts or omissions prior to such amendment or repeal, shall apply to him without his consent.

## ARTICLE VI

### Miscellaneous Provisions

1. Fiscal Year. Except as otherwise determined by the Board of Directors, the fiscal year of the corporation shall end on December 31 of each year.

2. Seal. The Board of Directors shall have power to adopt and alter the seal of the corporation.

3. Execution of Instruments. All deeds, leases, transfers, contracts, bonds, notes and other obligations authorized to be executed by an officer of the corporation in its behalf shall be signed by the Chief Executive Officer, President, Vice President or Treasurer, or by any other officer of the corporation designated by the Board of Directors, except as the Board of Directors may generally or in particular cases otherwise determine.

4. Voting of Securities. Unless otherwise provided by the Board of Directors, the Chief Executive Officer or President or Vice President or Treasurer may waive notice of and act on behalf of this corporation, or appoint another person or persons to act as proxy or attorney in fact for this corporation with or without discretionary power and/or power of substitution, at any meeting of stockholders or shareholders of any other corporation or organization, any of whose securities are held by this corporation.

5. Resident Agent. The Board of Directors may appoint a resident agent upon whom legal process may be served in any action or proceeding against the corporation.

6. Corporate Records. The original or attested copies of the Certificate of Incorporation, By-laws and records of all meetings of the incorporators, stockholders and the Board of Directors and the stock and transfer records, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, shall be kept at the principal office of the corporation, at the office of its counsel, or at an office of its transfer agent.

7. Certificate of Incorporation. All references in these By-laws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time.

8. Amendments. These By-laws may be amended or repealed or additional By-laws adopted by the stockholders or by the Board of Directors; provided, that (a) the Board of Directors may not amend or repeal Article V or this Section 8 of Article VI or any provision of these By-laws which by law, by the Certificate of Incorporation or by these By-laws requires action by the stockholders, (b) any amendment or repeal of these By-laws by the Board of Directors and any By-law adopted by the Board of Directors may be amended or repealed by the stockholders.

Adopted by the Board of Directors on July 29, 1999

CERTIFICATE OF INCORPORATION  
OF  
PERFECTO ACQUISITION CORP.

ARTICLE ONE

The name of the corporation (the "Corporation") is PERFECTO ACQUISITION CORP.

ARTICLE TWO

The address of the registered office of the Corporation in the State of Delaware is 9 East Loockerman Street, City of Dover, County of Kent 19901. The name of the registered agent of the Corporation at such address is National Registered Agents, Inc.

ARTICLE THREE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "General Corporation Law").

ARTICLE FOUR

The total number of shares of all classes of stock which the Corporation has authority to issue is 1000 shares, all of which are shares of Common Stock, par value \$.01 per share.

ARTICLE FIVE

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them, and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree on any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court

to which the said application has been made, be binding on all the creditors or class of creditors, or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE SIX

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, but the foregoing provision shall not eliminate or limit the 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 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended after the date of incorporation of the Corporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE SEVEN

The number of directors of the Corporation shall be such as from time to time shall be fixed in the manner provided in the By-laws of the Corporation. The election of directors of the Corporation need not be by ballot unless the By-laws so require.

ARTICLE EIGHT

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

<u>Name</u>	<u>Mailing Address</u>
Sharon M. Goodman	O'Sullivan Graev & Karabell, LLP 30 Rockefeller Plaza New York, New York 10112

ARTICLE NINE

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



IN WITNESS WHEREOF, the undersigned has signed this instrument on the 23<sup>rd</sup> day of May, 1996, thereby acknowledging that this instrument is the act and deed of the undersigned and that the facts stated above are true.

/s/ Sharon M. Goodman

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Sharon M. Goodman  
Sole Incorporator

CERTIFICATE OF CORRECTION FILED TO CORRECT  
A CERTAIN ERROR IN THE CERTIFICATE  
OF  
CHANGE OF REGISTERED AGENT AND REGISTERED OFFICE  
FILED IN THE OFFICE OF THE SECRETARY OF STATE  
OF DELAWARE ON JANUARY 24, 2002

PERFECTO MANUFACTURING, INC., Corporation organized and existing under any by virtue of the General Corporation Law of the State of Delaware,  
DOES HEREBY CERTIFY:

1. The name of the corporation is Perfecto Manufacturing, Inc.
2. That Certificate of Change of Registered Agent and Registered Office was filed by the Secretary of State of Delaware on January 24, 2002 and that said Certificate requires correction as permitted by Section 103 of the General Corporation Law of the State of Delaware.
3. The inaccuracy or defect of said Certificate to be corrected is as follows: the name of the president was misspelled.
4. The execution, sealing or acknowledgment of the certificate is corrected as follows:

IN WITNESS WHEREOF, the corporation has caused this Certificate to be signed by an authorized officer, this 24<sup>th</sup> of January 2002.

Perfecto Manufacturing, Inc.

/s/ Joe Bussing

\_\_\_\_\_  
Joe Bussing, President

IN WITNESS WHEREOF, the corporation has caused this Certificate to be signed by an authorized officer, this 31st of January, 2002.

Perfecto Manufacturing, Inc.

/s/ Joe Bussing

\_\_\_\_\_  
Joe Bussing, President

CERTIFICATE OF CHANGE OF REGISTERED AGENT  
AND  
REGISTERED OFFICE

\* \* \* \* \*

Perfecto Manufacturing, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware

DOES HEREBY CERTIFY:

That the registered office of the corporation in the state of Delaware is hereby changed to Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle.

That the registered agent of the corporation is hereby changed to THE CORPORATION TRUST COMPANY, the business address of which is identical to the aforementioned registered office as changed.

That the changes in the registered office and registered agent of the corporation as set forth herein were duly authorized by resolution of the Board of Directors of the corporation.

IN WITNESS WHEREOF, the corporation has caused this Certificate to be signed by an authorized officer, this 24th day of January, 2002.

Perfecto Manufacturing, Inc.

/s/ Joe Bussing

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Joe Busfing, President

CERTIFICATE OF MERGER

Pursuant to Section 251 and 252 of the Delaware General Corporation Law (“DGCL”), PERFECTO ACQUISITION CORP., a Delaware corporation (“PAC”), hereby certifies the following in connection with the merger (the “Merger”) of PERFECTO MANUFACTURING, INC., an Indiana corporation (“PMI”), with and into PAC.

1. Name and State of Incorporation. The names and states of incorporation of PAC and PMI, which are the only constituent corporations in the Merger (the “Constituent Corporations”), are:

<u>Name</u>	<u>State of Incorporation</u>
Perfecto Acquisition Corp.	Delaware
Perfecto Manufacturing, Inc.	Indiana

2. Agreement and Plan of Merger. The Agreement and Plan of Merger, dated as of June 28, 1996, by and among PAC, PMI and certain stockholders of PMI (the “Agreement and Plan of Merger”), setting forth the terms and conditions of the Merger, has been approved, adopted, certified, executed and acknowledged by each of the Constituent Corporations in accordance with Section 251 and 252 of the DGCL.

3. Name of Surviving Corporation. The name of the surviving corporation following the Merger (the “Surviving Corporation”) is Perfecto Acquisition Corp.

4. Certificate of Incorporation of Surviving Corporation. The Certificate of Incorporation of PAC in effect immediately prior to the Merger shall be amended by deleting, in its entirety, Article One thereof and inserting in lieu thereof a new Article One to read as follows:

ARTICLE ONE

The name of the corporation (hereinafter, the “Corporation”) is PERFECTO MANUFACTURING, INC.

Subsequent to the effective time of the Merger, the Certificate of Incorporation of PAC, as so amended, shall be the Certificate of Incorporation of the Surviving Corporation until altered, amended or repealed as provided in the DGCL.

5. Agreement and Plan of Merger on File. The executed Agreement and Plan of Merger is on file at the principal place of business of the Surviving Corporation, the address of which is P.O. Box 539, Noblesville, IN 46060.

6. Copy of Agreement and Plan of Merger. A copy of the Agreement and Plan of Merger will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any Constituent Corporation.

7. Authorized Capital of PMI. The authorized capital of PMI consists of 3,000 shares of Common Stock, without par value.

IN WITNESS WHEREOF, this Certificate of Merger has been executed this 28<sup>th</sup> day of June, 1996.

Attest:

PERFECTO ACQUISITION CORP.

By       /s/ Felix J. Wong      

By       /s/ P. Jeffrey Leck      

Name: Felix J. Wong

Name: P. Jeffrey Leck

Title: Secretary

Title: President

**PERFECTO ACQUISITION CORP.**

**Incorporated under the laws  
of the State of Delaware**

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**BY-LAWS**

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**As adopted on May 23, 1996**

**BY-LAWS OF  
PERFECTO ACQUISITION CORP.**

**ARTICLE I**

**OFFICES**

**1.1. Registered Office.**

The registered office of Perfecto Acquisition Corp. (the "Corporation"), in the State of Delaware shall be at 9 Loockerman Street, City of Dover, County of Kent, Delaware 19901, and the registered agent in charge thereof shall be National Registered Agents, Inc.

**1.2. Other Offices.**

The Corporation may also have an office or offices at any other place or places within or outside the State of Delaware.

**ARTICLE II**

**MEETING OF STOCKHOLDERS; STOCKHOLDERS'  
CONSENT IN LIEU OF MEETING**

**2.1. Annual Meetings.**

The annual meeting of the stockholders for the election of directors, and for the transaction of such other business as may properly come before the meeting, shall be held at such place, date and hour as shall be fixed by the Board of Directors (the "Board") and designated in the notice or waiver of notice thereof, except that no annual meeting need be held if all actions, including the election of directors, required by the General Corporation Law of the State of Delaware (the "Delaware Statute") to be taken at a stockholders' annual meeting are taken by written consent in lieu of meeting pursuant to Section 10 of this Article II.

**2.2. Special Meetings.**

A special meeting of the stockholders for any purpose or purposes may be called by the Board, the Chairman, the President or the record holders of at least a majority of the issued and outstanding shares of Common Stock of the Corporation, to be held at such place, date and hour as shall be designated in the notice or waiver of notice thereof.

### **2.3. Notice of Meetings.**

Except as otherwise required by statute, the Certificate of Incorporation of the Corporation (the "Certificate") or these By-laws, notice of each annual or special meeting of the stockholders shall be given to each stockholder of record entitled to vote at such meeting not less than 10 nor more than 60 days before the day on which the meeting is to be held, by delivering written notice thereof to him personally, or by mailing a copy of such notice, postage prepaid, directly to him at his address as it appears in the records of the Corporation, or by transmitting such notice thereof to him at such address by telegraph, cable or other telephonic transmission. Every such notice shall state the place, the date and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called. Notice of any meeting of stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy, or who shall, in person or by attorney thereunto authorized, waive such notice in writing, either before or after such meeting. Except as otherwise provided in these By-laws, neither the business to be transacted at, nor the purpose of, any meeting of the stockholders need be specified in any such notice or waiver of notice. Notice of any adjourned meeting of stockholders shall not be required to be given, except when expressly required by law.

### **2.4. Quorum.**

At each meeting of the stockholders, except where otherwise provided by the Certificate or these By-laws, the holders of a majority of the issued and outstanding shares of Common Stock of the Corporation entitled to vote at such meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. In the absence of a quorum, a majority in interest of the stockholders present in person or represented by proxy and entitled to vote, or, in the absence of all the stockholders entitled to vote, any officer entitled to preside at, or act as secretary of, such meeting, shall have the power to adjourn the meeting from time to time, until stockholders holding the requisite amount of stock to constitute a quorum shall be present or represented. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

### **2.5. SECTION 5. Organization.**

(a) Unless otherwise determined by the Board, at each meeting of the stockholders, one of the following shall act as chairman of the meeting and preside thereat, in the following order of precedence:

- (i) the Chairman;
- (ii) the President;

(iii) any director, officer or stockholder of the Corporation designated by the Board to act as chairman of such meeting and to preside thereat if the Chairman or the President shall be absent from such meeting; or



(iv) a stockholder of record who shall be chosen chairman of such meeting by a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat.

(b) The Secretary or, if he shall be presiding over such meeting in accordance with the provisions of this Section 5 or if he shall be absent from such meeting, the person (who shall be an Assistant Secretary, if an Assistant Secretary has been appointed and is present) whom the chairman of such meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

## **2.6. Order of Business.**

The order of business at each meeting of the stockholders shall be determined by the chairman of such meeting, but such order of business may be changed by a majority in voting interest of those present in person or by proxy at such meeting and entitled to vote thereat.

## **2.7. Voting.**

Except as otherwise provided by law, the Certificate or these By-laws, at each meeting of the stockholders, every stockholder of the Corporation shall be entitled to one vote in person or by proxy for each share of Common Stock of the Corporation held by him and registered in his name on the books of the Corporation on the date fixed pursuant to Section 7 of Article VI as the record date for the determination of stockholders entitled to vote at such meeting. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. A person whose stock is pledged shall be entitled to vote, unless, in the transfer by the pledgor on the books of the Corporation, he has expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent such stock and vote thereon. If shares or other securities having voting power stand in the record of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary shall be given written notice to the contrary and furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- (i) if only one votes, his act binds all;
- (ii) if more than one votes, the act of the majority so voting binds all; and
- (iii) if more than one votes, but the vote is evenly split on any particular matter, such shares shall be voted in the manner provided by law.

If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purposes of this Section 7 shall be a majority or even-split in interest. The Corporation shall not vote directly or indirectly any share of its own

capital stock. Any vote of stock may be given by the stockholder entitled thereto in person or by his proxy appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, delivered to the secretary of the meeting: provided, however, that no proxy shall be voted after three years from its date, unless said proxy provides for a longer period. At all meetings of the stockholders, all matters (except where other provision is made by law, the Certificate or these By-laws) shall be decided by the vote of a majority in interest of the stockholders present in person or by proxy at such meeting and entitled to vote thereon, a quorum being present. Unless demanded by a stockholder present in person or by proxy at any meeting and entitled to vote thereon, the vote on any question need not be by ballot. Upon a demand by any such stockholder for a vote by ballot upon any question, such vote by ballot shall be taken. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted.

**2.8. SECTION 8. Inspection.**

The chairman of the meeting may at any time appoint one or more inspectors to serve at any meeting of the stockholders. Any inspector may be removed, and a new inspector or inspectors appointed, by the Board at any time. Such inspectors shall decide upon the qualifications of voters, accept and count votes, declare the results of such vote, and subscribe and deliver to the secretary of the meeting a certificate stating the number of shares of stock issued and outstanding and entitled to vote thereon and the number of shares voted for and against the question, respectively. The inspectors need not be stockholders of the Corporation, and any director or officer of the Corporation may be an inspector on any question other than a vote for or against his election to any position with the Corporation or on any other matter in which he may be directly interested. Before acting as herein provided, each inspector shall subscribe an oath faithfully to execute the duties of an inspector with strict impartiality and according to the best of his ability.

**2.9. SECTION 9. List of Stockholders.**

It shall be the duty of the Secretary or other officer of the Corporation who shall have charge of its stock ledger to prepare and make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to any such meeting, during ordinary business hours, for a period of at least 10 days prior to such meeting, either at a place within the city where such meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. Such list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

**2.10. SECTION 10. Stockholders' Consent in Lieu of Meeting.**

Any action required by the Delaware Statute to be taken at any annual or special meeting of the stockholders of the Corporation, or any action which may be taken at any

annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, by a consent in writing, as permitted by the Delaware Statute.

**ARTICLE III**  
**BOARD OF DIRECTORS**

**3.1. General Powers.**

The business, property and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate directed or required to be exercised or done by the stockholders.

**3.2. Number and Term of Office.**

The number of directors shall be fixed from time to time by the Board. Directors need not be stockholders. Each director shall hold office until his successor is elected and qualified, or until his earlier death or resignation or removal in the manner hereinafter provided.

**3.3. Election of Directors.**

At each meeting of the stockholders for the election of directors at which a quorum is present, the persons receiving the greatest number of votes, up to the number of directors to be elected, of the stockholders present in person or by proxy and entitled to vote thereon shall be the directors; provided, however, that for purposes of such vote no stockholder shall be allowed to cumulate his votes. Unless an election by ballot shall be demanded as provided in Section 7 of Article II, election of directors may be conducted in any manner approved at such meeting.

**3.4. SECTION 4. Resignation, Removal and Vacancies.**

(a) Any director may resign at any time by giving written notice to the Board, the Chairman, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof; unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Any director or the entire Board may be removed, with or without cause, at any time by vote of the holders of a majority of the shares then entitled to vote at an election of directors or by written consent of the stockholders pursuant to Section 10 of Article II.

(c) Vacancies occurring on the Board for any reason may be filled by vote of the stockholders or by the stockholders' written consent pursuant to Section 10 of Article II, or by vote of the Board or by the directors' written consent pursuant to Section 6 of this Article III. If the number of directors then in office is less than a quorum, such vacancies may be filled by a vote of a majority of the directors then in office.

### 3.5. SECTION 5. Meetings.

(a) Annual Meetings. As soon as practicable after each annual election of directors, the Board shall meet for the purpose of organization and the transaction of other business, unless it shall have transacted all such business by written consent pursuant to Section 6 of this Article III.

(b) Other Meetings. Other meetings of the Board shall be held at such times and places as the Board, the Chairman, the President or any director shall from time to time determine.

(c) Notice of Meetings. Notice shall be given to each director of each meeting, including the time, place and purpose of such meeting. Notice of each such meeting shall be mailed to each director, addressed to him at his residence or usual place of business, at least two days before the date on which such meeting is to be held, or shall be sent to him at such place by telegraph, cable, wireless or other form of recorded communication, or be delivered personally or by telephone not later than the day before the day on which such meeting is to be held, but notice need not be given to any director who shall attend such meeting. A written waiver of notice, signed by the person entitled thereto, whether before or after the time of the meeting stated therein, shall be deemed equivalent to notice.

(d) Place of Meetings. The Board may hold its meetings at such place or places within or outside the State of Delaware as the Board may from time to time determine, or as shall be designated in the respective notices or waivers of notice thereof.

(e) Quorum and Manner of Acting. A majority of the total number of directors then in office shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and the vote of a majority of those directors present at any such meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board, except as otherwise expressly required by law or these By-laws. In the absence of a quorum for any such meeting, a majority of the directors present thereat may adjourn such meeting from time to time until a quorum shall be present.

(f) Organization. At each meeting of the Board, one of the following shall act as chairman of the meeting and preside thereat, in the following order of precedence:

- (i) the Chairman;
- (ii) the President (if a director); or
- (iii) any director designated by a majority of the directors present.

The Secretary or, in the case of his absence, an Assistant Secretary, if an Assistant Secretary has been appointed and is present, or any person whom the chairman of the meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

**3.6. Directors' Consent in Lieu of Meeting.**

Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by all the directors then in office and such consent is filed with the minutes of the proceedings of the Board.

**3.7. Action by Means of Conference Telephone or Similar Communications Equivalent.**

Any one or more members of the Board may participate in a meeting of the Board by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

**3.8. Committees.**

The Board may, by resolution or resolutions passed by a majority of the whole Board, designate one or more committees, each such committee to consist of one or more directors of the Corporation, which to the extent provided in said resolution or resolutions shall have and may exercise the powers of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it, such committee or committees to have such name or names as may be determined from time to time by resolution adopted by the Board. A majority of all the members of any such committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. The Board shall have power to change the members of any such committee at any time, to fill vacancies and to discharge any such committee, either with or without cause, at any time.

**ARTICLE IV**

**OFFICERS**

**4.1. Executive Officers.**

The principal officers of the Corporation shall be a Chairman, if one is appointed (and any references to the Chairman shall not apply if a Chairman has not been appointed), a President, a Secretary, and a Treasurer, and may include such other officers as the Board may appoint pursuant to Section 3 of this Article IV. Any two or more offices may be held by the same person.

#### **4.2. Authority and Duties.**

All officers, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in these By-laws or, to the extent so provided, by the Board.

#### **4.3. Other Officers.**

The Corporation may have such other officers, agents and employees as the Board may deem necessary, including one or more Assistant Secretaries, one or more Assistant Treasurers and one or more Vice Presidents, each of whom shall hold office for such period, have such authority, and perform such duties as the Board, the Chairman or the President may from time to time determine. The Board may delegate to any principal officer the power to appoint and define the authority and duties of, or remove, any such officers, agents, or employees.

#### **4.4. Term of Office, Resignation and Removal.**

(a) All officers shall be elected or appointed by the Board and shall hold office for such term as may be prescribed by the Board. Each officer shall hold office until his successor has been elected or appointed and qualified or until his earlier death or resignation or removal in the manner hereinafter provided. The Board may require any officer to give security for the faithful performance of his duties.

(b) Any officer may resign at any time by giving written notice to the Board, the Chairman, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if the time be not specified, at the time it is accepted by action of the Board. Except as aforesaid, the acceptance of such resignation shall not be necessary to make it effective.

(c) All officers and agents elected or appointed by the Board shall be subject to removal at any time by the Board or by the stockholders of the Corporation with or without cause.

#### **4.5. Vacancies.**

If the office of Chairman, President, Secretary or Treasurer becomes vacant for any reason, the Board shall fill such vacancy, and if any other office becomes vacant, the Board may fill such vacancy. Any officer so appointed or elected by the Board shall serve only until such time as the unexpired term of his predecessor shall have expired, unless reelected or reappointed by the Board.

#### **4.6. The Chairman.**

The Chairman shall give counsel and advice to the Board and the officers of the Corporation on all subjects concerning the welfare of the Corporation and the conduct of its business and shall perform such other duties as the Board may from time to time determine. Unless otherwise determined by the Board, he shall preside at meetings of the Board and of the Stockholders at which he is present.

#### **4.7. The President.**

The President shall be the chief executive officer of the Corporation. The President shall have general and active management and control of the business and affairs of the Corporation subject to the control of the Board and shall see that all orders and resolutions of the Board are carried into effect. The President shall from time to time make such reports of the affairs of the Corporation as the Board of Directors may require and shall perform such other duties as the Board may from time to time determine.

#### **4.8. The Secretary.**

The Secretary shall, to the extent practicable, attend all meetings of the Board and all meetings of the stockholders and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose. He may give, or cause to be given, notice of all meetings of the stockholders and of the Board, and shall perform such other duties as may be prescribed by the Board, the Chairman or the President, under whose supervision he shall act. He shall keep in safe custody the seal of the Corporation and affix the same to any duly authorized instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of the Treasurer or, if appointed, an Assistant Secretary or an Assistant Treasurer. He shall keep in safe custody the certificate books and stockholder records and such other books and records as the Board may direct, and shall perform all other duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman or the President.

#### **4.9. The Treasurer.**

The Treasurer shall have the care and custody of the corporate funds and other valuable effects, including securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, shall render to the Chairman, President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation and shall perform all other duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board, the Chairman or the President.

**ARTICLE V**  
**CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.**

**5.1. Execution of Documents.**

The Board shall designate, by either specific or general resolution, the officers, employees and agents of the Corporation who shall have the power to execute and deliver deeds, contracts, mortgages, bonds, debentures, checks, drafts and other orders for the payment of money and other documents for and in the name of the Corporation, and may authorize such officers, employees and agents to delegate such power (including authority to redelegate) by written instrument to other officers, employees or agents of the Corporation; unless so designated or expressly authorized by these By-laws, no officer, employee or agent shall have any power or authority to bind the Corporation by any contract or engagement, to pledge its credit or to render it liable pecuniarily for any purpose or amount.

**5.2. Deposits.**

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation or otherwise as the Board or Treasurer, or any other officer of the Corporation to whom power in this respect shall have been given by the Board, shall select.

**5.3. Proxies with Respect to Stock or Other Securities of Other Corporations.**

The Board shall designate the officers of the Corporation who shall have authority from time to time to appoint an agent or agents of the Corporation to exercise in the name and on behalf of the Corporation the powers and rights which the Corporation may have as the holder of stock or other securities in any other corporation, and to vote or consent with respect to such stock or securities. Such designated officers may instruct the person or persons so appointed as to the manner of exercising such powers and rights, and such designated officers may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, such written proxies, powers of attorney or other instruments as they may deem necessary or proper in order that the Corporation may exercise its powers and rights.

**ARTICLE VI**  
**SHARES AND THEIR TRANSFER; FIXING RECORD DATE**

**6.1. Certificates for Shares.**

Every owner of stock of the Corporation shall be entitled to have a certificate certifying the number and class of shares owned by him in the Corporation, which shall be in such form as shall be prescribed by the Board. Certificates shall be numbered and issued in consecutive order and shall be signed by, or in the name of, the Corporation by the Chairman, the President or any Vice President, and by the Treasurer (or an Assistant



Treasurer, if appointed) or the Secretary (or an Assistant Secretary, if appointed). In case any officer or officers who shall have signed any such certificate or certificates shall cease to be such officer or officers of the Corporation, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed such certificate had not ceased to be such officer or officers of the Corporation.

**6.2. Record.**

A record in one or more counterparts shall be kept of the name of the person, firm or corporation owning the shares represented by each certificate for stock of the Corporation issued, the number of shares represented by each such certificate, the date thereof and, in the case of cancellation, the date of cancellation. Except as otherwise expressly required by law, the person in whose name shares of stock stand on the stock record of the Corporation shall be deemed the owner thereof for all purposes regarding the Corporation.

**6.3. Transfer and Registration of Stock.**

(a) The transfer of stock and certificates which represent the stock of the Corporation shall be governed by Article 8 of Subtitle 1 of Title 6 of the Delaware Code (the Uniform Commercial Code), as amended from time to time.

(b) Registration of transfers of shares of the Corporation shall be made only on the books of the Corporation upon request of the registered holder thereof, or of his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation, and upon the surrender of the certificate or certificates for such shares properly endorsed or accompanied by a stock power duly executed.

**6.4. Addresses of Stockholders.**

Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to him, and, if any stockholder shall fail to designate such address, corporate notices may be served upon him by mail directed to him at his post-office address, if any, as the same appears on the share record books of the Corporation or at his last known post-office address.

**6.5. Lost, Destroyed and Mutilated Certificates.**

The holder of any shares of the Corporation shall immediately notify the Corporation of any loss, destruction or mutilation of the certificate therefor, and the Board may, in its discretion, cause to be issued to him a new certificate or certificates for such shares, upon the surrender of the mutilated certificates or, in the case of loss or destruction of the certificate, upon satisfactory proof of such loss or destruction, and the Board may, in its discretion, require the owner of the lost or destroyed certificate or his legal representative to give the Corporation a bond in such sum and with such surety or sureties as it may direct to indemnify the Corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate.

## **6.6. Regulations.**

The Board may make such rules and regulations as it may deem expedient, not inconsistent with these By-laws, concerning the issue, transfer and registration of certificates for stock of the Corporation.

## **6.7. Fixing Date for Determination of Stockholders of Record.**

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall be not more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall be not more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by the Delaware Statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by the Delaware Statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing

the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

## **ARTICLE VII**

### **SEAL**

The Board may provide a corporate seal, which shall be in the form of a circle and shall bear the full name of the Corporation, the year of incorporation of the Corporation and the words and figures "Corporate Seal – Delaware."

## **ARTICLE VIII**

### **FISCAL YEAR**

The fiscal year of the Corporation shall be the calendar year unless otherwise determined by the Board.

## **ARTICLE IX**

### **INDEMNIFICATION AND INSURANCE**

#### **9.1. Indemnification.**

(a) As provided in the Charter, to the fullest extent permitted by the Delaware Statute as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for breach of fiduciary duty as a director.

(b) Without limitation of any right conferred by paragraph (a) of this Section 1, each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director, officer or employee of the Corporation or is or was serving at the request of the Corporation as a director, officer or employee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity while serving as a director, officer or employee or in any other capacity while serving as a director, officer or employee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware Statute, 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 attorneys' fees, judgments, fines, excise taxes or 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 a director, officer or employee and shall inure to the benefit of the indemnitee's heirs, testators, intestates, executors and administrators; provided, however, that such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided further, however, that no indemnification shall be made in the case of an action, suit or proceeding by or in the right of the Corporation in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director, officer, employee or agent is liable to the Corporation, unless a court having jurisdiction shall determine that, despite such adjudication, such person is fairly and reasonably entitled to indemnification; provided further, however, that, except as provided in Section 1(c) of this Article IX 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) initiated by such indemnitee was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Article IX shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware Statute requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) 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 Section or otherwise.

(c) If a claim under Section (b) of this Article IX is not paid in full by the Corporation with 60 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 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If 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 any undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) 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, and (ii) 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 Delaware Statute. Neither the failure of the Corporation (including the Board, independent legal counsel, or the 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 Delaware Statute, nor an actual determination by the Corporation (including the Board, independent legal counsel, or the

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 Section or otherwise shall be on the Corporation.

(d) The rights to indemnification and to the advancement of expenses conferred in this Article IX shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Charter, agreement, vote of stockholders or disinterested directors or otherwise.

**9.2. Insurance.**

The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was a director, officer, employee or agent of the Corporation or any person who is or was serving at the request of the Corporation as a director, officer, employer 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 Delaware Statute.

**ARTICLE X  
AMENDMENT**

Any by-law (including these By-laws) may be adopted, amended or repealed by the vote of the holders of a majority of the shares then entitled to vote or by the stockholders' written consent pursuant to Section 10 of Article II, or by the vote of the Board or by the directors' written consent pursuant to Section 6 of Article III.

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ARTICLES OF INCORPORATION

OF

PETS AND PEOPLE, INC.

The name of this corporation is Pets and People, Inc.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

The name and address in the State of California of this corporation's initial agent for service of process is:

Joe Weiss  
5312 Ironwood Street  
Rancho Palos Verdes, Ca. 90274

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue is twenty-five thousand (25,000)

Dated: March 13, 1981

/s/ David S. Kirbach

\_\_\_\_\_  
David S. Kirbach

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

/s/ David S. Kirbach

\_\_\_\_\_  
David S. Kirbach

CERTIFICATE OF AMENDMENT

OF

ARTICLES OF INCORPORATION

JOSEPH H. WEISS and MARCIA WEISS certify that:

1. They are President and Secretary, respectively, of PETS AND PEOPLE, INC., a California Corporation.

2. The first full sentence of the Articles of Incorporation of this corporation is amended to read as follows:

“The name of this corporation is PETS ‘N PEOPLE, INC.”

3. The following provision is hereby added to the Articles of Incorporation:

“The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.”

4. The foregoing amendment of Articles of Incorporation has been duly approved by the Board of Directors.

5. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 25,000. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%).

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: 05/28/92, 1992.

/s/ Joseph H. Weiss

\_\_\_\_\_  
JOSEPH H. WEISS, President

/s/ Marica Weiss

\_\_\_\_\_  
MARCIA WEISS, Secretary

BY-LAWS OF  
(a California Corporation)  
PETS AND PEOPLE, INC.

ARTICLE I  
OFFICES

Section 1. Principal Office.

The principal office for the transaction of the business of the corporation in California is hereby fixed at principal office at 5312 Ironwood Street, Rancho Palos Verdes, Ca. 90274. The board of directors is hereby granted full power and authority to change said principal office from one location to another in said county. Any such change shall be noted on the By-Laws by the secretary, opposite this section, or this section may be amended to state the new location.

Section 2. Other Offices.

Branch or subordinate offices may at any time be established by the board of directors at any place or places where the corporation is qualified to do business.

ARTICLE II  
MEETINGS OF SHAREHOLDERS

Section 1. Place of Meetings.

All annual meetings of the shareholders shall be held at the principal office of the corporation, and all other meetings of shareholders shall be held either at the principal office or at any other place within or without the State of California which may be designated either by the board of directors pursuant to authority hereinafter granted to said board, or by the written consent of all persons entitled to vote thereat, given either before or after the meeting and filed with the secretary of the corporation.

Section 2. Annual Meetings.

The annual meetings of shareholders shall be held on March 15, provided, however, that should said day fall upon a legal holiday, then any such annual meeting of shareholders shall be held at the same time and place on the next day thereafter ensuing which is a full business day. At such meetings directors shall be elected, reports of the affairs of the corporation shall be considered, and any other business may be transacted which is within the powers of the shareholders.

Written notice of each annual meeting shall be given to each shareholder entitled to vote, either personally or by mail or other means of written communication, charges prepaid, addressed to such shareholder at his address appearing on the books of the corporation or given by him to the corporation for the purpose of notice. If a shareholder gives no address, notice by mail or other means of written communication addressed to the place where the principal office of the corporation is situated, or if published at least once in some newspaper of general



circulation in the county in which said office is located. All such notices shall be sent to each shareholder entitled thereto not less than 15 days before each annual meeting. Such notices shall specify the place, the day and the hour of such meeting and shall state such other matters, if any, as may be expressly required by statute.

Section 3. Special Meetings.

Special meetings of the shareholders, for any purpose or purposes whatsoever, may be called at any time by the president, or by any vice-president, or by the board of directors, or by one or more shareholders holding not less than one-fifth of the voting power of the corporation. Except in special cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of shareholders. Notices of any special meeting shall specify, in addition to the place, day and hour of such meeting, the general nature of the business to be transacted.

Section 4. Quorum.

The presence in person or by proxy of the persons entitled to vote a majority of the voting shares at any meeting shall constitute a quorum for the transaction of business. The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

Section 5. Adjourned Meeting and Notice Thereof.

Any shareholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the shares, the holders of which are either present in person or represented by proxy thereat, but in the absence of a quorum no other business may be transacted at such meeting.

When any shareholders' meeting, either annual or special, is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as provided above, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted thereat, other than by announcement at the meeting at which such adjournment is taken.

Section 6. Voting.

Unless a record for voting purposes be fixed as provided in Section 1 of Article V of these by-laws then, subject to the provisions of Sections 2218 to 2223, inclusive, of the Corporations Code of California, only persons in whose names shares entitled to vote stand on the stock records of the corporation on the day three days prior to any meeting of shareholders shall be entitled to vote at such meeting. Such vote may be viva voce or by ballot; provided, however, that all elections for directors must be by ballot upon demand made by a shareholder at any election and before the voting begins. Every shareholder entitled to vote at an election for directors shall have the right to cumulate his votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which his shares are entitled, or to distribute his votes on the same principle among as many candidates as he shall think fit. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected.

Section 7. Consent of Absentees.

The transactions of any meeting of shareholders, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 8. Action Without Meeting.

Any action which, under any provision of the California General Corporation Law, may be taken at a meeting of the shareholders, except approval of an agreement for merger or consolidation of the corporation with other corporations, may be taken without a meeting if authorized by a writing signed by all of the persons who would be entitled to vote upon such action at a meeting, and filed with the secretary of the corporation.

Section 9. Proxies.

Every person entitled to vote or execute consents shall have the right to do so either in person or by one or more agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the secretary of the corporation. Any proxy duly executed is not revoked and continues in full force and effect until an instrument revoking it or a duly executed proxy bearing a later date is filed with the secretary of the corporation; provided that no such proxy shall be valid after the expiration of eleven months from the date of its execution, unless the person executing it specifies therein the length of time for which such proxy is to continue in force, which in no case shall exceed seven years from the date of its execution.

Section 10. Inspectors of Election.

In advance of any meeting of shareholders, the board of directors may appoint any persons other than nominees for office inspectors of election to act at such meeting or any adjournment thereof. If inspectors of election be not so appointed, the chairman of any such meeting may, and on the request of any shareholder or his proxy shall, make such appointment at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more shareholders or proxies, the majority of shares present shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting, or at the meeting by the chairman.

The duties of such inspectors shall be as prescribed by Section 2233 of the Corporations Code of California and shall include: determining the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

ARTICLE III  
DIRECTORS

Section 1. Powers.

Subject to limitations of the articles of incorporation, of the by-laws, and of the California General Corporation Law as to action to be authorized or approved by the shareholders, and subject to the duties of directors as prescribed by the by-laws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by, the board of directors. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the directors shall have the following powers, to wit:

First — To select and remove all the other officers, agents and employees of the corporation, prescribe such powers and duties for them as may not be inconsistent with law, with the articles of incorporation or the by-laws, fix their compensation and require from them security for faithful service.

Second — To conduct, manage and control the affairs and business of the corporation, and to make such rules and regulations therefor not inconsistent with law, or with the articles of incorporation or the by-laws, as they may deem best.

Third — To change the principal office for the transaction of the business of the corporation from one location to another within the same county as provided in Article I, Section 1, hereof; to fix and locate from time to time one or more subsidiary offices of the corporation within or without the State of California, as provided in Article I, Section 2, hereof; to designate any place within or without the State of California for the holding of any shareholders' meeting or meetings except annual meetings; and to adapt, make and use a corporate seal, and to prescribe the forms of certificates of stock, and to alter the form of such seal and of such certificates from time to time, as in their judgment they may deem best, provided such seal and such certificates shall at all times comply with the provisions of law.

Fifth — To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor.

Sixth — To appoint an executive committee and other committees, and to delegate to the executive committee any of the powers and authority of the board in the management of the business and affairs of the corporation, except the power to declare dividends and to adopt, amend or repeal by-laws. The board of directors shall have the power to prescribe the manner in which proceedings of the executive committee and other committees shall be conducted. The executive committee shall be composed of two or more directors. Unless the board of directors shall otherwise provide: regular meetings of the executive committee, notice of which is hereby dispensed with, shall be held at such times as are determined by the board of directors, or by such committee if appointed; special meetings of the executive committee shall be held at the principal office of the corporation, or at any place which has been designated from time to time by resolution of the executive committee or by written consent of all members thereof, and may

be called by the president, any vice-president who is a member of the executive committee, or any two members thereof, upon written notice to the members of the executive committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the board of directors; minutes shall be kept of each meeting of the executive committee; vacancies in the membership of the executive committee may be filled by the board of directors; a majority of the authorized number of members of the executive committee shall constitute a quorum for the transaction of business; and transactions of any meeting of the executive committee, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the members not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

#### Section 2. Number and Qualification of Directors.

The authorized number of directors shall be 1 until changed by amendment of the articles of incorporation or by a by-law duly adopted by the shareholders amending this Section 2; and if it is proposed to reduce the authorized number of directors below five the vote or written consent of shareholders holding more than eighty percent of the voting power shall be necessary for such reduction.

#### Section 3. Election and Term of Office.

The directors shall be elected at each annual meeting of shareholders but, if any such annual meeting is not held or the directors are not elected thereat, the directors may be elected at any special meeting of shareholders held for that purpose. All directors shall hold office until their respective successors are elected.

#### Section 4. Vacancies.

Vacancies in the board of directors may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, and each director so elected shall hold office until his successor is elected at an annual or a special meeting of the shareholders.

A vacancy or vacancies in the board of directors shall be deemed to exist in case of the death, resignation or removal of any director, or if the authorized number of directors be increased, or if the shareholders fail, at any annual or special meeting of shareholders at which any director or directors are elected, to elect the full authorized number of directors to be voted for at that meeting.

The shareholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors. If the board of directors accept the resignation of a director tendered to take effect at a future time, the board or the shareholders shall have power to elect a successor to take office when the resignation is to become effective.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Section 5. Place of Meeting.

Regular meetings of the board of directors shall be held at any place within or without the State which has been designated from time to time by resolution of the board or by written consent of all members of the board. In the absence of such designation regular meetings shall be held at the principal office of the corporation. Special meetings of the board may be held either at a place so designated or at the principal office.

Section 6. Organization Meeting.

Immediately following each annual meeting of shareholders the board of directors shall hold a regular meeting for the purpose of organization, election of officers, and the transaction of other business. Call and notice of such meetings are hereby dispensed with.

Section 7. Other Regular Meetings.

Other regular meetings of the board of directors shall be held without call provided, however, should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next day thereafter ensuing which is a full business day. Notice of all such regular meetings of the board of directors is hereby dispensed with.

Section 8. Special Meetings.

Special meetings of the board of directors for any purpose or purposes shall be called at any time by the president or, if he is absent or unable or refuses to act, by any vice-president or by any two directors.

Written notice of the time and place of special meetings shall be delivered personally to each director or sent to each director by mail or by other form of written communication, charges prepaid, addressed to him at his address as it is shown upon the records of the corporation or, if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held. In case such notice is mailed, it shall be deposited in the United States mail in the place in which the principal office of the corporation is located at least prior to the time of the holding of the meeting. Notice may be telegraphed or telephoned six hours prior to the holding of the meeting. Such mailing, telegraphing or telephoning as above provided shall be due, legal and personal notice to such director.

Section 9. Action Without Meeting.

Any action by the board of directors may be taken without a meeting if all members of the board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the board.

Section 10. Quorum.

A majority of the authorized number of directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors, unless a greater number be required by law or by the articles of incorporation.

Section 11. Waiver of Notice.

The transactions of any meeting of the board of directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 12. Adjournment.

A quorum of the directors may adjourn any directors' meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum a majority of the directors present at any directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the board.

Section 13. Notice of Adjournment.

Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjourned.

Section 14. Fees and Compensation.

Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by resolution of the board.

ARTICLE IV  
OFFICERS

Section 1. Officers.

The officers of the corporation shall be a president, a vice-president, a secretary and a treasurer. The corporation may also have, at the discretion of the board of directors, a chairman of the board, one or more additional vice-presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article. One person may hold two or more offices, except that the offices of president and secretary shall not be held by the same person.

Section 2. Election.

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article, shall be chosen annually by the board of directors, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 3. Subordinate Officers, Etc.

The board of directors may appoint, and may empower the president to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the by-laws or as the board of directors may from time to time determine.

#### Section 4. Removal and Resignation.

Any officer may be removed, either with or without cause, by the board of directors, at any regular or special meeting thereof, or, except in case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the board of directors or to the president, or to the secretary of the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

#### Section 5. Vacancies.

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the by-laws for regular appointments to such office.

#### Section 6. Chairman of the Board.

The chairman of the board, if there shall be such an officer, shall, if present, preside at all meetings of the board of directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the board of directors or prescribed by the by-laws.

#### Section 7. President.

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, if there be such an officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have general supervision, direction and control of the business and officers of the corporation. He shall preside at all meetings of the shareholders and, in the absence of the chairman of the board, or if there be none, at all meetings of the board of directors. He shall be exofficio a member of all the standing committees, including the executive committee, if any, and shall have the general powers, and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the board of directors or the by-laws.

#### Section 8. Vice-President.

In the absence or disability of the president, the vice-presidents in order of their rank as fixed by the board of directors or, if not ranked, the vice-president designated by the board of directors, shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice-presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors or the by-laws.

#### Section 9. Secretary.

The secretary shall keep or cause to be kept, at the principal office or such other place as the board of directors may order, a book of minutes of all meetings of directors and shareholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at shareholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal office or at the office of the corporation's transfer agent, a share register, or a duplicate share register, showing the names of the shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all the meetings of the shareholders and of the board of directors required by the by-laws or by law to be given, and he shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by the by-laws.

#### Section 10. Treasurer.

The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of stated capital, shall be classified according to source and shown in a separate account. The books of account shall at all reasonable times be open to inspection by any director.

The treasurer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his transactions as treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or the by-laws.

### ARTICLE V MISCELLANEOUS

#### Section 1. Record Date and Closing Stock Books.

The board of directors may fix a time in the future as a record date for the determination of the shareholders entitled to notice of and to vote at any meeting of shareholders or entitled to receive any dividend or distributio, or any allotment of rights, or to exercise rights in respect to any change, conversion, or exchange of shares. The record date so fixed shall be not more than fifty days prior to the date of the meeting or event for the purposes of which it is fixed. When a record date is so fixed, only shareholders of record on that date are entitled to notice of and to vote at the meeting or to receive a dividend, distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date.

The board of directors may close the books of the corporation against transfers of shares during the whole or any part of a period not more than fifty (50) days prior to the date of a shareholders' meeting, the date when the right to any dividend, distribution, or allotment of rights vests, or the effective date of any change, conversion or exchange of shares.



## Section 2. Inspection of Corporate Records.

The share register or duplicate share register, the books of account, and minutes of proceedings of the shareholders and directors and of the executive and other committees of the directors shall be open to inspection upon the written demand of any shareholder or holder of a voting trust certificate, at any reasonable time, and for a purpose reasonably related to his interests as a shareholder or as the holder of a voting trust certificate and shall be exhibited at any time when required by the demand of ten per cent of the shares represented at any shareholders' meeting. Such inspection may be made in person or by an agent or attorney, and shall include the right to make extracts. Demand of inspection other than at a shareholders' meeting shall be made in writing upon the president, secretary, assistant secretary or general manager of the corporation.

## Section 3. Checks, Drafts, Etc.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the board of directors.

## Section 4. Annual Report.

The board of directors of the corporation shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal or calendar year in compliance with the provisions of Sections 3007, et seq., of the California Corporations Code.

## Section 5. Contracts, Etc., How Executed.

The board of directors, except as in the by-laws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances; and, unless so authorized by the board of directors, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

## Section 6. Certificates of Stock.

A certificate or certificates for shares of the capital stock of the corporation shall be issued to each shareholder when any such shares are fully paid up. All such certificates shall be signed by the president or a vice-president and the secretary or an assistant secretary, or be authenticated by facsimiles of the signatures of the president and secretary or by a facsimile of the signature of the president and the written signature of the secretary or an assistant secretary. Every certificate authenticated by a facsimile of a signature must be countersigned by a transfer agent or transfer clerk, or by the facsimile signature of the transfer agent or transfer clerk, and be registered by an incorporated bank or trust company, either domestic or foreign, as registrar of transfers, before issuance. Even though an officer who signed, or whose facsimile signature has been written, printed or stamped on, a certificate for shares shall have ceased by death, resignation or otherwise to be an officer of the corporation before such certificate is delivered by the corporation, such certificate shall be as valid as though signed by a duly elected, qualified and authorized officer, if it be countersigned by a signature or facsimile signature of a transfer agent or transfer clerk and registered by an incorporated bank or trust company as registrar of transfers.

Certificates for shares may be issued prior to full payment under such restrictions and for such purposes as the board of directors or the by-laws may provide; provided, however, that any such certificate so issued prior to full payment shall state the amount remaining unpaid and the terms of payment thereof.

No new certificate for shares shall be issued in lieu of an old certificate unless the latter is surrendered and cancelled at the same time; provided, however, that a new certificate will be issued without the surrender and cancellation of the old certificate if (1) the old certificate is lost, apparently destroyed or wrongfully taken; (2) the request for the issuance of the new certificate is made within a reasonable time after the owner of the old certificate has notice of its loss, destruction, or theft; (3) the request for the issuance of a new certificate is made prior to the receipt of notice by the corporation that the old certificate has been acquired by a bona fide purchaser; (4) the owner of the old certificate files a sufficient indemnity bond with the corporation; and (5) the owner satisfies any other reasonable requirements imposed by the corporation. In the event of the issuance of a new certificate, the rights and liabilities of the corporation, and of the holders of the old and new certificates, shall be governed by the provisions of Sections 8104 and 8405 of the California Commercial Code.

#### Section 7. Representation of Shares of Other Corporations.

The president or any vice-president and the secretary or any assistant secretary of this corporation are authorized to vote, represent and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority herein granted to said officers to vote or represent on behalf of this corporation any and all shares held by this corporation in any other corporation or corporations may be exercised either by such officers in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officers.

#### Section 8. Inspection of By-Laws.

The corporation shall keep in its principal office for the transaction of business the original or a copy of the by-laws as amended or otherwise altered to date, certified by the secretary, which shall be open to inspection by the shareholders at all reasonable times during office hours.

#### Section 9. Employee Stock Purchase Plans.

The corporation may, upon terms and conditions herein authorized, provide and carry out an employee stock purchase plan or plans providing for the issue and sale, or for the granting of options for the purchase, of its unissued shares, or of issued shares purchased or to be purchased or acquired, to employees of the corporation or of any subsidiary or to a trustee on their behalf. Such plan may provide for such consideration as may be fixed therein, for the payment of such shares in installments or at one time and for aiding any such employees in paying for such shares by compensation for services or otherwise. Any such plan before becoming effective must be approved or authorized by the board of directors of the corporation.

Such plan may include, among other things, provisions determining or providing for the determination by the board of directors, or any committee thereof designated by the board of directors, of: (a) eligibility of employees (including officers and directors) to participate therein, (b) the number and class of shares which may be subscribed for or for which options may be

granted under the plan, (c) the time and method of payment therefor, (d) the price or prices at which such shares shall be issued or sold, (e) whether or not title to the shares shall be reserved to the corporation until full payment therefore, (f) the effect of the death of an employee participating in the plan or termination of his employment, including whether there shall be any option or obligation on the part of the corporation to repurchase the shares thereupon, (g) restrictions, if any, upon the transfer of the shares, and the time limits and termination of the plan, (h) termination, continuation or adjustments of the rights of participating employees upon happening of specified contingencies, including increase or decrease in the number of issued shares of the class covered by the plan without receipt of consideration by the corporation or any exchange of shares of such class for stock or securities of another corporation pursuant to a reorganization or merger, consolidation or dissolution of the corporation, (i) amendment, termination, interpretation and administration of such plan by the board of directors or any committee thereof designated by the board of directors, and (j) any other matters, not repugnant to law, as may be included in the plan as approved or authorized by the board of directors or any such committee.

Section 10. Construction and Definitions.

Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the California General Corporation Law shall govern the construction of these by-laws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the term "person" includes a corporation as well as a natural person.

ARTICLE VI  
AMENDMENTS

Section 1. Power of Shareholders.

New by-laws may be adopted or these by-laws may be amended or repealed by the vote of shareholders entitled to exercise a majority of the voting power of the corporation or by the written assent of such shareholders, except as otherwise provided by law or by the articles of incorporation.

Section 2. Power of Directors.

Subject to the right of shareholders as provided in Section 1 of this Article VI to adopt, amend or repeal by-laws, other than a by-law or amendment thereof changing the authorized number of directors, may be adopted, amended or repealed by the board of directors.

ARTICLE VII  
TRANSFER OF SHARES

Section 1.

Subject to the terms and provisions hereinafter set forth, the shares of capital stock of the corporation shall be transferred on the books of the corporation upon surrender and cancellation of certificates for a like number of shares by the holder thereof in person, or by his attorney.

Except as otherwise provided in this Article, no shares of the corporation shall be sold or otherwise disposed of by any shareholder until after written notice of such intended sale or

disposition shall have been delivered to the corporation, and until sixty days have expired subsequent to a final determination of a price per share for such shares, all as hereinafter provided.

In the event any shareholder proposes to sell or otherwise dispose of all or any part of his shares, he shall sign and deliver to the corporation a written notice stating his desire to sell and dispose of the designated number of shares. Such shareholder and the corporation shall then fix a price per share computed by determining the fair market value of the net assets of the corporation (excluding "good will") on the date of such notice, and multiplying the resulting figure by a fraction, the numerator of which shall be one and the denominator of which shall be the number of shares of the capital stock of the corporation issued and outstanding as of the date of such notice. In the event that the shareholder and the corporation cannot agree on the price per share, computed as aforesaid, the shareholder and the corporation shall each appoint an independent arbitrator. If either the shareholder or the corporation fails to appoint an arbitrator, the arbitrator appointed by the other shall have power to act alone. The arbitrator(s) thus selected shall determine the price per share computed as aforesaid, and their decision shall be final and conclusive upon the parties; in the event the two arbitrators cannot agree on the price per share, the two arbitrators shall appoint a third arbitrator. Such third arbitrator shall receive the advice and counsel of the two previously appointed arbitrators, but the decision of the third arbitrator acting alone, as to the price per share computed as aforesaid, shall be final, binding and conclusive upon the parties.

The corporation shall have the prior option and right to purchase all or any part of such shares for a period of thirty days after the final determination of the price per share at the price thus determined. In the event the corporation does not exercise its option within the thirty-day period with respect to all of the shares, each remaining shareholder of the corporation shall have an option for a period of twenty days next succeeding the expiration of such thirty-day period to purchase pro rata to the number of shares owned by him the shares remaining for sale at the price per share determined as aforesaid. In the event options have not been exercised with respect to all of the shares specified in the written notice pursuant to the options granted to the corporation and to the shareholders as above set forth, shareholders who exercise their option within said twenty-day period shall have an additional option for a period of ten days next succeeding the expiration of such twenty-day period to purchase all or any part of the balance of such shares at the price per share determined as aforesaid; in the event there are two or more such shareholders who exercise the last mentioned option for a total number of shares in excess of the number available, the shares available for such option shall be allocated to such shareholders pro rata to the number of shares owned by each such shareholder.

In the event that options have not been exercised with respect to all of the shares set forth in the written notice delivered to the corporation within sixty days after the date of final determination of the price per share as aforesaid, the shareholder giving such written notice may sell such shares with respect to which options have not been exercised at the expiration of sixty days after the final determination of the price per share as aforesaid, but not otherwise, and in no event later than thirty days after the expiration of said sixty day period.

The provisions of this Article VII and the options and rights therein granted may be waived with respect to any proposed sale or other disposition of shares by written waiver executed by the corporation and by the owners of two-thirds of the outstanding capital stock of the corporation. In the event of any such waiver, the provisions of this Article shall not be applicable to the proposed sale or other disposition of shares with respect to which such waiver shall have been executed but shall be applicable to all other sales or dispositions of shares.

**WRITTEN CONSENT  
OF  
THE SOLE STOCKHOLDER  
OF  
PETS 'N PEOPLE, INC.**

**July 30, 2004**

The undersigned, being the sole stockholder of Pets 'N People, Inc., a California corporation (the "Company"), hereby, pursuant to Section 603(a) of the California Corporations Code, consents to, adopts, and approves the following resolutions and each and every action effected thereby:

Acceptance of Resignations

RESOLVED, that the director resignations attached hereto as Exhibit A are hereby accepted, effective as of the date set forth therein.

Amendment of By-Laws

RESOLVED, that Article III, Section 2 of the By-Laws of the Company be, and it, hereby is, deleted in its entirety and a new Article III, Section 2 be inserted in lieu thereof to read as set forth in Exhibit B attached hereto.

Election of Directors

RESOLVED, that Robert L. Caulk and Daniel J. Johnston are hereby elected to serve as members of the Board of Directors of the Company until the election of their qualified successors or their earlier resignation or removal.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Written Consent as of the date first above written.

UNITED PET GROUP, INC.

By: /s/ Daniel J. Johnston

\_\_\_\_\_  
Name: Daniel J. Johnston

Title: Vice President, Treasurer

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**EXHIBIT A**

**DIRECTOR RESIGNATIONS**

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**EXHIBIT B**

**AMENDMENT TO BY-LAWS**

“Article III, Section 2. Number and Qualifications of Directors

The authorized number of directors shall be no more than two (2) until changed by a duly adopted amendment to the Articles of Incorporation or by an amendment to this by-law adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote.”



AMENDMENT OF  
BY-LAWS OF  
PETS 'N PEOPLE, INC.

Pursuant to the unanimous consents adopted by the shareholders and directors of PETS 'N PEOPLE, INC., a California corporation, effective 3/15, 2003 the By-laws of this corporation are hereby amended as follows:

Article VII, Deleted in its entirety

The foregoing amendment of the By-laws was duly approved by the required vote of shareholders in accordance with Article VI, Section 1 of the Bylaws.

Effective: 3/15, 2003

/s/ Mindy D. Weiss

\_\_\_\_\_  
MINDY D. WEISS, President

/s/ Marcia Weiss

\_\_\_\_\_  
MARCIA WEISS, Secretary

AMENDMENT OF  
BY-LAWS OF  
PETS 'N PEOPLE, INC.

Pursuant to the resolution adopted by the shareholder and director of PETS 'N PEOPLE, INC., a California corporation, effective March 10, 1998 the By-laws of this corporation are hereby amended as follows:

Article III, Section 2, Number and Qualification of Directors, is deleted in its entirety and the following inserted in lieu thereof:

“Article III, Section 2, Number and Qualification of Directors

The authorized number of directors shall be 3 until changed by a duly adopted amendment to the Articles of Incorporation or by an amendment to this by-law adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote, as provided in Sec. 212.”

The foregoing amendment of the By-laws was duly approved by the required vote of shareholders in accordance with Article VI, Section 1 of the Bylaws.

Effective: March 10, 1998

/s/ Joseph H. Weiss

\_\_\_\_\_  
JOSEPH H. WEISS, President

/s/ Marcia Weiss

\_\_\_\_\_  
MARCIA WEISS, Secretary

FIRST AMENDMENT OF  
BYLAWS OF  
PETS 'N PEOPLE, INC.

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Pursuant to the resolution adopted by the shareholders and director of PETS 'N PEOPLE, INC., a California corporation, on May 28, 1992 the Bylaws of this corporation are hereby amended as follows:

“Article V, Section 11, Indemnification of Agents The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the corporation and its stockholders, in excess of the indemnification otherwise permitted by Section 317, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code. In any event, the corporation shall have the right to purchase and maintain insurance on behalf of any such persons whether or not the corporation would have the power to indemnify such person against the liability insured against.”

The foregoing amendment of the Bylaws was duly approved by the required vote of shareholders in accordance with Article VI, Section 1 of the Bylaws.

Dated: 05/28/92, 1992.

/s/ Joseph H. Weiss

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JOSEPH H. WEISS, President

/s/ Marcia Weiss

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MARCIA WEISS, Secretary

## AMENDED ARTICLES OF INCORPORATION

OF

SCHULTZ COMPANY

The amended Articles of Incorporation are as follows:

ARTICLE I

The name of the Corporation is Schultz Company.

ARTICLE II

The address, including street and number, if any, of the Corporation's initial registered office in this State is 13260 Corporate Exchange Drive, Bridgeton, Missouri 63044, and the name of its initial registered agent at such address is James J. Scheetz.

ARTICLE III

The aggregate number, class and par value, if any, of shares which the Corporation shall have authority to issue shall be Thirty Thousand (30,000) shares of Common Stock having a par value of One Dollar (\$1.00) per share.

ARTICLE IV

No shareholder of the Corporation shall have any preemptive right to acquire any shares of any class of stock of this Corporation, whether now or hereafter authorized, or any securities or obligations (including, but not limited to, securities or obligations convertible into any class of stock issued by this Corporation), whether issued or sold for cash, property, services or otherwise.

ARTICLE V

The name and address of the original incorporators are Jacob Schultz, 6909 Washington Avenue, University City, Missouri, Abraham Y. Schultz, 2329 S. Kingshighway, St. Louis, Missouri, Harry Schultz, 530 Purdue Avenue, University City, Missouri and Marvin Saks, 6909 Washington Avenue, University City, Missouri.

ARTICLE VI

The number of directors to constitute the first Board of Directors shall be Three (3), who need not be a shareholders. Thereafter, the number of directors to constitute the Board of Directors shall be fixed by, or in the manner provided in, the By-Laws of the Corporation, and any change in the number will be reported to the Missouri Secretary of State within thirty (30) calendar days of such change.

ARTICLE VII

In all elections of directors, each shareholder entitled to vote shall have the right to cast only as many votes as shall equal the number of shares held by the shareholder in the Corporation. There shall be no right to cumulative voting in election of directors.

ARTICLE VIII

The duration of the Corporation is perpetual.

ARTICLE IX

The Corporation is formed to engage in any lawful business.

ARTICLE X

The Corporation undertakes to provide indemnity pursuant to the provisions of this Article X:

(1) Nature of Indemnity. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he, or a person of whom he is the legal representative, is or was a director or officer, of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or

other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent which it is empowered to do so unless prohibited from doing so by the General and Business Corporation Law of Missouri, 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 said law permitted the Corporation to provide prior to such amendment) against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding) and such indemnification shall inure to the benefit of his heirs, executors and administrators; provided, however, that, except as provided in subsection 2 hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the Corporation. The right to indemnification conferred in this Article X shall be a contract right and, subject to subsections 2 and 5 hereof, shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition. The Corporation may, by action of its board of directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(2) Procedure for Indemnification of Directors and Officers. Any indemnification of a director or officer of the Corporation under subsection 1 of this Article X or advance of expenses under subsection 5 of this Article X shall be made promptly, and in any event within thirty (30) days, upon the written request of the director or officer. If a determination by the Corporation that the director or officer is entitled to indemnification pursuant to this Article X is required, and the Corporation fails to respond within sixty (60) days

to a written request for indemnity, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty (30) days, the right to indemnification or advances as granted by this Article X shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the General and Business Corporation Law of Missouri for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including its board of directors, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the General and Business Corporation Law of Missouri, nor an actual determination by the Corporation (including its board of directors, independent legal counsel, or its shareholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(3) Article Not Exclusive. The rights to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article X shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the articles of incorporation, by-law, agreement, vote of shareholders or disinterested directors or otherwise.

(4) Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such liability under this Article X.

(5) Expenses. Expenses incurred by any person described in subsection 1 of this Article X in defending a proceeding shall be paid by the Corporation in advance of such proceeding's final disposition unless otherwise determined by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(6) Employees and Agents. Persons who are not covered by the foregoing provisions of this Article X and who are or were employees or agents of the Corporation, or who are or were serving at the request of the Corporation as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the board of directors.



(7) Contract Rights. The provisions of this Article X shall be deemed to be a contract right between the Corporation and each director or officer who serves in any such capacity at any time while this Article X and the relevant provisions of the General and Business Corporation Law of Missouri or other applicable law are in effect, and any repeal or modification of this Article X or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

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

#### ARTICLE XI

At any time or times before the Corporation has received any payment for any of its shares, the Board of Directors may adopt amendments to the Articles of Incorporation by executing and verifying a certificate of amendment as provided by The General and Business Corporation Law of Missouri. After the Corporation has received payment for any of its shares, amendments to the Articles of Incorporation shall be made in the manner prescribed by The General and Business Corporation Law of Missouri. The power to make, alter, amend, or repeal the By-Laws of the Corporation shall be vested in the Board of Directors.

The Board of Directors shall have and exercise such further powers as are provided it under present or future laws of the State of Missouri.

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SUMMARY ARTICLES OF MERGER

The Honorable Matt Blunt  
Secretary of State  
State of Missouri  
P.O. Box 778  
Jefferson City, Missouri 65102

Pursuant to the provisions of Section 351.430.2 of The General and Business Corporation Law of Missouri (the "Corporation Law"), the undersigned corporations certify to the following:

1. That CD Acquisition Corp., a Missouri corporation ("CD"), and Schultz Company, a Missouri corporation ("Schultz"), hereby are merged, and that Schultz is the surviving corporation (the "Merger").
2. That the terms and conditions of the Merger and the mode of carrying the same into effect are as set forth in that certain Agreement and Plan of Merger, which was approved, adopted, certified, executed and acknowledged by both CD and Schultz in accordance with, and pursuant to the provisions of, the Corporation Law.
3. That the Articles of Incorporation of CD shall be the Articles of Incorporation of the corporation surviving the Merger and that the Articles of Incorporation of CD shall be amended to read in their entirety as set forth on Exhibit A attached hereto.
4. That the executed Agreement and Plan of Merger is on file at the principal place of business of Schultz, and the address of such principal place of business is 13620 Corporate Exchange Drive, St. Louis, Missouri 63044.
5. That a copy of the Agreement and Plan of Merger shall be furnished by Schultz, on request and at no cost, to any shareholder of Schultz or CD. Address in Article 4 above.
6. That the Merger shall be effective as of the date of filing of the Summary Articles of Merger with the Secretary of State of the State of Missouri.

IN AFFIRMATION OF THE ABOVE STATED FACTS, these Summary Articles of Merger have been executed in duplicate by the aforementioned corporations as of the 9<sup>th</sup> day of May, 2002.

**CD ACQUISITION CORP.**  
**(A Missouri Corporation)**

By /s/ Robert L. Caulk

\_\_\_\_\_  
Robert L. Caulk, President

(NO SEAL)

**ATTEST:**

By /s/ Louis N. Laderman

\_\_\_\_\_

**SCHULTZ COMPANY**  
**(A Missouri Corporation)**

By /s/ Steven D. Schultz

\_\_\_\_\_  
Steven D. Schultz, President

(NO SEAL)

**ATTEST:**

By /s/ Daniel J. Schultz

\_\_\_\_\_

BY-LAWS  
OF  
CD ACQUISITION CORP.

Effective As  
Of: April 30, 2002.

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BY-LAWS  
OF  
CD ACQUISITION CORP.

ARTICLE I. OFFICES

The principal office of the Corporation in the State of Missouri shall be located at c/o United Industries Corporation, 8825 Page Boulevard, St. Louis, Missouri 63114. The Corporation may have such other office(s), either within or without the State of Missouri, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

The registered office of the Corporation required by The General and Business Corporation Law of Missouri to be maintained in the State of Missouri may be, but need not be, identical with its principal office in the State of Missouri, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II. SHAREHOLDERS

Section 2.1. Annual Meeting. The annual meeting of the shareholders shall be held on the third Monday of February, in each year, beginning with the year 2003, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Missouri, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the shareholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as conveniently may be arranged.

Section 2.2. Special Meetings. A special meeting of the shareholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, by the Board of Directors, or by the holders of not less than one-fifth of all the outstanding shares of the Corporation entitled to vote at such meeting.

Section 2.3. Place of Meeting. The Board of Directors may designate any place, either within or without the State of Missouri, as the place of meeting for any annual meeting of the shareholders or for any special meeting of the shareholders called by the Board of Directors, except that a meeting called expressly for the purpose of removal of a director shall be held at the registered office or principal business office of the Corporation in the State of Missouri or in the city or county of the State of Missouri in which the principal business office of the Corporation is located. A waiver of notice signed by all shareholders entitled to vote at a meeting may designate any place, either within or without the State of Missouri, as the place for the holding of such meeting unless such meeting is called expressly for the purpose of removal of one or more

directors, in which event such meeting shall be held at the registered office or principal business office of the Corporation in the State of Missouri or in the city or county of the State of Missouri in which the principal business office of the Corporation is located. If no designation is made, the place of meeting shall be the registered office of the Corporation in the State of Missouri.

Section 2.4. Notice of Meeting. Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, unless otherwise allowed or prescribed by statute, be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the President, or the Secretary, or the persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his or her address as it appears on the records of the Corporation, with postage thereon prepaid.

Section 2.5. Meetings, How Convened. Every meeting, for whatever purpose, of the shareholders of the Corporation shall be convened by the President, Secretary or other officer, or any of the persons calling the meeting by notice given as herein provided.

Section 2.6. Closing Transfer Books; Record Date. The Board of Directors shall have power to close the transfer books of the Corporation for a period not exceeding fifty days preceding the date of any meeting of shareholders, or the date of payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect; provided, however, that in lieu of closing the stock transfer books, the Board of Directors may fix in advance a date, not exceeding fifty days preceding the date of any meeting of shareholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at, the meeting and any adjournment thereof, or to receive payment of the dividend, or to receive the allotment of rights, or to exercise the rights in respect of the change, conversion or exchange of shares. In such case, only the shareholders who are shareholders of record on the date of closing the transfer books, or on the record date so fixed, shall be entitled to notice of, and to vote at, the meeting and any adjournment thereof, or to receive payment of the dividend, or to receive the allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the Corporation after the date of closing of the transfer books or the record date fixed as aforesaid. If the Board of Directors does not close the transfer books or set a record date, only the shareholders who are shareholders of record at the close of business on the twentieth day preceding the date of the meeting shall be entitled to notice of, and to vote at, the meeting, and any adjournment of the meeting; except that, if prior to the meeting written waivers of notice of the meeting are signed and delivered to the Corporation by all of the shareholders of record at the time the meeting is convened, only the shareholders who are shareholders of record at the time the meeting is convened shall be entitled to vote at the meeting, and any adjournment of the meeting.

Section 2.7. Voting Lists. The officer having charge of the transfer book for shares of the Corporation shall make, at least ten days before each meeting of the shareholders, a complete



list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such meeting shall be kept on file at the registered office of the Corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer books, or a duplicate thereof kept in the State of Missouri, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of the shareholders.

Section 2.8. Quorum. A majority of the outstanding shares of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders. If less than a quorum is present, those present may adjourn the meeting until a specified date, not longer than ninety days after such adjournment, and no notice need be given of such adjournment to shareholders not present at the meeting. Every decision of a majority of such quorum shall be valid as a corporate act unless a different vote is required by law, the Articles of Incorporation or the By-Laws of the Corporation.

Section 2.9. Proxies. At all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. A duly executed proxy shall be irrevocable only if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power of attorney. The interest with which it is coupled need not be an interest in the shares themselves. If any instrument of proxy designates two or more persons to act as proxy, in the absence of any provisions in the proxy to the contrary, the persons designated may represent and vote the shares in accordance with the vote or consent of the majority of the persons named as proxies. If only one such proxy is present, the proxy may vote all of the shares, and all the shares standing in the name of the principal or principals for whom such proxy acts shall be deemed represented for the purpose of obtaining a quorum. The foregoing provisions shall apply to the voting of shares by proxies for any two or more personal representatives, trustees or other fiduciaries, unless an instrument or order of court appointing them otherwise directs.

Section 2.10. Voting of Shares. Subject to the provisions of Section 2.13, each outstanding share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of the shareholders.

Section 2.11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by such officer, agent or proxy as the by-laws of such corporation may prescribe, or, in the absence of such provision, as the Board of Directors of such corporation may determine.

Shares standing in the name of a deceased person may be voted by his or her personal representative, either in person or by proxy. Shares standing in the name of a conservator or trustee may be voted by such fiduciary, either in person or by proxy, but no conservator or trustee shall be entitled, as a fiduciary to vote shares held by him or her without a transfer of such shares into his or her name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his or her name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Neither shares of its own stock held by the Corporation, nor those held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation are owned beneficially and of record (and not in trust) by this Corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

Section 2.12. Shareholder Action Without a Meeting. Any action required to be taken at a meeting of the shareholders, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if consents in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consents shall have the same force and effect as a unanimous vote of the shareholders at a meeting duly held. The Secretary of the Corporation shall file such consents with the minutes of the meetings of the shareholders.

Section 2.13. Cumulative Voting Rights Denied. In all elections for directors, each shareholder entitled to vote shall have the right to cast only as many votes as shall equal the number of votes held by him in the Corporation. There shall be no right to cumulative voting in the election of directors.

Section 2.14. Shareholders' Right to Examine Books and Records. This Corporation shall keep correct and complete books and records of account, including the amount of its assets and liabilities, minutes of the proceedings of its shareholders and Board of Directors, and the names and places of residence of its officers; and it shall keep at its registered office or principal place of business in this state, or at the office of its transfer agent in this state, if any, books and records in which shall be recorded the number of shares subscribed, the names of the owners of the shares, the numbers owned by them respectively, the amount of shares paid, and by whom, and the transfer of such shares with the date of transfer. Each shareholder may, during normal business hours, have access to the books of the Corporation, to examine the same. The Board of Directors may, from time to time, further prescribe regulations with respect to any such examination.

ARTICLE III. BOARD OF DIRECTORS

Section 3.1. General Powers. The property and business of the Corporation shall be controlled and managed by its Board of Directors.

Section 3.2. Number, Term and Qualifications. The number of directors of the Corporation shall be Three (3). Thereafter the number of directors on the Board of Directors may be changed by amendment to the Articles of Incorporation of the Corporation. Each director shall hold office until his or her successor shall have been elected and qualified. The directors need not be residents of the State of Missouri or shareholders of the Corporation.

Section 3.3. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of shareholders. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Missouri, for the holding of additional regular meetings without other notice than such resolution.

Section 3.4. Special Meetings. A special meeting of the Board of Directors may be called by, or at the request of, the President or any director. The person or persons authorized to call such special meeting of the Board of Directors may fix any place, either within or without the State of Missouri, as the place for holding such special meeting.

Section 3.5. Notice. Notice of any special meeting shall be delivered at least ten (10) days prior thereto by written notice delivered personally or left at or mailed to each director at his or her business or residence address, or by telegram or telefax. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice be given by telegram or telefax, such notice shall be deemed to be delivered when the text of the telegram or telefax is delivered to the telegraph or telefax company. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 3.6. Quorum; Participation by Telephone. A majority of the full Board of Directors shall constitute a quorum for the transaction of business, but if less than a majority are present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice. Members of the Board of Directors may participate in a meeting of the Board of Directors, whether regular or special, by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 3.7. Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a different number is required by statute, the Articles of Incorporation or these By-Laws.

Section 3.8. Action Without a Meeting. Any action that may be taken at a meeting of the Board of Directors or of a committee of directors may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by all of the members of the Board of Directors or of the committee, as the case may be. Such written consents shall be filed by the Secretary with the minutes of the proceedings of the Board of Directors or of the committee, as the case may be, and shall have the same force and effect as a unanimous vote at a meeting duly held.

Section 3.9. Resignations. Any director may resign at any time by delivering written notice to the Board of Directors, the President or the Secretary of the Corporation. Any written notice delivered in person to the President or the Secretary shall be effective upon delivery, unless otherwise provided therein. Written notice may be delivered by certified or registered mail, with postage thereon prepaid and a return receipt requested. Such resignation shall take effect on the date of the receipt of such notice which date of receipt shall be deemed to be the date indicated upon the registered or certified mail return receipt, or at any later time specified therein. Unless otherwise specified, acceptance of such resignation shall not be necessary to make it effective.

Section 3.10. Removal by Shareholders. Any director or directors may be removed, with or without cause, at a meeting of the shareholders called expressly for that purpose. The entire Board of Directors may be removed by a vote of the holders of a majority of shares then entitled to vote at an election of directors. If less than the entire board is to be removed, one or more of the directors may be removed if the shareholders of a majority of the outstanding shares entitled to vote are voted for the removal of such director.

Section 3.11. Removal by Board of Directors. Any director may be removed for cause by action of a majority of the entire Board of Directors if the director to be removed shall, at the time of removal, fail to meet the Corporation's qualifications for election as a director as set forth in its Articles of Incorporation or in these By-Laws, or if the director shall be in breach of any agreement between such director and the Corporation relating to such director's services as a director or employee of the Corporation. Notice of the proposed removal shall be given to all directors of the Corporation prior to action thereon.

Section 3.12. Vacancies. In case of the death, incapacity or resignation of one or more of the directors, or in the case of a newly created directorship resulting from any increase in the number of directors to constitute the Board of Directors, a majority of the directors then in office, although less than a quorum, or the sole remaining director, may fill the vacancy or vacancies until the next election of directors by the shareholders.

Section 3.13. Compensation. By resolution of the Board of Directors, each director may be paid his or her expenses, if any, of attendance at each meeting of the Board of Directors, and

may be paid a stated salary as director or a fixed sum for attendance at each meeting of the Board of Directors or both. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.14. Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the director dissents or abstains at such meeting, and the fact of such dissent or abstention (a) is entered in the minutes of the meeting, or (b) shall be filed by the director in writing with the person acting as secretary of the meeting before the adjournment thereof, or (c) shall have been recorded by the director and forwarded by registered mail to the Secretary of the Corporation promptly after the adjournment of the meeting.

Section 3.15. Committee. The Board of Directors, by resolution adopted by a majority of the board, may designate two or more directors to constitute (a) an executive committee, which committee shall have and exercise all of the authority of the Board of Directors in the management of the Corporation, or (b) any other committee which shall have the name, purpose, power and authority delegated to it by such resolution.

#### ARTICLE IV. OFFICERS

Section 4.1. Number. The officers of the Corporation shall be the President, one or more Vice-Presidents (the number thereof to be determined by the Board of Directors) and a Secretary, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person.

Section 4.2. Election and Term of Office. The officers of the Corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after the first annual meeting of the shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be arranged. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided.

Section 4.3. Removal. Any officer, agent, or other employee elected or appointed by the Board of Directors may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4.4. Resignations. Any officer may resign, at any time by giving written notice to the Board of Directors, the President or the Secretary of the Corporation. Any written notice delivered in person to the President or the Secretary shall be effective upon delivery unless otherwise provided therein. Written notice may be delivered by certified or registered mail, with postage thereon prepaid and a return receipt requested. Such resignation shall take effect on the

date of the receipt of such notice which date of receipt shall be deemed to be the date indicated upon the registered or certified mail return receipt, or at any later time specified therein. Unless otherwise specified herein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.5. Vacancies. A vacancy in any office because of death, incapacity, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 4.6. President. The President shall be the chief operating officer of the Corporation and shall in general supervise and control all of the business and affairs of the Corporation. The President may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Board of Directors, certificates for shares of the Corporation, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed. The President may vote in person or by proxy shares in other corporations standing in the name of this Corporation. The President shall in general perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 4.7. Vice-President(s). In the absence of the President, whether due to resignation, incapacity or any other cause, or in the event of the President's death, inability or refusal to act, the Vice-President (or in the event there be more than one Vice-President, the Vice-Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall exercise such powers only so long as the President remains absent or incapacitated, or until the Board of Directors elects a new President. Any Vice-President may sign, with the Secretary, an Assistant Secretary, Treasurer or an Assistant Treasurer, certificates for shares of the Corporation; and shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

Section 4.8. Secretary. The Secretary shall (a) keep the minutes of the proceedings of the shareholders and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; (d) keep a register of the post office address of each shareholder which shall be furnished to the Secretary by such shareholder; (e) sign with the President, or a Vice-President, certificates for shares of the Corporation, the issuance of which shall have been authorized by resolution of the Board of Directors; (f) have general charge of the stock transfer books of the Corporation; and (g) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board of Directors.

Section 4.9. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that the officer is also a director of the Corporation and participated in determining and voting upon the salary.

#### ARTICLE V. CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 5.1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 5.2. Loans. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 5.3. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 5.4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

#### ARTICLE VI. CERTIFICATES FOR SHARES AND THEIR TRANSFER

Section 6.1. Certificates for Shares. Certificates representing shares of the Corporation shall be in such form as shall be determined by the Board of Directors.

The shares of the Corporation shall be represented by certificates signed by the President or a Vice President, and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of the Corporation and sealed with the seal of the Corporation. Such seal may be facsimile, engraved or printed. Any signatures on the certificates may be facsimile. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Corporation. All certificates surrendered to the Corporation for transfer shall be cancelled, and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms as the Board of Directors may prescribe.

Section 6.2. Transfer of Shares. Transfer of shares of the Corporation shall be made only on the stock transfer books of the Corporation by the holder of record thereof or by his or her legal representative, or by his or her attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the Corporation shall be deemed by the Corporation to be the owner thereof for all purposes.

ARTICLE VII. FISCAL YEAR

The fiscal year of the Corporation shall be as fixed from time to time by the Board of Directors.

ARTICLE VIII. DIVIDENDS

The Board of Directors may, from time to time, declare and the Corporation may pay dividends on its outstanding shares in the manner, and upon the terms and conditions provided by law and the Articles of Incorporation of the Corporation.

ARTICLE IX. FINANCIAL INTEREST OF CORPORATE OFFICERS; EFFECT ON CONTRACTS

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

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

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

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

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee which authorizes the contract or transactions.



ARTICLE X. CORPORATE SEAL

The Corporation shall have no corporate seal unless so provided for in a resolution adopted by the Board of Directors. In the event that the Board of Directors shall adopt such resolution providing for a corporate seal, such seal shall be in the form of a circle with the name of the Corporation inscribed thereon.

ARTICLE XI. WAIVER OF NOTICE

Whenever any notice is required to be given to any shareholder or director of the Corporation under the provisions of these By-Laws or of the Articles of Incorporation or of The General and Business Corporation Law of Missouri, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII. AMENDMENTS

These By-Laws may be altered, amended or repealed and new By-Laws adopted by action of a majority of the directors at any regular or special meeting of the directors.

\* \* \* \*

Adopted on April 30, 2002.

/s/ Robert L. Caulk

\_\_\_\_\_  
Robert L. Caulk, President

ATTEST:

/s/ Louis N. Laderman

\_\_\_\_\_  
Louis N. Laderman, Secretary

ACTION BY WRITTEN CONSENT OF  
THE SOLE SHAREHOLDER OF  
SCHULTZ COMPANY

The following action was taken and the following business transacted by the written consent of the sole Shareholder of Schultz Company, a Missouri corporation (the "Company"), effective as of April 22, 2004, which consent and action is evidenced by the signature of the sole Shareholder appended hereto, and which consent and action is intended to have the same force and effect as a unanimous vote at a meeting duly called and held.

RESOLVED, that Section 3.2 of Article III of the Company's Bylaws be and hereby is amended to read in its entirety as following:

Section 3.2. Number, Term and Qualifications. The number of directors of the Corporation shall be two (2). Each director shall hold office until his or her successor shall have been elected and qualified. The directors need not be residents of the state of Missouri or shareholders of the Corporation.

FURTHER RESOLVED, that the officers of the Company be and hereby are authorized and directed for and in behalf and in the name of the Company to cause to be taken any and all actions and to execute and file any and all documents, forms and/or certificates with the Secretary of State of the State of Missouri, to incur such costs and expenses and to take all other actions and do such other things as any such officer deems necessary, appropriate or desirable in order to accomplish the above resolutions.

The undersigned, constituting the sole Shareholder of the Company, hereby consents to and adopts the foregoing acts and resolutions, effective as of the day and year first above written.

UNITED INDUSTRIES CORPORATION

By /s/ Louis N. Laderman

\_\_\_\_\_  
Louis N. Laderman, Vice President,  
Secretary and General Counsel

Constituting the sole Shareholder of Schultz Company

**ARTICLES OF INCORPORATION**  
**OF**  
**SOUTHERN CALIFORNIA FOAM, INC.**  
A California Corporation

**FIRST:** The name of this corporation is:

**SOUTHERN CALIFORNIA FOAM, INC.**

**SECOND:** The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

**THIRD:** The name and address in the State of California of this Corporation's initial agent for service of process is:

Dennis Curley, 19855 Kuroz Court, City of Industry, Calif. 91733

**FOURTH:** This corporation is authorized to issue only one class of shares of stock, and the total number of shares which this corporation is authorized to issue is 1,000,000 shares.

Dated: February 22, 1989

/s/ Gary A. Starre

\_\_\_\_\_  
GARY A. STARRE  
Sole Incorporator

I hereby declare under penalty of perjury that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

Dated: February 22, 1989

/s/ Gary A. Starre

\_\_\_\_\_  
GARY A. STARRE

BY-LAWS OF  
SOUTHERN CALIFORNIA FOAM, INC.  
(A California Corporation)

ARTICLE I  
SHAREHOLDERS' MEETINGS

Section 1. TIME. An annual meeting for the election of directors and for the transaction of any other proper business and any special meeting shall be held on the date and at the time as the Board of Directors shall from time to time fix.

Time of Meeting: 10:00 o'clock A.M.

Date of Meeting: The 1st day of March.

Section 2. PLACE. Annual meetings and special meetings shall be held at such place, within or without the State of California, as the Directors may, from time to time, fix. Whenever the Directors shall fail to fix such place, the meetings shall be held at the principal executive office of the corporation.

Section 3. CALL. Annual meetings may be called by the Directors, by the Chairman of the Board, if any, Vice Chairman of the Board, if any, the President, if any, the Secretary, or by any officer instructed by the Directors to call the meeting. Special meetings may be called in like manner and by the holders of shares entitled to cast not less than ten percent of the votes at the meeting being called.

Section 4. NOTICE. Written notice stating the place, day and hour of each meeting, and, in the case of a special meeting, the general nature of the business to be transacted or, in the case of an Annual Meeting, those matters which the Board of Directors, at the time of mailing of the notice, intends to present for action by the shareholders, shall be given not less than ten days (or not less than any such other minimum period of days as may be prescribed by the General Corporation Law) or more than sixty days (or more than any such maximum period of days as may be prescribed by the General Corporation Law) before the date of the meeting, by mail, personally, or by other means of written communication, charges prepaid by or at the direction of the Directors, the President, if any, the Secretary or the officer or persons calling the meeting, addressed to each shareholder at his address appearing on the books of the corporation or given by him to the corporation for the purpose of notice, or, if no such address appears or is given, at the place where the principal executive office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the said principal executive office is located. Such notice shall be deemed to be delivered when deposited in the United States mail with first class postage therein prepaid, or sent by

other means of written communication addressed to the shareholder at his address as it appears on the stock transfer books of the corporation. The notice of any meeting at which directors are to be elected shall include the names of nominees intended at the time of notice to be presented by management for election. At an annual meeting of shareholders, any matter relating to the affairs of the corporation, whether or not stated in the notice of the meeting, may be brought up for action except matters which the General Corporation Law requires to be stated in the notice of the meeting. The notice of any annual or special meeting shall also include, or be accompanied by, any additional statements, information, or documents prescribed by the General Corporation Law. When a meeting is adjourned to another time or place, notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken; provided that, if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

Section 5. CONSENT. The transaction of any meeting, however called and noticed, and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each of the shareholders or his proxy signs a written waiver of notice or a consent to the holding of the meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting constitutes a waiver of notice of such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting shall not constitute a waiver of any right to object to the consideration of matters required by the General Corporation Law to be included in the notice if such objection is expressly made at the meeting. Except as otherwise provided in subdivision (f) of Section 601 of the General Corporation Law, neither the business to be transacted at nor the purpose of any regular or special meeting need be specified in any written waiver of notice.

Section 6. CONDUCT OF MEETING. Meetings of the shareholders shall be presided over by one of the following officers in the order of seniority and if present and acting — the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President, if any, a Vice President, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by the shareholders. The Secretary of the corporation, or in his absence, an Assistant Secretary, shall act as secretary of every meeting, but, if neither the Secretary nor an Assistant Secretary is present, the Chairman of the meeting shall appoint a secretary of the meeting.

Section 7. PROXY REPRESENTATION. Every shareholder may authorize another person or persons to act as his proxy at a meeting or by written action. No proxy shall be valid after the expiration of eleven months from the date of its execution unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it prior to the vote or written action pursuant thereto, except as otherwise provided by the General Corporation Law. As used herein, a “proxy” shall be deemed to

mean a written authorization signed by a shareholder or a shareholder's attorney in fact giving another person or persons power to vote or consent in writing with respect to the shares of such shareholder, and "Signed" as used herein shall be deemed to mean the placing of such shareholder's name on the proxy, whether by manual signature, typewriting, telegraphic transmission or otherwise by such shareholder or such shareholder's attorney in fact. Where applicable, the form of any proxy shall comply with the provisions of Section 604 of the General Corporation Law.

Section 8. INSPECTORS - APPOINTMENT. In advance of any meeting, the Board of Directors may appoint inspectors of election to act at the meeting and any adjournment thereof. If inspectors of election are not so appointed, or, if any persons so appointed fail to appear or refuse to act, the Chairman of any meeting of shareholders may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election, or persons to replace any of those who so fail or refuse, at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more shareholders or proxies, the majority of shares represented shall determine whether one or three inspectors are to be appointed.

The inspectors of election shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the authenticity, validity, and effect of proxies, receive votes, ballots, if any, or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result, and do such acts as may be proper to conduct the election or vote with fairness to all shareholders. If there are three inspectors of election, the decision, act, or certificate of a majority shall be effective in all respects as the decision, act, or certificate of all.

Section 9. SUBSIDIARY CORPORATIONS. Shares of this corporation owned by a subsidiary shall not be entitled to vote on any matter. A subsidiary for these purposes is defined as a corporation, the shares of which possessing more than 25% of the total combined voting power of all classes of shares entitled to vote, are owned directly or indirectly through one or more subsidiaries.

Section 10. QUORUM; VOTE; WRITTEN CONSENT. The holders of a majority of the voting shares shall constitute a quorum at a meeting of shareholders for the transaction of any business. The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum if any action taken, other than adjournment, is approved by at least a majority of the shares required to constitute a quorum. In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares represented thereat, but no other business may be transacted except as hereinbefore provided.

In the election of directors, a plurality of the votes cast shall elect. No shareholder shall be entitled to exercise the right of cumulative voting at a meeting for the election of directors unless the candidate's name or the candidates' names have been

placed in nomination prior to the voting and the shareholder has given notice at the meeting prior to the voting of the shareholder's intention to cumulate the shareholder's votes. If any one shareholder has given such notice, all shareholders may cumulate their votes for such candidates in nomination.

Except as otherwise provided by the General Corporation Law, the Articles of Incorporation or these By-Laws, any action required or permitted to be taken at a meeting at which a quorum is present shall be authorized by the affirmative vote of a majority of the shares represented at the meeting.

Except in the election of directors by written consent in lieu of a meeting, and except as may otherwise be provided by the General Corporation Law, the Articles of Incorporation or these By-Laws, any action which may be taken at any annual or special meeting may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, shall be signed by holders of shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors. Notice of any shareholder approval pursuant to Section 310, 317, 1201 or 2007 without a meeting by less than unanimous written consent shall be given at least ten days before the consummation of the action authorized by such approval, and prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent to those shareholders entitled to vote who have not consented in writing.

Section 11. BALLOT. Elections of directors at a meeting need not be by ballot unless a shareholder demands election by ballot at the election and before the voting begins. In all other matters, voting need not be by ballot.

Section 12. SHAREHOLDERS' AGREEMENTS. Notwithstanding the above provisions in the event this corporation elects to become a close corporation, an agreement between two or more shareholders thereof, if in writing and signed by the parties thereof, may provide that in exercising any voting rights the shares held by them shall be voted as provided therein or in Section 706, and may otherwise modify these provisions as to shareholders' meetings and actions.

## ARTICLE II BOARD OF DIRECTORS

Section 1. FUNCTIONS. The business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of its Board of Directors. The Board of Directors may delegate the management of the day-to-day operation of the business of the corporation to a management company or other person, provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board of Directors. The Board of Directors shall have authority to fix the compensation of directors for services in any lawful capacity.

Each director shall exercise such powers and otherwise perform such duties in good faith, in the manner such director believes to be in the best interests of the corporation, and with care, including reasonable inquiry, using ordinary prudence, as a person in a like position would use under similar circumstances. (Section 309).

Section 2. EXCEPTION FOR CLOSE CORPORATION. Notwithstanding the provisions of Section 1, in the event that this corporation shall elect to become a close corporation as defined in Section 186, its shareholders may enter into a Shareholders' Agreement as provided in Section 300 (b). Said Agreement may provide for the exercise of corporate powers and the management of the business and affairs of this corporation by the shareholders, provided however such agreement shall, to the extent and so long as the discretion or the powers of the Board in its management of corporate affairs is controlled by such agreement, impose upon each shareholder who is a party thereof, liability for managerial acts performed or omitted by such person pursuant thereto otherwise imposed upon Directors as provided in Section 300 (d).

Section 3. QUALIFICATIONS AND NUMBER. A director need not be a shareholder of the corporation, a citizen of the United States, or a resident of the State of California. The authorized number of directors constituting the Board of Directors until further changed shall be two. Thereafter, the authorized number of directors constituting the Board shall be at least three provided that, whenever the corporation shall have only two shareholders, the number of directors may be at least two, and, whenever the corporation shall have only one shareholder, the number of directors may be at least one. Subject to the foregoing provisions, the number of directors may be changed from time to time by an amendment of these By-Laws adopted by the shareholders. Any such amendment reducing the number of directors to fewer than five cannot be adopted if the votes cast against its adoption at a meeting or the shares not consenting in writing in the case of action by written consent are equal to more than sixteen and two-thirds percent of the outstanding shares. No decrease in the authorized number of directors shall have the effect of shortening the term of any incumbent director.

Section 4. ELECTION AND TERM. The initial Board of Directors shall consist of the persons elected at the meeting of the incorporator, all of whom shall hold office until the first annual meeting of shareholders and until their successors have been elected and qualified, or until their earlier resignation or removal from office. Thereafter, directors who are elected to replace any or all of the members of the initial Board of Directors or who are elected at an annual meeting of shareholders, and directors who are elected in the interim to fill vacancies, shall hold office until the next annual meeting of shareholders and until their successors have been elected and qualified, or until their earlier resignation, removal from office, or death. In the interim between annual meetings of shareholders or of special meetings of shareholders called for the election of directors, any vacancies in the Board of Directors, including vacancies resulting from an increase in the authorized number of directors which have not been filled by the shareholders, including any other vacancies which the General Corporation Law authorizes directors to



fill, and including vacancies resulting from the removal of directors which are not filled at the meeting of shareholders at which any such removal has been effected, if the Articles of Incorporation or a By-Law adopted by the shareholders so provides, may be filled by the vote of a majority of the directors then in office or of the sole remaining director, although less than a quorum exists. Any director may resign effective upon giving written notice to the Chairman of the Board, if any, the President, the Secretary or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to the office when the resignation becomes effective.

The shareholders may elect a director at any time to fill any vacancy which the directors are entitled to fill, but which they have not filled. Any such election by written consent shall require the consent of a majority of the shares.

Section 5. INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS. The corporation may indemnify any Director, Officer, agent or employee as to those liabilities and on those terms and conditions as are specified in Section 317. In any event, the corporation shall have the right to purchase and maintain insurance on behalf of any such persons whether or not the corporation would have the power to indemnify such person against the liability insured against.

Section 6. MEETINGS.

**TIME.** Meetings shall be held at such time as the Board shall fix, except that the first meeting of a newly elected Board shall be held as soon after its election as the directors may conveniently assemble.

**PLACE.** Meetings may be held at any place within or without the State of California, which has been designated in any notice of the meeting, or, if not stated in said notice, or, if there is no notice given, at the place designated by resolution of the Board of Directors.

**CALL.** Meetings may be called by the Chairman of the Board, if any and acting, by the Vice Chairman of the Board, if any, by the President, if any, by any Vice President or Secretary, or by any two directors.

**NOTICE AND WAIVER THEREOF.** No notice shall be required for regular meetings for which the time and place have been fixed by the Board of Directors. Special meetings shall be held upon at least four days' notice by mail or upon at least forty-eight hours' notice delivered personally or by telephone or telegraph. Notice of a meeting need not be given to any director who signs a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the Board of Directors.

Section 7. SOLE DIRECTOR PROVIDED BY ARTICLES OF INCORPORATION. In the event only one director is required by the By-Laws or Articles of Incorporation, then any reference herein to notices, waivers, consents, meetings or other actions by a

majority or quorum of the directors shall be deemed to refer to such notice, waiver, etc., by such sole director, who shall have all the rights and duties and shall be entitled to exercise all of the powers and shall assume all the responsibilities otherwise herein described as given to a Board of Directors.

Section 8. QUORUM AND ACTION. A majority of the authorized number of directors shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided such majority shall constitute at least either one-third of the authorized number of directors or at least two directors, whichever is larger, or unless the authorized number of directors is only one. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors, if any, who were not present at the time of the adjournment. Except as the Articles of Incorporation, these By-Laws and the General Corporation Law may otherwise provide, the act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be the act of the Board of Directors. Members of the Board of Directors may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another, and participation by such use shall be deemed to constitute presence in person at any such meeting.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, provided that any action which may be taken is approved by at least a majority of the required quorum for such meeting.

Section 9. CHAIRMAN OF THE MEETING. The Chairman of the Board, if any and if present and acting, the Vice Chairman of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the President, if any and present and acting, or any director chosen by the Board, shall preside.

Section 10. REMOVAL OF DIRECTORS. The entire Board of Directors or any individual director may be removed from office without cause by approval of the holders of at least a majority of the shares provided, that unless the entire Board is removed, an individual director shall not be removed when the votes cast against such removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election of directors at which the same total number of votes were cast, or, if such action is taken by written consent, in lieu of a meeting, all shares entitled to vote were voted, and the entire number of directors authorized at the time of the director's most recent election were then being elected. If any or all directors are so removed, new directors may be elected at the same meeting or by such written consent. The Board of Directors may declare vacant the office of any director who has been declared of unsound mind by an order of court or convicted of a felony.

Section 11. COMMITTEES. The Board of Directors, by resolution adopted by a majority of the authorized number of directors, may designate one or more committees,

each consisting of two or more directors to serve at the pleasure of the Board of Directors. The Board of Directors may designate one or more directors as alternate members of any such committee, who may replace any absent member at any meeting of such committee. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have all the authority of the Board of Directors except such authority as may not be delegated by the provisions of the General Corporation Law.

Section 12. INFORMAL ACTION. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 13. WRITTEN ACTION. Any action required or permitted to be taken may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such directors.

### ARTICLE III OFFICERS

Section 1. OFFICERS. The officers of the corporation shall be a Chairman of the Board or a President or both, a Secretary and a Chief Financial Officer. The corporation may also have, at the discretion of the Board of Directors, one or more Vice Presidents, one or more Assistant Secretaries and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article. One person may hold two or more offices.

Section 2. ELECTION. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article shall be chosen annually by the Board of Directors, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 3. SUBORDINATE OFFICERS, ETC. The Board of Directors may appoint such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the By-Laws or as the Board of Directors may from time to time determine.

Section 4. REMOVAL AND RESIGNATION. Any officer may be removed, either with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the Board of Directors, or to the President, or to the Secretary of the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the By-Laws for regular appointments to such office.

Section 6. CHAIRMAN OF THE BOARD. The Chairman of the Board, if there shall be such an officer, shall, if present, preside at all meetings of the Board of Directors, and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the By-Laws.

Section 7. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the President shall be the Chief Executive Officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. He shall preside at all meetings of the shareholders and in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors. He shall be ex officio a member of all the standing committees, including the Executive Committee, if any, and shall have the general powers and duties of management usually vested in the office of President of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or the By-Laws.

Section 8. VICE PRESIDENT. In the absence or disability of the President, the Vice Presidents, in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to, all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or the By-Laws.

Section 9. SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board of Directors may order, of all meetings of Directors and Shareholders, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Directors' meetings, the number of shares present or represented at Shareholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office or at the office of the corporation's transfer agent, a share register, or duplicate share register,

showing the names of the shareholders and their addresses; the number and classes of shares held by each; the number and date of certificates issued for the same; and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the shareholders and of the Board of Directors required by the By-Laws or by law to be given, and he shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by the By-Laws.

Section 10. CHIEF FINANCIAL OFFICER. This officer shall keep and maintain, or cause to be kept and maintained in accordance with generally accepted accounting principles, adequate and correct accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, earnings (or surplus) and shares. The books of account shall at all reasonable times be open to inspection by any director.

This officer shall deposit all monies and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the President and directors, whenever they request it, an account of all his transactions and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the By-Laws.

#### ARTICLE IV CERTIFICATES AND TRANSFERS OF SHARES

Section 1. CERTIFICATES FOR SHARES. Each certificate for shares of the corporation shall set forth therein the name of the record holder of the shares represented thereby, the number of shares and the class or series of shares owned by said holder, the par value, if any, of the shares represented thereby, and such other statements, as applicable, prescribed by Sections 416 - 419, inclusive, and other relevant Sections of the General Corporation Law of the State of California (the "General Corporation Law") and such other statements, as applicable, which may be prescribed by the Corporate Securities Law of the State of California and any other applicable provision of the law. Each such certificate issued shall be signed in the name of the corporation by the Chairman of the Board of Directors, if any, or the Vice Chairman of the Board of Directors, if any, the President, if any, or a Vice President, if any, and by the Chief Financial Officer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Any or all of the signatures on a certificate for shares may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate for shares shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

In the event that the corporation shall issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor, any such certificate for shares shall set forth thereon the statements prescribed by Section 409 of the General Corporation Law.

Section 2. LOST OR DESTROYED CERTIFICATES FOR SHARES. The corporation may issue a new certificate for shares or for any other security in the place of any other certificate theretofore issued by it, which is alleged to have been lost, stolen or destroyed. As a condition to such issuance, the corporation may require any such owner of the allegedly lost, stolen or destroyed certificate or any such owner's legal representative to give the corporation a bond, or other adequate security, sufficient to indemnify it against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. SHARE TRANSFERS. Upon compliance with any provisions of the General Corporation Law and/or the Corporate Securities Law of 1968 which may restrict the transferability of shares, transfers of shares of the corporation shall be made only on the record of shareholders of the corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the corporation or with a transfer agent or a registrar, if any, and on surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes, if any, due thereon.

Section 4. RECORD DATE FOR SHAREHOLDERS. In order that the corporation may determine the shareholders entitled to notice of any meeting or to vote or be entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action, the Board of Directors may fix, in advance a record date, which shall not be more than sixty days or fewer than ten days prior to the date of such meeting or more than sixty days prior to any other action.

If the Board of Directors shall not have fixed a record date as aforesaid, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held; the record date for determining shareholders entitled to give consent to corporate action in writing without a meeting, when no prior action by the Board of Directors has been taken, shall be the day on which the first written consent is given; and the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto, or the sixtieth day prior to the day of such other action, whichever is later.

A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting unless the Board of Directors fixes a new record date for the adjourned meeting, but the Board of Directors shall fix a new record date if the meeting is adjourned for more than forty-five days from the date set for the original meeting.

Except as may be otherwise provided by the General Corporation Law, shareholders on the record date shall be entitled to notice and to vote or to receive any dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date.

Section 5. REPRESENTATION OF SHARES IN OTHER CORPORATIONS. Shares of other corporations standing in the name of this corporation may be voted or represented and all incidents thereto may be exercised on behalf of the corporation by the Chairman of the Board, the President or any Vice President or any other person authorized by resolution of the Board of Directors.

Section 6. MEANING OF CERTAIN TERMS. As used in these By-Laws in respect of the right to notice of a meeting of shareholders or a waiver thereof or to participate or vote thereat or to assent or consent or dissent in writing in lieu of a meeting, as the case may be, the term “share” or “shares” or “shareholder” or “shareholders” refers to an outstanding share or shares and to a holder or holders of record or outstanding shares when the corporation is authorized to issue only one class of shares, and said reference is also intended to include any outstanding share or shares and any holder or holders of record of outstanding shares of any class upon which or upon whom the Articles of Incorporation confer such rights where there are two or more classes or series of shares or upon which or upon whom the General Corporation Law confers such rights notwithstanding that the Articles of Incorporation may provide for more than one class or series of shares, one or more of which are limited or denied such rights thereunder.

Section 7. CLOSE CORPORATION CERTIFICATES. All certificates representing shares of this corporation, in the event it shall elect to become a close corporation, shall contain the legend required by Section 418 (c).

## ARTICLE V

### EFFECT OF SHAREHOLDERS’ AGREEMENT – CLOSE CORPORATION

Any Shareholders’ Agreement authorized by Section 300 (b) shall only be effective to modify the terms of these By-Laws if this corporation elects to become a close corporation with appropriate filing of or amendment to its Articles as required by Section 202 and shall terminate when this corporation ceases to be a close corporation. Such an agreement cannot waive or alter Sections 158 (defining close corporations), 202 (requirements of Articles of Incorporation), 500 and 501 relative to distributions, 111 (merger), 1201(e) (reorganization) or Chapters 15 (Records and Reports), 16 (Rights of Inspection), 18 (Involuntary Dissolution) or 22 (Crimes and Penalties). Any other provisions of the Code or these By-Laws may be altered or waived thereby, but to the extent they are not so altered or waived, these By-Laws shall be applicable.

ARTICLE VI  
CORPORATE CONTRACTS AND INSTRUMENTS – HOW EXECUTED

The Board of Directors, except as in the By-Laws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or agreement, or to pledge its credit, or to render it liable for any purposes or any amount, except as provided in Section 313 of the Corporations Code.

ARTICLE VII  
CONTROL OVER BY-LAWS

After the initial By-Laws of the corporation shall have been adopted by the incorporator or incorporators of the corporation, the By-Laws may be amended or repealed or new By-Laws may be adopted by the shareholders entitled to exercise a majority of the voting power or by the Board of Directors; provided, however, that the Board of Directors shall have no control over any By-Law which fixes or changes the authorized number of directors of the corporation; provided, further, that any control over the By-Laws herein vested in the Board of Directors shall be subject to the authority of the aforesaid shareholders to amend or repeal the By-Laws or to adopt new By-Laws; and provided further that any By-Law amendment or new By-Law which changes the minimum number of directors to fewer than five shall require authorization by the greater proportion of voting power of the shareholders as hereinbefore set forth.

ARTICLE VIII  
BOOKS AND RECORDS – STATUTORY AGENT

Section 1. RECORDS: STORAGE AND INSPECTION. The corporation shall keep at its principal executive office in the State of California, or, if its principal executive office is not in the State of California, the original or a copy of the By-Laws as amended to date, which shall be open to inspection by the shareholders at all reasonable times during office hours. If the principal executive office of the corporation is outside the State of California, and, if the corporation has no principal business office in the State of California, it shall upon request of any shareholder furnish a copy of the By-Laws as amended to date.

The corporation shall keep adequate and correct books and records of account and shall keep minutes of the proceedings of its shareholders, Board of Directors and committees, if any, of the Board of Directors. The corporation shall keep at its



principal executive office, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of shares held by each. Such minutes shall be in written form. Such other books and records shall be kept either in written form or in any other form capable of being converted into written form.

Section 2. RECORD OF PAYMENTS. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the corporation, shall be signed or endorsed by such person or persons and in such manner as shall be determined from time to time by resolution of the Board of Directors.

Section 3. ANNUAL REPORT. Whenever the corporation shall have fewer than one hundred shareholders, the Board of Directors shall not be required to cause to be sent to the shareholders of the corporation the annual report prescribed by Section 1501 of the General Corporation Law unless it shall determine that a useful purpose would be served by causing the same to be sent or unless the Department of Corporations, pursuant to the provisions of the Corporate Securities Law of 1968, shall direct the sending of the same.

Section 4. AGENT FOR SERVICE. The name of the agent for service of process within the State of California is Dennis Curley.

CERTIFICATE OF ADOPTION OF BY-LAWS

ADOPTION BY INCORPORATOR(S) OR FIRST DIRECTOR(S).

The undersigned person(s) appointed in the Articles of Incorporation to act as the Incorporator(s) or First Director(s) of the above-named corporation hereby adopt the same as the By-Laws of said corporation.

Executed this 1 day of March, 1989.

/s/ Dennis Curley

\_\_\_\_\_  
Name DENNIS CURLEY

THIS IS TO CERTIFY:

That I am the duly-elected, qualified and acting Secretary of the above-named corporation; that the foregoing By-Laws were adopted as the By-Laws of said corporation on the date set forth above by the person(s) appointed in the Articles of Incorporation to act as the Incorporator(s) or First Director(s) of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 1 day of March, 1989.

/s/ Alan Dolling

\_\_\_\_\_  
Secretary ALAN DOLLING

(SEAL)

CERTIFICATE BY SECRETARY OF ADOPTION BY SHAREHOLDERS' VOTE.

THIS IS TO CERTIFY:

That I am the duly-elected, qualified and acting Secretary of the above-named corporation and that the above and foregoing Code of By-Laws was submitted to the shareholders at their first meeting held on the date set forth in the By-Laws and recorded in the minutes thereof, was ratified by the vote of shareholders entitled to exercise the majority of the voting power of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand this 1 day of March, 1989.

/s/ Alan Dolling

\_\_\_\_\_  
Secretary ALAN DOLLING

**WRITTEN CONSENT  
OF  
THE SOLE STOCKHOLDER  
OF  
SOUTHERN CALIFORNIA FOAM, INC.**

**July 30, 2004**

The undersigned, being the sole stockholder of Southern California Foam, Inc., a California corporation (the "Company"), hereby, pursuant to Section 603(a) of the California Corporations Code, consents to, adopts, and approves the following resolutions and each and every action effected thereby:

Acceptance of Resignations

RESOLVED, that the director resignations attached hereto as Exhibit A are hereby accepted, effective as of the date set forth therein.

Amendment of By-Laws

RESOLVED, that Article II, Section 3 of the By-Laws of the Company be, and it, hereby is, deleted in its entirety and a new Article II, Section 3 be inserted in lieu thereof to read as set forth in Exhibit B attached hereto.

Election of Directors

RESOLVED, that Robert L. Caulk and Daniel J. Johnston are hereby elected to serve as members of the Board of Directors of the Company until the election of their qualified successors or their earlier resignation or removal.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Written Consent as of the date first above written.

UNITED PET GROUP, INC.

By: /s/ Daniel J. Johnston

Name: Daniel J. Johnston

Title: Vice President, Treasurer

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**EXHIBIT A**  
**DIRECTOR RESIGNATIONS**

**EXHIBIT B**  
**AMENDMENT TO BY-LAWS**

“ARTICLE II  
BOARD OF DIRECTORS

Section 3. QUALIFICATION AND NUMBER. A director need not be a shareholder of the corporation, a citizen of the United States, or a resident of the State of California. The authorized number of directors constituting the Board of Directors shall be no more than two (2). The number of directors may be changed from time to time by an amendment of these By-laws adopted by the shareholders. No decrease in the authorized number of directors shall have the effect of shortening the term of any incumbent director.”

**CERTIFICATE OF INCORPORATION  
OF  
SYLORR PLANT CORP.**

**ARTICLE ONE**

The name of the corporation is Sylorr Plant Corp.

**ARTICLE TWO**

The address of the corporation's registered office in the State of Delaware is 9 East Loockerman Street, in the City of Dover, County of Kent, 19901. The name of its registered agent at such address is National Registered Agents, Inc.

**ARTICLE THREE**

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

**ARTICLE FOUR**

The total number of shares of stock which the corporation has authority to issue is one thousand (1,000) shares of Common Stock, par value one cent (\$0.01) per share.

**ARTICLE FIVE**

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

**NAME AND MAILING ADDRESS**

Thaddine G. Gomez  
200 East Randolph Drive  
Suite 5400  
Chicago, Illinois 60601

**ARTICLE SIX**

The corporation is to have perpetual existence.

**ARTICLE SEVEN**

In furtherance and not in limitation of the powers conferred by statute, the board of directors of the corporation is expressly authorized to make, alter or repeal the by-laws of the corporation.

**ARTICLE EIGHT**

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

**ARTICLE NINE**

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

**ARTICLE TEN**

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

**ARTICLE ELEVEN**

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

I, THE UNDERSIGNED, being the sole incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts stated herein are true, and accordingly have hereunto set my hand on the 18<sup>th</sup> day of September, 2002.

/s/ Thaddine G. Gomez

\_\_\_\_\_  
Thaddine G. Gomez  
Sole Incorporator



CERTIFICATE OF CHANGE OF LOCATION OF REGISTERED OFFICE  
AND OF REGISTERED AGENT  
OF  
**SYLORR PLANT CORP.**

It is hereby certified that:

1. The name of the corporation (hereinafter called the "corporation") is:

**SYLORR PLANT CORP.**

2. The registered office of the corporation within the State of Delaware is hereby changed to 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle.

3. The registered agent of the corporation within the State of Delaware is hereby changed to Corporation Service Company, the business office of which is identical with the registered office of the corporation as hereby changed.

4. The corporation has authorized the changes hereinbefore set forth by resolution of its Board of Directors.

/s/ Louis N. Laderman

\_\_\_\_\_  
Name: Louis N. Laderman  
Title: Secretary

**BY-LAWS****OF****SYLORR PLANT CORP.**

A Delaware corporation

*(Adopted as of September 18, 2002)***ARTICLE I****OFFICES**

**Section 1. Registered Office.** The registered office of the corporation in the State of Delaware shall be located at Delaware is 9 East Loockerman Street, in the City of Dover, County of Kent, 19901. The name of the corporation's registered agent at such address shall be National Registered Agents, Inc. The registered office and/or registered agent of the corporation may be changed from time to time by action of the board of directors.

**Section 2. Other Offices.** The corporation may also have offices at such other places, both within and without the State of Delaware, as the board of directors may from time to time determine or the business of the corporation may require.

**ARTICLE II****MEETINGS OF STOCKHOLDERS**

**Section 1. Place and Time of Meetings.** An annual meeting of the stockholders shall be held each year within one hundred twenty (120) days after the close of the immediately preceding fiscal year of the corporation for the purpose of electing directors and conducting such other proper business as may come before the meeting. The date, time and place of the annual meeting shall be determined by the president of the corporation; provided, that if the president does not act, the board of directors shall determine the date, time and place of such meeting.

**Section 2. Special Meetings.** Special meetings of stockholders may be called for any purpose and may be held at such time and place, within or without the State of Delaware, as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Such meetings may be called at any time by the board of directors or the president and shall be called by the president upon the written request of holders of shares entitled to cast not less than a majority of the votes at the meeting, such written request shall state the purpose or purposes of the meeting and shall be delivered to the president.

**Section 3. Place of Meetings.** The board of directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting called by the board of directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the corporation.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. All such notices shall be delivered, either personally or by mail, by or at the direction of the board of directors, the president or the secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

Section 5. Stockholders List. The officer having charge of the stock ledger of the corporation shall make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 6. Quorum. The holders of a majority of the outstanding shares of capital stock, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by statute or by the certificate of incorporation. If a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. Vote Required. When a quorum is present, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the

question is one upon which by express provisions of an applicable law or of the certificate of incorporation a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 9. Voting Rights. Except as otherwise provided by the General Corporation Law of the State of Delaware or by the certificate of incorporation of the corporation or any amendments thereto and subject to Section 3 of Article VI hereof, every stockholder shall at every meeting of the stockholders be entitled to one (1) vote in person or by proxy for each share of common stock held by such stockholder.

Section 10. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote, except that when such proxy is coupled with an interest and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the secretary or a person designated by the secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

Section 11. Action by Written Consent. Unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the state of Delaware, or the corporation's principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested provided, however, that no consent or consents delivered by certified or registered mail shall be deemed delivered until such consent or consents are actually received at the registered office. All consents properly delivered in accordance with this section shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the

corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

ARTICLE III  
DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by or under the direction of the board of directors.

Section 2. Number, Election and Term of Office. The number of directors which shall constitute the first board shall be two (2). Thereafter, the number of directors shall be established from time to time by resolution of the board. The directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors. The directors shall be elected in this manner at the annual meeting of the stockholders, except as provided in Section 4 of this Article III. Each director elected shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3. Removal and Resignation. Any director or the entire board of directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the corporation's certificate of incorporation, the provisions of this section shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole. Any director may resign at any time upon written notice to the corporation.

Section 4. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as herein provided.

Section 5. Annual Meetings. The annual meeting of each newly elected board of directors shall be held without other notice than this by-law immediately after, and at the same place as, the annual meeting of stockholders.

Section 6. Other Meetings and Notice. Regular meetings, other than the annual meeting, of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by resolution of the board. Special meetings of the board of directors may be called by or at the request of the president on at least twenty-four (24) hours notice to each director, either personally, by telephone, by mail, or by telegraph.

Section 7. Quorum, Required Vote and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the board of directors. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 8. Committees. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation, which to the extent provided in such resolution or these by-laws shall have and may exercise the powers of the board of directors in the management and affairs of the corporation except as otherwise limited by law. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors. Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

Section 9. Committee Rules. Each committee of the board of directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the board of directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the board of directors as provided in Section 8 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in place of any such absent or disqualified member.

Section 10. Communications Equipment. Members of the board of directors or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute presence in person at the meeting.

Section 11. Waiver of Notice and Presumption of Assent. Any member of the board of directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such

member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

Section 12. Action by Written Consent. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

#### ARTICLE IV OFFICERS

Section 1. Number. The officers of the corporation shall be elected by the board of directors and shall consist of a president, one or more vice-presidents, secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary or desirable by the board of directors. Any number of offices may be held by the same person. In its discretion, the board of directors may choose not to fill any office for any period as it may deem advisable, except that the offices of president and secretary shall be filled as expeditiously as possible.

Section 2. Election and Term of Office. The officers of the corporation shall be elected annually by the board of directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as conveniently may be. The president shall be elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of stockholders or as soon thereafter as conveniently may be. The president shall appoint other officers to serve for such terms as he or she deems desirable. Vacancies may be filled or new offices created and filled at any meeting of the board of directors. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3. Removal. Any officer or agent elected by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term by the board of directors then in office.

Section 5. Compensation. Compensation of all officers shall be fixed by the board of directors, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation.

Section 6. The President. The president shall be the chief executive officer of the corporation; shall preside at all meetings of the stockholders and board of directors at which he is present; subject to the powers of the board of directors, shall have general charge of the business, affairs and property of the corporation, and control over its officers, agents and employees; and shall see that all orders and resolutions of the board of directors are carried into effect. The president shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation. The president shall have such other powers and perform such other duties as may be prescribed by the board of directors or as may be provided in these by-laws.

Section 7. Vice-presidents. The vice-president, or if there shall be more than one, the vice-presidents in the order determined by the board of directors or by the president, shall, in the absence or disability of the president, act with all of the powers and be subject to all the restrictions of the president. The vice-presidents shall also perform such other duties and have such other powers as the board of directors, the president or these by-laws may, from time to time, prescribe.

Section 8. The Secretary and Assistant Secretaries. The secretary shall attend all meetings of the board of directors, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose. Under the president's supervision, the secretary shall give, or cause to be given, all notices required to be given by these by-laws or by law; shall have such powers and perform such duties as the board of directors, the president or these by-laws may, from time to time, prescribe; and shall have custody of the corporate seal of the corporation. The secretary, or an assistant secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors, the president, or secretary may, from time to time, prescribe.

Section 9. The Treasurer and Assistant Treasurer. The treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; shall deposit all monies and other valuable effects in the name and to the credit of the corporation as may be ordered by the board of directors; shall cause the funds of the corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the president and the board of directors, at its regular meeting or when the board of directors so requires, an account of the corporation; shall have such powers and perform such duties as the board of directors,



the president or these by-laws may, from time to time, prescribe. If required by the board of directors, the treasurer shall give the corporation a bond (which shall be rendered every six (6) years) in such sums and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of the office of treasurer and for the restoration to the corporation, in case of death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in the possession or under the control of the treasurer belonging to the corporation. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors, shall in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. The assistant treasurers shall perform such other duties and have such other powers as the board of directors, the president or treasurer may, from time to time, prescribe.

Section 10. Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these by-laws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the board of directors.

Section 11. Absence or Disability of Officers. In the case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the board of directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

ARTICLE V  
INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Section 1. Nature of Indemnity. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he, or a person of whom he is the legal representative, is or was a director or officer, of the corporation or is or was serving at the request of the corporation as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the corporation to the fullest extent which it is empowered to do so unless prohibited from doing so by the General Corporation Law of the State of Delaware, 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 said law permitted the corporation to provide prior to such amendment) against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding) and such indemnification shall inure to the benefit of his heirs, executors and administrators; provided, however, that, except as provided in Section 2 hereof, the corporation shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the corporation. The right to indemnification conferred in this Article V shall be a contract right and, subject to Sections 2 and 5 hereof, shall include the right to be paid by

the corporation the expenses incurred in defending any such proceeding in advance of its final disposition. The corporation may, by action of its board of directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

Section 2. Procedure for Indemnification of Directors and Officers. Any indemnification of a director or officer of the corporation under Section 1 of this Article V or advance of expenses under Section 5 of this Article V shall be made promptly, and in any event within thirty (30) days, upon the written request of the director or officer. If a determination by the corporation that the director or officer is entitled to indemnification pursuant to this Article V is required, and the corporation fails to respond within sixty (60) days to a written request for indemnity, the corporation shall be deemed to have approved the request. If the corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty (30) days, the right to indemnification or advances as granted by this Article V shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the corporation. Neither the failure of the corporation (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the corporation (including its board of directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 3. Article Not Exclusive. The rights to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article V shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

Section 4. Insurance. The corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the corporation or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the corporation would have the power to indemnify such person against such liability under this Article V.

Section 5. Expenses. Expenses incurred by any person described in Section 1 of this Article V in defending a proceeding shall be paid by the corporation in advance of such proceeding's final disposition unless otherwise determined by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the corporation. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

Section 6. Employees and Agents. Persons who are not covered by the foregoing provisions of this Article V and who are or were employees or agents of the corporation, or who are or were serving at the request of the corporation as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the board of directors.

Section 7. Contract Rights. The provisions of this Article V shall be deemed to be a contract right between the corporation and each director or officer who serves in any such capacity at any time while this Article V and the relevant provisions of the General Corporation Law of the State of Delaware or other applicable law are in effect, and any repeal or modification of this Article V or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

Section 8. Merger or Consolidation. For purposes of this Article V, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article V with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

## ARTICLE VI CERTIFICATES OF STOCK

Section 1. Form. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by the president or a vice-president and the secretary or an assistant secretary of the corporation, certifying the number of shares of a specific class or series owned by such holder in the corporation. If such a certificate is countersigned (1) by a transfer agent or an assistant transfer agent

other than the corporation or its employee or (2) by a registrar, other than the corporation or its employee, the signature of any such president, vice-president, secretary, or assistant secretary may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization, and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates, and record the transaction on its books. The board of directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar, or both in connection with the transfer of any class or series of securities of the corporation.

Section 2. Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his or her legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Fixing a Record Date for Stockholder Meetings. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

Section 4. Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

Section 5. Fixing a Record Date for Other Purposes. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

Section 6. Registered Stockholders. Prior to the surrender to the corporation of the certificate or certificates for a share or shares of stock with a request to record the transfer of such share or shares, the corporation may treat the registered owner as the person entitled to receive dividends, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner. The corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

Section 7. Subscriptions for Stock. Unless otherwise provided for in the subscription agreement, subscriptions for shares shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation.

ARTICLE VII  
GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the board of directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation, and in such manner as shall be determined by resolution of the board of directors or a duly authorized committee thereof.

Section 3. Contracts. The board of directors may authorize any officer or officers, or any agent or agents, of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Section 5. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors.

Section 6. Corporate Seal. The board of directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other corporation held by the corporation shall be voted by the president, unless the board of directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

Section 8. Inspection of Books and Records. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in the State of Delaware or at its principal place of business.

Section 9. Section Headings. Section headings in these by-laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Inconsistent Provisions. In the event that any provision of these by-laws is or becomes inconsistent with any provision of the certificate of incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these by-laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

#### ARTICLE VIII AMENDMENTS

These by-laws may be amended, altered, or repealed and new by-laws adopted at any meeting of the board of directors by a majority vote. The fact that the power to adopt, amend, alter, or repeal the by-laws has been conferred upon the board of directors shall not divest the stockholders of the same powers.

**CERTIFICATE OF INCORPORATION**

**OF**

**TETRA HOLDING (US), INC.**

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I, THE UNDERSIGNED, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, as from time to time amended, do hereby certify as follows:

Article I

The name of the Corporation is Tetra Holding (US), Inc. (the "Corporation").

Article II

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

Article III

The purpose of the Corporation is to engage, directly or indirectly, in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as from time to time in effect.

Article IV

The total authorized capital stock of the Corporation shall be 1,000 shares of common stock, par value \$0.01 per share.

Article V

The name and address of the incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
Jonathan Grant	c/o White & Case LLP 1155 Avenue of the Americas New York, NY 10036



Article VI

The powers of the incorporator are to terminate upon the filing of this Certificate of Incorporation.

Article VII

The name and mailing address of each person who is to serve as a director until the first annual meeting of the stockholders or until their successors and are elected and qualify, are as follows:

<u>Name</u>	<u>Mailing Address</u>
Peter Sewing	Wendelinsweg 16 61476 Kronberg Germany
Newton Aguiar	155 Castelnau London SW13 9EW United Kingdom

Article VIII

The business of the Corporation shall be managed under the direction of the Board of Directors except as otherwise provided by applicable law. The number of Directors of the Corporation shall be fixed from time to time by, or in the manner provided in, the By-Laws. Election of Directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

Article IX

The Board of Directors may make, alter or repeal the By-Laws of the Corporation except as otherwise provided in any By-Law adopted by the Corporation's stockholders.

Article X

The directors of the Corporation shall be protected from personal liability, through indemnification or otherwise, to the fullest extent permitted under the General Corporation Law of the State of Delaware as from time to time in effect.

1. A director of the Corporation shall under no circumstances have any personal liability to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director except for those breaches and acts or omissions with respect to which the General Corporation Law of the State of Delaware, as from time to time amended, expressly provides that this provision shall not eliminate or limit

such personal liability of directors. Neither the modification or repeal of the foregoing sentence nor any amendment to said General Corporation Law that does not have retroactive application shall limit the right of directors hereunder to exculpation from personal liability for any act or omission occurring prior to such amendment, modification or repeal.

2. The Corporation shall indemnify each director and officer of the Corporation to the fullest extent permitted by applicable law, except as may be otherwise provided in the Corporation's By-Laws, and in furtherance hereof the Board of Directors is expressly authorized to amend the Corporation's By-Laws from time to time to give full effect hereto, notwithstanding possible self-interest of the directors in the action being taken. Neither the modification or repeal of the foregoing sentence nor any amendment to the General Corporation Law of the State of Delaware that does not have retroactive application shall limit the right of directors and officers to indemnification hereunder with respect to any act or omission occurring prior to such modification, amendment or repeal.

#### Article XI

Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws of the Corporation may provide. The books of the Corporation may be kept (subject to any provisions contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

#### Article XII

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

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of November, 2002.

/s/ Jonathan Grant  
Jonathan Grant  
Incorporator

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**BY-LAWS**  
**OF**  
**TETRA HOLDING (US), INC.**

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BY-LAWS  
OF  
TETRA HOLDING (US), INC.  
ARTICLE I  
STOCKHOLDERS

Section 1. Annual Meeting. The annual meeting of the stockholders of the Corporation shall be held either within or without the State of Delaware, at such place as the Board of Directors may designate in the call or in a waiver of notice thereof, at such date and time as shall be designated from time to time by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting.

Section 2. Special Meetings. Special Meetings of the stockholders may be called by the Board of Directors or by the Chief Executive Officer, and shall be called by the Chief Executive Officer or by the Secretary upon the written request of the holders of record of at least fifty per cent (50%) of the shares of stock of the Corporation, issued and outstanding and entitled to vote, at such times and at such place either within or without the State of Delaware as may be stated in the call or in a waiver of notice thereof.

Section 3. Notice of Meetings. Notice of the time, place and purpose of every meeting of stockholders shall be delivered personally or mailed not less than ten days nor more than sixty days previous thereto to each stockholder of record entitled to vote, at such stockholder's post office address appearing upon the records of the Corporation or at such other address as shall be furnished in writing by him or her to the Corporation for such purpose. Such further notice shall be given as may be required by law or by these By-Laws. Any meeting may be held without notice if all stockholders entitled to vote are present in person or by proxy, or if notice is waived in writing, either before or after the meeting, by those not present.

Section 4. Quorum. The holders of record of at least a majority of the shares of the stock of the Corporation, issued and outstanding and entitled to vote, present in person or by proxy, shall, except as otherwise provided by law or by these By-Laws, constitute a quorum at all meetings of the stockholders; if there be no such quorum, the holders of a majority of such shares so present or represented may adjourn the meeting from time to time until a quorum shall have been obtained.

Section 5. Organization of Meetings. Meetings of the stockholders shall be presided over by the Chairman of the Board, if there be one, or if the Chairman of the Board is not present, by the Chief Executive Officer, or if the Chief Executive Officer is not present, by a chairman to be chosen at the meeting. The Secretary of the Corporation,

or in the Secretary of the Corporation's absence, an Assistant Secretary, shall act as Secretary of the meeting, if present.

Section 6. Voting. At each meeting of stockholders, except as otherwise provided by statute or the Certificate of Incorporation, every holder of record of stock entitled to vote shall be entitled to one vote in person or by proxy for each share of such stock standing in his or her name on the records of the Corporation. Elections of directors shall be determined by a plurality of the votes cast and, except as otherwise provided by statute, the Certificate of Incorporation, or these By-Laws, all other action shall be determined by a majority of the votes cast at such meeting. Each proxy to vote shall be in writing and signed by the stockholder or by such stockholder's duly authorized attorney.

At all elections of directors, the voting shall be by ballot or in such other manner as may be determined by the stockholders present in person or by proxy entitled to vote at such election. With respect to any other matter presented to the stockholders for their consideration at a meeting, any stockholder entitled to vote may, on any question, demand a vote by ballot.

A complete list of the stockholders entitled to vote at each such meeting, arranged in alphabetical order, with the address of each, and the number of shares registered in the name of each stockholder, shall be prepared by the Secretary and shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 7. Inspectors of Election. The Board of Directors in advance of any meeting of stockholders may appoint one or more Inspectors of Election to act at the meeting or any adjournment thereof. If Inspectors of Election are not so appointed, the chairman of the meeting may, and on the request of any stockholder entitled to vote shall, appoint one or more Inspectors of Election. Each Inspector of Election, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of Inspector of Election at such meeting with strict impartiality and according to the best of his or her ability. If appointed, Inspectors of Election shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

Section 8. Action by Consent. Any action required or permitted to be taken at any meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if, prior to such action, a written consent or consents thereto, setting forth such action, is signed by the holders of record of shares of the stock of the Corporation, issued and outstanding and entitled to vote thereon, having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.



ARTICLE II

DIRECTORS

Section 1. Number, Quorum, Term, Vacancies, Removal. The Board of Directors of the Corporation shall consist of no less than one (1) person. The number of directors shall initially be two (2) and thereafter may be changed by a resolution passed by a majority of the whole Board of Directors or by a vote of the holders of record of at least a majority of the shares of stock of the Corporation, issued and outstanding and entitled to vote.

A majority of the members of the Board of Directors then holding office (but not less than one-third of the total number of directors nor less than two (2) directors, unless the number of directors then in office shall be one (1), in which case one (1) director) shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum shall have been obtained.

Directors shall hold office until the next annual election and until their successors shall have been elected and shall have qualified, unless sooner displaced.

Whenever any vacancy shall have occurred in the Board of Directors, by reason of death, resignation, or otherwise, other than removal of a director with or without cause by a vote of the stockholders, it shall be filled by a majority of the remaining directors, though less than a quorum (except as otherwise provided by applicable law), or by the stockholders, and the person so chosen shall hold office until the next annual election and until a successor is duly elected and has qualified.

Any one or more of the directors of the Corporation may be removed either with or without cause at any time by a vote of the holders of record of at least a majority of the shares of stock of the Corporation, issued and outstanding and entitled to vote, and thereupon the term of the director or directors who shall have been so removed shall forthwith terminate and there shall be a vacancy or vacancies in the Board of Directors, to be filled by a vote of the stockholders as provided in these By-Laws.

Section 2. Meetings, Notice. Meetings of the Board of Directors shall be held at such place either within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the call or in a waiver of notice thereof. Regular meetings of the Board of Directors shall be held at such times as may from time to time be fixed by resolution of the Board of Directors, and special meetings may be held at any time upon the call of two directors, the Chairman of the Board, if one be elected, or the Chief Executive Officer, by oral, telegraphic, or written notice, duly served on or sent or mailed to each director not less than two days before such meeting. A meeting of the Board of Directors may be held without notice immediately after the annual meeting of stockholders at the same place at which such meeting was held. Notice need not be given of regular meetings of the Board of Directors. Any meeting may be held without notice, if all directors are present, or if notice is waived in writing, either before or after the meeting, by those not present.

Section 3. Committees. The Board of Directors may, in its discretion, by resolution passed by a majority of the whole Board of Directors, designate from among its members one or more committees which shall consist of one (1) or more directors. The Board of Directors may designate one or more directors as alternate members of any such committee, who may replace any absent or disqualified member at any meeting of the committee. Such committees shall have and may exercise such powers as shall be conferred or authorized by the resolution appointing them. A majority of any such committee may determine its action and fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. The Board of Directors shall have power at any time to change the membership of any such committee, to fill vacancies in it, or to dissolve it.

Section 4. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting, if prior to such action a written consent or consents thereto is signed by all members of the Board of Directors, or of such committee as the case may be, and such written consent or consents is filed with the minutes of proceedings of the Board of Directors or committee.

Section 5. Compensation. The Board of Directors may determine, from time to time, the amount of compensation which shall be paid to its members. The Board of Directors shall also have power, in its discretion, to allow a fixed sum and expenses for attendance at each regular or special meeting of the Board of Directors, or of any committee of the Board of Directors. In addition, the Board of Directors shall also have power, in its discretion, to provide for and pay to directors rendering services to the Corporation not ordinarily rendered by directors, as such, special compensation appropriate to the value of such services, as determined by the Board of Directors from time to time.

### ARTICLE III

#### OFFICERS

Section 1. Titles and Election. The officers of the Corporation, who shall be chosen by the Board of Directors at its first meeting after each annual meeting of stockholders, shall be a Chief Executive Officer, a Treasurer and a Secretary. The Board of Directors from time to time may elect a Chairman of the Board, a President and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and such other officers and agents as it shall deem necessary, and may define their powers and duties. Any number of offices may be held by the same person.

Section 2. Terms of Office. Officers shall hold office until their successors are chosen and qualify.

Section 3. Removal. Any officer may be removed, either with or without cause, at any time, by the affirmative vote of a majority of the Board of Directors.

Section 4. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors or to the Secretary. Such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. If the office of any officer or agent becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Board of Directors may choose a successor, who shall hold office for the unexpired term in respect of which such vacancy occurred.

Section 6. Chairman of the Board. The Chairman of the Board of Directors, if one be elected, shall preside at all meetings of the Board of Directors and of the stockholders, and the Chairman shall have and perform such other duties as from time to time may be assigned to the Chairman by the Board of Directors.

Section 7. Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and, in the absence of the Chairman, shall preside at all meetings of the Board of Directors, and of the stockholders. The Chief Executive Officer shall exercise the powers and perform the duties usual to the chief executive officer and, subject to the control of the Board of Directors, shall have general management and control of the affairs and business of the Corporation; the Chief Executive Officer shall appoint and discharge employees and agents of the Corporation (other than officers elected by the Board of Directors) and fix their compensation; and the Chief Executive Officer shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chief Executive Officer shall have the power to execute bonds, mortgages and other contracts, agreements and instruments of the Corporation, and shall do and perform such other duties as from time to time may be assigned to the Chief Executive Officer by the Board of Directors.

Section 8. President and Vice Presidents. If chosen, the President and Vice Presidents, in the order of their seniority, shall, in the absence or disability of the Chief Executive Officer, exercise all of the powers and duties of the Chief Executive Officer. Such President and Vice Presidents shall have the power to execute bonds, notes, mortgages and other contracts, agreements and instruments of the Corporation, and shall do and perform such other duties incident to the office of President or Vice President, as the case may be, and as the Board of Directors, or the Chief Executive Officer shall direct.

Section 9. Secretary. The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of proceedings in a book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors. The Secretary shall affix the corporate seal to any instrument requiring it, and when so affixed, it shall be attested by the signature of the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer who may affix the seal to any such instrument in the event of the absence or disability of the Secretary. The Secretary shall have and be the custodian of the stock records and all other books, records and papers of the Corporation

(other than financial) and shall see that all books, reports, statements, certificates and other documents and records required by law are properly kept and filed.

Section 10. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the Corporation, in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the directors whenever they may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation.

Section 11. Duties of Officers May Be Delegated. In case of the absence or disability of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate, for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any director.

#### ARTICLE IV

##### INDEMNIFICATION

Section 1. Actions by Others. The Corporation, to the fullest extent permitted by applicable law as it currently exists or may hereafter be amended, (a) shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director or an officer of the Corporation and (b) except as otherwise required by Section 3 of this Article IV, may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, agent of or participant in another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts actually and reasonably incurred by such person in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Actions by or in the Right of the Corporation. The Corporation, to the fullest extent permitted by applicable law as it currently exists or may hereafter be amended, shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, agent of or participant in another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Section 3. Successful Defense. To the extent that a person who is or was a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or Section 2 of this Article IV, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 4. Specific Authorization. Any indemnification under Section 1 or Section 2 of this Article IV (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in said Sections 1 and 2. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the stockholders.

Section 5. Advance of Expenses. Expenses incurred by any person who may have a right of indemnification under this Article in defending a civil or criminal action, suit or proceeding may, to the fullest extent not prohibited by applicable law, be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation pursuant to this Article IV.

Section 6. Right of Indemnity Not Exclusive. The indemnification provided by this Article IV shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of or participant in another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article IV, Section 145 of the General Corporation Law of the State of Delaware or otherwise.

Section 8. Invalidity of Any Provisions of This Article. The invalidity or unenforceability of any provision of this Article IV shall not affect the validity or enforceability of the remaining provisions of this Article IV.

## ARTICLE V

### CAPITAL STOCK

Section 1. Certificates. The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the Board of Directors may from time to time prescribe. The certificates of stock shall be signed by the Chief Executive Officer or the President or a Vice President and by the Secretary or the Treasurer or an Assistant Secretary or an Assistant Treasurer, and countersigned and registered in such manner, if any, as the Board of Directors may by resolution prescribe. Where any such certificate is countersigned by a transfer agent other than the Corporation or its employee, or registered by a registrar other than the Corporation or its employee, the signature of any such officer may be a facsimile signature. In case any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used on, any such certificate or certificates shall cease to be such officer or officers of the Corporation, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers of the Corporation.

Section 2. Transfer. The shares of stock of the Corporation shall be transferred only upon the books of the Corporation by the holder thereof in person or by his or her attorney, upon surrender for cancellation of certificates for the same number of

shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require.

Section 3. Record Dates. The Board of Directors may fix in advance a date, not less than ten nor more than sixty days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the distribution or allotment of any rights, or the date when any change, conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, or entitled to receive payment of any such dividend, or to receive any distribution or allotment of such rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, and in such case only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, or to receive payment of such dividend, or to receive such distribution or allotment or rights or to exercise such rights, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

Section 4. Lost Certificates. In the event that any certificate of stock is lost, stolen, destroyed or mutilated, the Board of Directors may authorize the issuance of a new certificate of the same tenor and for the same number of shares in lieu thereof. The Board of Directors may in its discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner to make an affidavit or affirmation setting forth such facts as to the loss, destruction or mutilation as it deems necessary, and to give the Corporation a bond in such reasonable sum as it directs to indemnify the Corporation.

#### ARTICLE VI

##### CHECKS, NOTES, ETC.

Section 1. Checks, Notes, Etc. All checks and drafts on the Corporation's bank accounts and all bills of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, may be signed by the Chief Executive Officer, the President any Vice President or the Treasurer or such other officer or officers, agent or agents, in each case as shall be thereunto authorized from time to time by the Board of Directors.

#### ARTICLE VII

##### MISCELLANEOUS PROVISIONS

Section 1. Offices. The registered office of the Corporation shall be located at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801, in the State of Delaware and The Corporation Trust Company shall be the registered agent of this Corporation in charge thereof. The Corporation may have other offices either within or without the State of Delaware at such places as shall be

determined from time to time by the Board of Directors or the business of the Corporation may require.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

Section 3. Corporate Seal. The seal of the Corporation shall be circular in form and contain the name of the Corporation, and the year and state of its incorporation. Such seal may be altered from time to time at the discretion of the Board of Directors.

Section 4. Books. There shall be kept at such office of the Corporation as the Board of Directors shall determine, within or without the State of Delaware, correct books and records of account of all its business and transactions, minutes of the proceedings of its stockholders, Board of Directors and committees, and the stock book, containing the names and addresses of the stockholders, the number of shares held by them, respectively, and the dates when they respectively became the owners of record thereof, and in which the transfer of stock shall be registered, and such other books and records as the Board of Directors may from time to time determine.

Section 5. Voting of Stock. Unless otherwise specifically authorized by the Board of Directors, all stock owned by the Corporation, other than stock of the Corporation, shall be voted, in person or by proxy, by the Chief Executive Officer, the President or any Vice President of the Corporation on behalf of the Corporation.

## ARTICLE VIII

### AMENDMENTS

Section 1. Amendments. The vote of the holders of at least a majority of the shares of stock of the Corporation, issued and outstanding and entitled to vote, shall be necessary at any meeting of stockholders to amend or repeal these By-Laws or to adopt new by-laws. These By-Laws may also be amended or repealed, or new by-laws adopted, at any meeting of the Board of Directors by the vote of at least a majority of the entire Board of Directors; provided that any by-law adopted by the Board of Directors may be amended or repealed by the stockholders in the manner set forth above.

Any proposal to amend or repeal these By-Laws or to adopt new by-laws shall be stated in the notice of the meeting of the Board of Directors or the stockholders, or in the waiver of notice thereof, as the case may be, unless all of the directors or the holders of record of all of the shares of stock of the Corporation, issued and outstanding and entitled to vote, are present at such meeting.



**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
UNITED INDUSTRIES CORPORATION**

FIRST: The name of the corporation is UNITED INDUSTRIES CORPORATION.

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

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

FOURTH: 4.1 Capital Structure. The total number of shares of stock which the corporation shall have authority to issue is Three Thousand (3,000) shares of common stock having a par value of \$0.01 per share (the "Common Stock").

4.2 Common Stock. The Common Stock (a) shall be one and the same class, (b) shall have full and unlimited voting rights (with each share having one vote on each matter submitted to stockholders for vote), and (c) shall have equal rights of participation in dividends and distributions and be entitled to receive the net assets of the corporation ratably upon dissolution.

4.3 No Pre-emptive Rights. No holders of shares of the corporation of any class or series shall be entitled as a matter of right to any pre-emptive right to subscribe for or purchase any shares of any class or series of stock of the corporation, whether now or hereafter authorized, any options or rights to purchase any such shares, or any bonds, debentures or other securities of the corporation, whether or not convertible into or carrying an option to purchase any such shares.

FIFTH: Election of directors need not be by ballot.

SIXTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the board of directors is expressly authorized to adopt, amend or repeal the bylaws of the corporation.

SEVENTH: A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under §174 of the Delaware General Corporation Law, or (d) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after the date of this certificate of incorporation to further eliminate or limit the personal liability of directors, then the liability of a director of the

corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Any repeal or modification of this Article by the stockholders of the corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

EIGHTH: The corporation reserves the right to amend and repeal any provision contained in the certificate of incorporation in the manner prescribed by the Delaware General Corporation Law. All rights herein conferred are granted subject to this reservation.

\* \* \* \* \*

**CERTIFICATE OF MERGER MERGING**

**LINDBERGH CORPORATION**  
a Delaware corporation

**INTO**

**UNITED INDUSTRIES CORPORATION**  
a Delaware corporation

**UNDER SECTION 251 OF THE GENERAL CORPORATION LAW  
OF THE STATE OF DELAWARE**

Pursuant to Section 251(c) of the General Corporation Law of the State of Delaware (the "DGCL"), United Industries Corporation, a Delaware corporation formed and existing under and by virtue of the DGCL, hereby certifies as follows:

**FIRST:** The name and state of incorporation of each of the constituent corporations (the "Constituent Corporations") to the merger are as follows:

<u>Name</u>	<u>Jurisdiction</u>
Lindbergh Corporation ("Lindbergh")	Delaware
United Industries Corporation (the "Company")	Delaware

**SECOND:** An Agreement and Plan of Merger, dated January 3, 2005 (the "Merger Agreement"), providing for the merger of Lindbergh with and into the Company has been approved, adopted, certified, executed and acknowledged by Lindbergh and the Company in accordance with the requirements of Section 251 of the DGCL. The holders of a majority of the outstanding shares of each class of capital stock of the Company entitled to vote thereon have adopted the Merger Agreement by written consent dated January 3, 2005. The holders of all of the outstanding shares of the sole class of capital stock of Lindbergh have adopted the Merger Agreement by written consent dated January 3, 2005.

**THIRD:** The name of the surviving corporation shall be "United Industries Corporation" (the "Surviving Corporation").

**FOURTH:** The Certificate of Incorporation of the Surviving Corporation is hereby amended and restated in its entirety as shown on Exhibit A attached hereto.

**FIFTH:** An executed copy of the Merger Agreement is on file at the office of the Surviving Corporation located at 2150 Schuetz Road, St. Louis, Missouri 63146.

**SIXTH:** A copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any Constituent Corporation.

**SEVENTH:** The merger of Lindbergh with and into the Company shall be effective upon the filing of this Certificate of Merger in accordance with the provisions of Sections 103 and 251(c) of the DGCL.

[End of Text]

IN WITNESS WHEREOF, United Industries Corporation has caused this Certificate of Merger to be signed by its duly authorized officer on this 7th day of February, 2005.

**UNITED INDUSTRIES CORPORATION**

By: /s/ Robert L. Caulk

Name: Robert L. Caulk

Title: Chairman and Chief Executive Officer

**BYLAWS**  
**OF**  
**LINDBERGH CORPORATION**  
(a Delaware Corporation)

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**BYLAWS**  
**OF**  
**LINDBERGH CORPORATION**  
(A Delaware Corporation)

**ARTICLE 1: DEFINITIONS**

1.1 Definitions.

The following terms used in the Bylaws have the meanings set forth below:

- (a) "Certificate of Incorporation" means the certificate of incorporation of the Corporation as amended from time to time.
- (b) "Board" means the Board of Directors of the Corporation.
- (c) "Bylaws" means these bylaws as amended or restated from time to time.
- (d) "Corporation" means the Delaware corporation named LINDBERGH CORPORATION.
- (e) "DGCL" refers to the General Corporation Law of the State of Delaware or any successor law of the State of Delaware, and a reference to a particular section of the DGCL is a reference to successor sections of such law or successor law.
- (f) "Section" means a section of the Bylaws.
- (g) "Stockholders" means the stockholders of the Corporation.

For purposes of the Bylaws: (i) titles and captions of or in, and the table of contents of, the Bylaws are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of the Bylaws or the intent of any of their provisions; and (ii) "including" and other words or phrases of inclusion, if any, shall not be construed as terms of limitation, so that references to "included" matters shall be regarded as non-exclusive, non-characterizing illustrations.

**ARTICLE 2: STOCK CERTIFICATES**

2.1 Stock Certificates. Stock certificates shall be issued in consecutive order and shall be numbered in the order in which they are issued. They shall be signed by the Chairman of the Board, if any, the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary (any of which signatures may be a facsimile), and the seal of the Corporation or a facsimile of it shall be affixed to the stock certificates.



2.2 List of Stockholders. The Corporation shall maintain an alphabetical record of the names and addresses of its Stockholders and the number of shares of stock held by each, which shall be maintained and made available in accordance with the DGCL.

2.3 Transfers of Stock. Transfers of stock of the Corporation shall be made in the stock records of the Corporation upon surrender of the certificate for such stock signed by the person in whose name the certificate is registered or on his or her behalf by a person legally authorized to so sign (or accompanied by a separate stock transfer power so signed) and otherwise in accordance with and subject to the applicable provisions of the Uniform Commercial Code as in effect in the State of Delaware, and subject to such other reasonable and lawful conditions and requirements as may be imposed by the Corporation.

2.4 Lost Certificates. The Corporation may issue a new stock certificate in place of any certificate or certificates previously issued by the Corporation and alleged to have been lost or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost or destroyed and, if the Chairman of the Board, if any, or the President in his or her sole discretion deems it appropriate, the delivery of a commercial indemnity bond issued by a company approved by him or her in such sum as he or she may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed.

### **ARTICLE 3: STOCKHOLDERS' MEETINGS**

3.1 Annual Meetings of Stockholders. The annual meeting of the Stockholders of the Corporation shall be held each fiscal year at such time and place, within or without the State of Delaware, as may from time to time be fixed by the Board, the Chairman of the Board or, if there is no Chairman of the Board, the President. The failure to hold the annual meeting shall not work a forfeiture of or otherwise affect valid corporate acts.

3.2 Special Meetings of Stockholders. Special meetings of the Stockholders may be called at any time by the Board, the Chairman of the Board, if any, or the President, or by the Corporation upon the written request of the holder or holders of at least twenty-five (25) percent of the outstanding shares of stock of the Corporation. Special meetings of the Stockholders shall be held at such time and place, within or without the State of Delaware, as may be determined by the person or persons calling the meeting.

3.3 Notice. The Secretary or an Assistant Secretary or the officer or persons calling the meeting shall deliver a written notice of the place, day and time of each meeting of the Stockholders, not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each Stockholder of record entitled to vote at such meeting. Such notice shall be given in any manner permitted by the DGCL. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with first class

postage thereon prepaid, addressed to the Stockholder at his or her address as it appears on the stock records of the Corporation. The notice of a special meeting of the Stockholders shall state the purpose or purposes for which the meeting is called. Notice of a meeting of the Stockholders need not be given to any Stockholder who signs a waiver of notice, either before or after the meeting. Attendance of a Stockholder at a meeting, either in person or by proxy, shall of itself constitute waiver of notice of such meeting and waiver of any and all objections to the place of the meeting, the time of the meeting, and the manner in which it has been called or convened, except when a Stockholder attends the meeting solely for the purpose of stating, at the beginning of the meeting, any such objection or objections to the transaction of business.

3.4 Quorum. At all meetings of the Stockholders, the holders of a majority of the outstanding shares of stock of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum for the transaction of business.

3.5 Voting. Except as otherwise required by law or by the Bylaws, all resolutions adopted and business transacted shall require the favorable vote of the holders of a majority of the shares of stock represented at the meeting and entitled to vote on the subject matter. Except as otherwise required by law, by the Certificate of Incorporation, by filings with the Delaware Secretary of State fixing and determining the voting rights of the stock of the Corporation or by the Bylaws, at any meeting of the Stockholders, each Stockholder of the Corporation entitled to vote shall have one vote, in person or by proxy, for each share of stock having voting rights standing in his name on the books of the Corporation at the record date fixed or otherwise determined for such meeting.

3.6 Adjournment. The holders of a majority of the shares of stock represented at a meeting, whether or not a quorum is present, may adjourn such meeting from time to time. If a quorum is not present, the holders of the shares of stock present in person or represented by proxy at the meeting, and entitled to vote, shall have the power, by the affirmative vote of the holders of such shares of stock which represent a majority of the votes which may be cast by the holders of such shares of stock, to adjourn the meeting to another time and/or place. Unless the adjournment is for more than thirty (30) days or unless a new record date is set for the adjourned meeting, no notice of the adjourned meeting need be given to any Stockholder provided that the time and place of the adjourned meeting were announced at the meeting at which the adjournment was taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

3.7 Presiding Officer. The Chairman of the Board shall preside at meetings of the Stockholders or, if there is no Chairman of the Board or if the Chairman of the Board is absent and has not delegated such authority, the President shall preside at meetings of the Stockholders; provided, however, that the Chairman of the Board or President may delegate his authority to preside at meetings of the Stockholders pursuant to Section 5.2 or 5.3.

3.8 Written Consent of the Stockholders. Any action required to be taken at a meeting of the Stockholders of the Corporation, or any action that may be taken at a

meeting of the Stockholders, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by persons who would be entitled to vote at a meeting those shares of stock having voting power to cast not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of stock entitled to vote were present and voted. Prompt notice shall be given of the taking of corporate action without a meeting by less than unanimous written consent to those Stockholders on the record date whose shares of stock were not represented on the written consent. For purposes of written consent by the Stockholders, the record date for determining Stockholders entitled to take action pursuant to this Section 3.8 shall be the date when the consent is first executed and action shall be deemed taken when executed by the last necessary signature.

#### **ARTICLE 4: BOARD OF DIRECTORS**

4.1 Powers of Board. Subject to the Certificate of Incorporation, the Bylaws or any lawful agreement between or among the Stockholders, the business and affairs of the Corporation shall be managed by the Board.

4.2 Number of Board; Conduct of Meetings of Board. The Board shall consist of one or more directors, which number may be determined from time to time by resolution of the Stockholders, each of whom shall be elected at an annual meeting of the Stockholders, to serve until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal.

4.3 Removal of Board. At any meeting of the Stockholders with respect to which notice of such purpose has been given, the entire Board or any individual director may be removed, with or without cause, by the affirmative vote of the holders of a majority of the shares of stock of the Corporation entitled to vote.

4.4 Board Vacancies. Except as otherwise provided in this Section 4.4, any vacancy occurring in the Board may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, or by the sole remaining director, as the case may be, or, if the vacancy is not so filled, or if no director remains, by the Stockholders. Any vacancy arising as a result of the removal of a director by the Stockholders may be filled by the Stockholders or, if the Stockholders so authorize, by the remaining director or directors, but only for the unexpired term of his or her predecessor in office.

#### 4.5 Meetings.

(a) Time and Location. The Board shall meet annually immediately following the annual meeting of the Stockholders; provided that the failure to hold the annual meeting shall not work a forfeiture or otherwise affect valid corporate acts. A special meeting of the Board may be called at any time by the Chairman of the Board, if any, the President, or by any two directors, on two (2) days' notice.

(b) Notice. The notice shall be given (i) in person, either orally or in writing (which includes a telephone call to the director, but does not include either (A) a telephone call to such directors' assistant or (B) the leaving of a message), (ii) by nationally recognized next business day delivery service for next business day delivery, (iii) by facsimile telecommunication, or (iv) by electronic mail. Such notice shall be addressed to the director at his or her address as it appears on the stock records of the Corporation or, if he or she is not a Stockholder, at his or her business address. Notice of a special meeting may be waived by an instrument in writing. Attendance of a director at a meeting shall constitute a waiver of notice of the meeting and waiver of any and all objections to the place of the meeting, the time of the meeting and the manner in which it has been called or convened, except when a director states, at the beginning of the meeting, any such objection or objections to the transaction of business. Any meeting of the Board may be held within or without the State of Delaware at such place as may be determined by the person or persons calling the meeting.

(c) Quorum. A majority of said directors shall constitute a quorum for the transaction of business.

(d) Voting. Except as otherwise provided in the Bylaws, all resolutions adopted and all business transacted by the Board shall require the affirmative vote of a majority of the directors present at a meeting at which a quorum is present.

(e) Presiding Officer. The Chairman of the Board or, in his or her absence, and if the President is a director, the President shall preside at all meetings of the Board; provided, however, that each of the Chairman of the Board or the President may delegate his or her authority to preside at Board meetings pursuant to Section 5.2 or 5.3, respectively. If the Chairman of the Board is not present and if the President is not a director, the Board shall select a director as chairman for the meeting.

(f) Written Consent of Board. Any action required to be taken at a meeting of the Board, or any action that may be taken at a meeting of the Board, may be taken without a meeting if a consent in writing setting forth the action taken shall be signed by all the directors and shall be filed with the minutes of the proceedings of the directors.

(g) Telephonic Meetings of Board. Any action required to be taken at a meeting of the Board, or any action that may be taken at a meeting of the Board, may be taken at a meeting held by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting. In all other respects the provisions of Article 4 of the Bylaws with respect to meetings of the Board shall apply to such a meeting.

## ARTICLE 5: OFFICERS

5.1 Officers; Election. The Board shall elect a President, a Secretary and a Treasurer and may elect a Chairman of the Board (who shall be a member of the Board), one or more Vice Presidents, and such other officers, assistant officers or agents as the Board shall determine. Any two or more offices may be held by the same person. A failure to elect officers shall not dissolve or otherwise affect the Corporation.

5.2 Chairman of the Board. The Chairman of the Board, if any, shall preside at all meetings of the Stockholders and of the Board or he or she may delegate his or her authority to preside at such meetings to any other director or to an officer of the Corporation.

### 5.3 President.

(a) Chief Executive Officer. The President shall be the chief executive officer of the Corporation, and shall be responsible for the administration of the Corporation, including general supervision of the policies of the Corporation and general, active management of the financial affairs of the Corporation, and supervision and direction of the actions of the other officers of the Corporation. He or she shall have the authority to execute bonds, mortgages or other contracts, agreements or instruments on behalf of the Corporation.

(b) Presiding Officer. If there is no Chairman of the Board, or if the Chairman of the Board is absent and has not delegated his or her authority to preside, the President shall preside at meetings of the Stockholders and, if he or she is a director, at meetings of the Board or he or she may delegate his or her authority to preside at such meetings to any other director or to an officer of the Corporation.

5.4 Secretary. The Secretary shall keep minutes of all meetings of the Stockholders and Board, shall have charge of the minute books, stock records and seal of the Corporation, shall have the authority to certify as to the corporate books and records, and shall perform such other duties and have such other powers as may from time to time be delegated to him or her by the President or the Board.

5.5 Treasurer. The Treasurer shall be charged with the management of the financial affairs of the Corporation. He or she shall in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or the Board.

5.6 Vice Presidents. The Vice Presidents, if any, shall perform such duties and exercise such powers as the President or the Board shall request or delegate and, unless the Board or the President otherwise provides, shall perform such other duties as are generally performed by Vice Presidents with equivalent restrictions, if any, on title.

5.7 Appointment of Officers and Agents. The Board or the President may appoint one or more Vice Presidents and such other officers, assistant officers and agents as the Board or the President may determine. Any such officers, assistant officers or

agents so appointed shall perform such duties as are set forth in the Bylaws and as the action appointing him or her provides, and, unless such action otherwise provides, such appointed officers and assistant officers shall perform such duties as are generally performed by elected officers or assistant officers having the same title.

5.8 Removal of Officers and Agents. Any officer, assistant officer or agent elected or appointed by the Board may be removed by the Board. Any officer, assistant officer or agent appointed by the President may be removed by the President or by the Board whenever in his, her or its judgment the best interests of the Corporation will be served thereby.

5.9 Vacancies. Any vacancy, however occurring, in any office may be filled by the Board.

#### **ARTICLE 6: SEAL**

6.1 Seal. The seal of the Corporation shall be in such form as the Board may from time to time determine. In the event it is inconvenient to use such a seal at any time, the words "Corporate Seal" or the word "Seal" accompanying the signature of an officer signing for and on behalf of the Corporation shall be the seal of the Corporation. The seal shall be in the custody of the Secretary and affixed by him or her on the stock certificates and such other papers as may be directed by law, by the Bylaws or by the Board.

#### **ARTICLE 7: INDEMNIFICATION AND INSURANCE**

##### **7.1 Indemnification.**

(a) General. The Corporation shall indemnify each person who is or was a director, officer or employee of the Corporation (including the heirs, executors, administrators or estate of such person) or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise to the full extent permitted under DGCL §145(a), (b) and (c) or any other provisions of the laws of the State of Delaware.

(b) Procedure. If any such indemnification is requested pursuant to the foregoing, the Board shall cause a determination to be made (unless a court has ordered the indemnification or indemnification is required by DGCL §145(c)) pursuant to DGCL §145(d) as to whether indemnification of the party requesting indemnification is proper in the circumstances because he or she has met the applicable standard of conduct set forth in DGCL §§145(a) or (b). Upon any such determination that such indemnification is proper, the Corporation shall make indemnification payments of liability, cost, payment or expense asserted against, or paid or incurred by, him or her in his or her capacity as such a director, officer or employee to the maximum extent permitted by said sections of such laws.

(c) Interim Payment of Expenses. Expenses incurred by a person who is or was a director, officer or employee of the Corporation (including the heirs, executors, administrators or estate of such person) or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise in defending a civil or criminal action, suit, or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the Board, upon receipt of an agreement or an undertaking by or on behalf of such person to repay such amount, unless it is ultimately determined that he or she is entitled to be indemnified by the Corporation as authorized in, or as permitted by, this Article 7. The Board may pay such expenses of such person upon such other terms and conditions as the Board deems appropriate.

(d) Subsequent Amendment. No amendment, termination or other elimination of this Article 7 or of any relevant provisions of the DGCL or any other applicable laws shall affect or diminish in any way the rights to indemnification under this Article 7 with respect to any action, suit or proceeding arising out of, or relating to, any event or act or omission occurring or fact or circumstance existing prior to such amendment, termination or other elimination.

(e) Other Rights. The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Section 7.1 shall not be deemed exclusive of any other rights to which a director, officer or employee seeking indemnification or advancement of expenses may be entitled under any applicable law, agreement, vote of Stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in any other capacity while holding such office; provided, however, that indemnification shall not be permitted (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 DGCL §174, or (iv) for any transaction from which the director derived an improper personal benefit. Nothing contained in this Article 7 shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements which provide indemnification rights and procedures permitted by the DGCL.

(f) Continuation of Right to Indemnification. All rights to indemnification under this Article 7 (including those arising pursuant to subsection (e) above) shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of heirs, executors, administrators and the estate of such person, and shall be deemed to be a contract between the Corporation and each such person or entity. This Article 7 shall be binding upon any successor corporation to the Corporation, whether by way of merger, consolidation or otherwise.

(g) Savings Clause. If this Article 7 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify persons or entities specified in this Article 7 to the full extent permitted by any applicable portion of this Article 7 that shall not have been invalidated and to the full extent permitted by applicable law.

7.2 Insurance. The Corporation may purchase and maintain insurance at its expense, to protect itself and any such person or entity against any such liability, cost, payment or expense whether or not the Corporation would have the power to indemnify such person or entity against such liability, cost, payment or expense.

#### **ARTICLE 8: MISCELLANEOUS**

8.1 Voting of Securities Owned by the Corporation. The Chairman of the Board, if any, the President, any Vice President, the Secretary, or the Treasurer of the Corporation or such other person designated by the Board shall have authority to vote shares of stock or any other securities owned by the Corporation and to execute proxies and written waivers and consents in relation thereto.

8.2 Registered Offices. The initial registered office of the Corporation in the State of Delaware and the name of the Corporation's registered agent shall be as designated in the Certificate of Incorporation and may be changed as any officer of the Corporation shall from time to time determine.

#### **ARTICLE 9: AMENDMENT**

9.1 Amendment. The Bylaws may be amended by the Stockholders or by the Board either by written consent or approved at a meeting, in each case in accordance with the provisions of the Bylaws and applicable law. The Stockholders may prescribe that any or all provisions of the Bylaws adopted by them shall not be altered, amended or repealed by the Board.



**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION****OF****UNITED PET GROUP, INC.**

## ARTICLE ONE

The name of the Corporation is United Pet Group, Inc.

## ARTICLE TWO

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle; and the name of the registered agent of the corporation in the State of Delaware at such address is Corporation Service Company.

## ARTICLE THREE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as from time to time amended.

## ARTICLE FOUR

The total number of shares of capital stock which the Corporation shall have authority to issue is 1,000, all of which shares shall be Common Stock having a par value of \$0.01.

## ARTICLE FIVE

In furtherance and not limited of the powers conferred by law, subject to any limitations contained elsewhere in these articles of incorporation, by-laws of the Corporation may be adopted, amended or repealed by a majority of the board of directors of the Corporation, but any by-laws adopted by the board of directors may be amended or repealed by the stockholders entitled to vote thereon. Election of directors need not be by written ballot.

## ARTICLE SIX

(a) A director of the Corporation shall not be personally liable either to the Corporation or to any stockholder for monetary damages for breach of fiduciary duty as a director, except (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, or (ii) for acts or omissions which are not in good faith or which involve

intentional misconduct or knowing violation of the law, or (iii) for any matter in respect of which such director shall be liable under Section 174 of Title 8 of the General Corporation Law of the State of Delaware or any amendment thereto or successor provision thereto, or (iv) for any transaction from which the director shall have derived an improper personal benefit. Neither amendment nor repeal of this paragraph (a) nor the adoption of any provision of the Amended and Restated Certificate of Incorporation inconsistent with this paragraph (a) shall eliminate or reduce the effect of this paragraph (a) in respect of any matter occurring, or any cause of actions, suite or claim that, but for this paragraph (a) of this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to, or testifies in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature, by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suite or proceeding to the full extent permitted by law, and the Corporation may adopt By-laws or enter into agreements with any such person for the purpose of providing for such indemnification.

**CERTIFICATE OF MERGER**

**MERGING**

**SATURN MERGERCO., INC.**  
**a Delaware corporation**

**INTO**

**UNITED PET GROUP, INC.**  
**a Delaware corporation**

**UNDER SECTION 251 OF THE GENERAL CORPORATION LAW OF  
THE STATE OF DELAWARE**

Pursuant to Section 251(c) of the General Corporation Law of the State of Delaware, United Pet Group, Inc., a Delaware corporation formed and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: The name and state of incorporation of each of the constituent corporations (the "Constituent Corporations") to the merger are as follows:

<u>Name</u>	<u>Jurisdiction</u>
Saturn MergerCo., Inc. ("MergerCo")	Delaware
United Pet Group, Inc. (the "Company")	Delaware

SECOND: An Agreement and Plan of Merger, dated as of June 14, 2004 (the "Merger Agreement"), providing the merger of MergerCo with and into the Company has been approved, adopted, certified, executed and acknowledged by MergerCo and the Company in accordance with the requirements of Section 251(c) of the General Corporation Law of the State of Delaware. The holders of a majority of the outstanding shares of each class of capital stock of the Company entitled to vote thereon have adopted the Merger Agreement by written consent dated June 15, 2004.

THIRD: The name of the surviving corporation shall be "United Pet Group, Inc." (the "Surviving Corporation").

FOURTH: The Certificate of Incorporation of the Surviving Corporation is hereby amended and restated in its entirety as shown on Exhibit A attachment hereto.

FIFTH: An executed copy of the Merger Agreement is on file at the place of business of the Surviving Corporation located at 463 Ohio Pike, Suite 303, Cincinnati, OH 45255.

SIXTH: A copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any Constituent Corporation.

SEVENTH: The merger of MergerCo with and into the Company shall be effective upon the filing of this Certificate of Merger in accordance with the provisions of Sections 103 and 251(c) of the General Corporation Law of the State of Delaware.

[End of Text]

IN WITNESS WHEREOF, United Pet Group, Inc. has caused this Certificate of Merger to be signed by its duly authorized officer on this 30<sup>th</sup> day of July, 2004.

**UNITED PET GROUP, INC.**

By: /s/ John Heil

\_\_\_\_\_  
Name: John Heil  
Title: Chairman/CEO

**CERTIFICATE OF MERGER  
OF  
UNITED PET GROUP, INC.  
FIRSTRAX, INC. AND  
FIRSTRAX PET PRODUCTS, INC.**

Pursuant to Title 8, Section 252 of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

**FIRST:** The name of the surviving corporation is UNITED PET GROUP, INC. a Delaware corporation (the "Corporation"), and the names of the corporations being merged into this surviving corporation are FIRSTRAX, INC., a California corporation, and FIRSTRAX PET PRODUCTS, INC., a Nevada corporation.

**SECOND:** The Agreement and Plan of Merger (the "Merger Agreement") has been approved, adopted, certified, executed and acknowledged by each of the constituent corporation pursuant to Title 8 Section 252 of the General Corporation Law of the State of Delaware.

**THIRD:** The name of the surviving corporation is UNITED PET GROUP, INC., a Delaware corporation.

**FOURTH:** The Certificate of Incorporation of the Corporation shall be the Certificate of Incorporation of the surviving corporation.

**FIFTH:** The authorized stock and par value of the non-Delaware corporations is as follows:

<u>Name</u>	<u>Authorized Stock and Par Value</u>
Firststrax, Inc.	100,000 shares of common stock, no par value
Firststrax Pet Products, Inc.	5,000,000 shares of common stock, no par value

**SIXTH:** The merger is to become effective upon the filing of this Certificate of Merger.

**SEVENTH:** The Merger Agreement is on file at 463 Ohio Pike, Suite 303 Cincinnati, Ohio 45255, an office of the surviving corporation.

**EIGHTH:** A copy of the Merger Agreement will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

**IN WITNESS WHEREOF**, the Corporation has caused this certificate to be signed by an authorized officer, the 31<sup>st</sup> day of January, 2005.

UNITED PET GROUP, INC.

By: /s/ Thomas G. Kosvin

Name: Thomas G. Kosvin

Title: Vice President

**CERTIFICATE OF MERGER  
OF  
UNITED PET GROUP, INC.  
AND  
TAP, LLC**

Pursuant to Title 8, Section 264(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

- FIRST:** The name of the surviving corporation is UNITED PET GROUP, INC., a Delaware Corporation (the “Corporation”), and the name of the limited liability company being merged into this surviving corporation is TAP, LLC, a Nevada limited liability company.
- SECOND:** The Agreement and Plan of Merger (the “Merger Agreement”) has been approved, adopted, certified, executed and acknowledged by the surviving corporation and the merging limited liability company.
- THIRD:** The name of the surviving corporation is UNITED PET GROUP, INC., a Delaware corporation.
- FOURTH:** The merger is to become effective upon the filing of this Certificate of Merger.
- FIFTH:** The Merger Agreement is on file at 463 Ohio Pike, Suite 303, Cincinnati, Ohio 45255, the place of business of the Corporation.
- SIXTH:** A copy of the Merger Agreement will be furnished by the Corporation on request, without cost, to any stockholder of any constituent corporation or member of any constituent limited liability company.
- SEVENTH:** The Certificate of Incorporation of the Corporation shall be the Certificate of Incorporation of the surviving corporation.

**[signature on following page]**



**IN WITNESS WHEREOF**, the Corporation has caused this certificate to be signed by an authorized officer, the 31<sup>st</sup> day of January, 2005.

UNITED PET GROUP, INC.

By: /s/ Thomas G. Kosvin

\_\_\_\_\_  
Name: Thomas G. Kosvin

Title: Vice President

AMENDED AND RESTATED BYLAWS  
OF  
UNITED PET GROUP, INC.  
(a Delaware corporation)

ARTICLE I

Stockholders

SECTION 1. Annual Meetings. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year at such date and time, within or without the State of Delaware, as the Board of Directors shall determine.

SECTION 2. Special Meetings. Special meetings of stockholders for the transaction of such business as may properly come before the meeting may be called by order of the Board of Directors or by stockholders holding together at least a majority of all the shares of the Corporation entitled to vote at the meeting, and shall be held at such date and time, within or without the State of Delaware, as may be specified by such order. Whenever the directors shall fail to fix such place, the meeting shall be held at the principal executive office of the Corporation.

SECTION 3. Notice of Meetings. Written notice of all meetings of the stockholders, stating the place, date and hour of the meeting and the place within the city or other municipality or community at which the list of stockholders may be examined, shall be mailed or delivered to each stockholder not less than 10 nor more than 60 days prior to the meeting. Notice of any special meeting shall state in general terms the purpose or purposes for which the meeting is to be held.

SECTION 4. Stockholder Lists. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

SECTION 5. Quorum. Except as otherwise provided by law or the Corporation's Certificate of Incorporation, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the issued and outstanding shares of the capital stock of the Corporation entitled to vote at the meeting, present in person or by proxy. At all meetings of the stockholders at which a quorum is present, all matters, except as otherwise provided by law or the Certificate of Incorporation, shall be decided by the vote of the holders of a majority of the shares entitled to vote thereat present in person or by proxy. If there be no such quorum, the holders of a majority of such shares so present or represented may adjourn the meeting from time to time, without further notice, until a quorum shall have been obtained. When a quorum is once present it is not broken by the subsequent withdrawal of any stockholder.

SECTION 6. Organization. Meetings of stockholders shall be presided over by the Chairman, if any, or if none or in the Chairman's absence the Vice-Chairman, if any, or if none or in the Vice-Chairman's absence the President, if any, or if none or in the President's absence a Vice-President, or, if none of the foregoing is present, by a chairman to be chosen by the stockholders entitled to vote who are present in person or by proxy at the meeting. The Secretary of the Corporation, or in the Secretary's absence an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the presiding officer of the meeting shall appoint any person present to act as secretary of the meeting.

SECTION 7. Voting; Proxies; Required Vote. (a) At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by such stockholder's duly authorized attorney-in-fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period), and, unless the Certificate of Incorporation provides otherwise, shall have one vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Amended and Restated Bylaws. At all elections of directors the voting may but need not be by ballot and a plurality of the votes cast there shall elect. Except as otherwise required by law or the Certificate of Incorporation, any other action shall be authorized by a majority of the votes cast.

(b) Any action required or permitted to be taken at any meeting of stockholders may, except as otherwise required by law or the Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of record of the issued and outstanding capital stock of the Corporation having a majority of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

SECTION 8. Inspectors. The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of elections to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

## ARTICLE II

### Board of Directors

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors.

SECTION 2. Qualification; Number; Term; Remuneration. (a) Each director shall be at least 18 years of age. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The number of directors constituting the entire Board shall be two (2) or such larger number as may be fixed from time to time by action of the stockholders or Board of Directors to be its Chairman. The use of the phrase "entire Board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

(b) Directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier resignation or removal.

(c) Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

SECTION 3. Quorum and Manner of Voting. Except as otherwise provided by law, a majority of the entire Board shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 4. Places of Meeting. Meetings of the Board of Directors may be held at any place within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

SECTION 5. Annual Meeting. Following the annual meeting of stockholders, the newly elected Board of Directors shall meet for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting. Such meeting may be held without notice immediately after the annual meeting of stockholders at the same place at which such stockholders' meeting is held.

SECTION 6. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

SECTION 7. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, President or by a majority of the directors then in office.

SECTION 8. Notice of Meetings. A notice of the place, date and time and the purpose or purposes of each meeting of the Board of Directors shall be given to each director by mailing the same at least two days before the meeting, or by telegraphing or telephoning the same or by delivering the same personally not later than the day before the day of the meeting.

SECTION 9. Organization. At all meetings of the Board of Directors, the Chairman, if any, or if none or in the Chairman's absence or inability to act the President, or in the President's absence or inability to act any Vice-President who is a member of the Board of Directors, or in such Vice-President's absence or inability to act a chairman chosen by the directors, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as secretary.

SECTION 10. Resignation. Any director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the President or Secretary, unless otherwise specified in the resignation. Any or all of the directors may be removed, with or without cause, by the holders of a majority of the shares of stock outstanding and entitled to vote for the election of directors.

SECTION 11. Vacancies. Unless otherwise provided in these Amended and Restated Bylaws, vacancies on the Board of Directors, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of directors or otherwise, may be filled by the affirmative vote of a majority of the remaining directors, although less than a quorum, or by a sole remaining director, or at a special meeting of the stockholders, by the holders of shares entitled to vote for the election of directors.

SECTION 12. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

### ARTICLE III

#### Committees

SECTION 1. Appointment. From time to time the Board of Directors by a resolution adopted by a majority of the entire Board may appoint any committee or committees for any purpose or purposes, to the extent lawful, which shall have powers as shall be determined and specified by the Board of Directors in the resolution of appointment.

SECTION 2. Procedures, Quorum and Manner of Acting. Each committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a committee shall constitute a quorum for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. Each committee shall keep minutes of its proceedings, and actions taken by a committee shall be reported to the Board of Directors.

SECTION 3. Action by Written Consent. Any action required or permitted to be taken at any meeting of any committee of the Board of Directors may be taken without a meeting if all the members of the committee consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the committee.

SECTION 4. Term; Termination. In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

ARTICLE IV

Officers

SECTION 1. Election and Qualifications. The Board of Directors shall elect the officers of the Corporation, which shall include a President and a Secretary, and may include, by election or appointment, one or more Vice-Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such assistant secretaries, such Assistant Treasurers and such other officers as the Board may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Amended and Restated Bylaws and as may be assigned by the Board of Directors or the President. Any two or more offices may be held by the same person except the offices of President and Secretary.

SECTION 2. Term of Office and Remuneration. The term of office of all officers shall be one year and until their respective successors have been elected and qualified, but any officer may be removed from office, either with or without cause, at any time by the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. Resignation; Removal. Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the President or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by vote of a majority of the entire Board.

SECTION 4. Chairman of the Board. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

SECTION 5. President and Chief Executive Officer. The President shall be the chief executive officer of the Corporation, and shall have such duties as customarily pertain to that office. The President shall have general management and supervision of the property, business and affairs of the Corporation and over its other officers; may appoint and remove assistant officers and other agents and employees; and may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments.

SECTION 6. Vice-President. A Vice-President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board of Directors or the President.

SECTION 7. Treasurer. The Treasurer shall in general have all duties incident to the position of Treasurer and such other duties as may be assigned by the Board of Directors or the President.

SECTION 8. Secretary. The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors or the President.

SECTION 9. Assistant Officers. Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

## ARTICLE V

### Books and Records

SECTION 1. Location. The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in the Amended and Restated Bylaws and by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. Addresses of Stockholders. Notices of meetings and all other corporate notices may be delivered personally or mailed to each stockholder at the stockholder's address as it appears on the records of the Corporation.

SECTION 3. Fixing Date for Determination of Stockholders of Record. (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining



stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in this State, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by this chapter, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

## ARTICLE VI

### Certificates Representing Stock,

SECTION 1. Certificates; Signatures. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption, of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate, signed by or in the name of the Corporation by the Chairman or Vice-Chairman of the Board of Directors, or the President or Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

SECTION 2. Transfers of Stock. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, shares of capital stock shall be transferable on the books of the Corporation only by the holder of record thereof in person, or by duly authorized attorney, upon surrender and cancellation of certificates for a like number of shares, properly endorsed, and the payment of all taxes due thereon.

SECTION 3. Fractional Shares. The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a stockholder except as therein provided.

The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the Corporation.

SECTION 4. Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or his legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

## ARTICLE VII

### Dividends

Subject always to the provisions of law and the Certificate of Incorporation, the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE VIII

Ratification

Any transaction, questioned in any law suit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

ARTICLE IX

Corporate Seal

The corporate seal shall have inscribed thereon the name of the Corporation and the year of its incorporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal.

ARTICLE X

Fiscal Year

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall be the calendar year.

ARTICLE XI

Waiver of Notice

Whenever notice is required to be given by these Amended and Restated Bylaws or by the Certificate of Incorporation or by law, a written waiver thereof, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

ARTICLE XII

Bank Accounts, Drafts, Contracts, Etc.

SECTION 1. Bank Accounts and Drafts. In addition to such bank accounts as may be authorized by the Board of Directors, the primary financial officer or any person designated by said primary financial officer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as he may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check of the Corporation in accordance with the written instructions of said primary financial officer, or other person so designated by the Treasurer.

SECTION 2. Contracts. The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

SECTION 3. Proxies; Powers of Attorney; Other Instruments. The Chairman, the President or any other person designated by either of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the rights and powers incident to the ownership of stock by the Corporation. The Chairman, the President or any other person authorized by proxy or power of attorney executed and delivered by either of them on behalf of the Corporation may attend and vote at any meeting of stockholders of any company in which the Corporation may hold stock, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock at any such meeting, or otherwise as specified in the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

SECTION 4. Financial Reports. The Board of Directors may appoint the primary financial officer or other fiscal officer or any other officer to cause to be prepared and furnished to stockholders entitled thereto any special financial notice and/or financial statement, as the case may be, which may be required by any provision of law.

ARTICLE XIII

Amendments

The Board of Directors shall have power to adopt, amend or repeal Bylaws. Bylaws adopted by the Board of Directors may be repealed or changed, and new Bylaws made, by the stockholders, and the stockholders may prescribe that any Bylaw made by them shall not be altered, amended or repealed by the Board of Directors.

**CERTIFICATE OF INCORPORATION****OF****WILLINGER BROS., INC.**

The undersigned, a natural person, for the purpose of organizing a corporation for conducting the business and promoting the purposes hereinafter stated, under the provisions and subject to the requirements of the laws of the State of Delaware (particularly Chapter 1, Title 8 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified and referred to as the "General Corporation Law of the State of Delaware"), hereby certifies that:

FIRST: The name of the corporation (hereinafter sometimes called the "corporation") is WILLINGER BROS., INC.

SECOND: The address, including street, number, city and county of the registered office of the corporation in the State of Delaware is 229 South State Street, City of Dover, County of Kent (19901); and the name of the registered agent of the corporation in the State of Delaware at such address is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business and of the purposes to be conducted and promoted by the corporation, which shall be in addition to the authority of the corporation to conduct any lawful business, to promote any lawful purpose, and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, is as follows:

To manufacture and import products for the pet field.

To acquire by purchase, subscription, contract or otherwise, and to invest in, hold for investment or otherwise, to pledge and otherwise realize upon and to sell, contract to sell and dispose of all forms of securities, real and personal property, including, but not limited to, shares, stocks, bonds, debentures, notes, warrants, rights, options, certificates of deposit, mortgages, evidences of indebtedness, certificates of indebtedness and certificates of interest issued or created, or to be issued or created in any and all parts of the world by corporations, associations, partnerships, trustees, syndicates, individuals, governments, states, municipalities and other political and governmental divisions and subdivisions, or by any combinations, organizations or entities whatsoever, irrespective of their form or the name by which they may be described, and all trust, participation, and other certificates of, and receipts evidencing interest in, any such securities, to exercise any and all rights, powers and privileges of individual ownership or interest in respect of any and all such securities, real and personal property, and options or other evidences of interest, including the right to vote thereon and to consent and

otherwise act with respect thereto; to operate and manage the business of any entity whose securities it holds, to do any and all acts and things for the preservation, protection, improvement and enhancement in value of any and all such securities, or evidences of interest therein.

To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein; wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated.

To engage generally in the real estate business as principal, agent, broker, and in any lawful capacity, and generally to take, lease, purchase, or otherwise acquire, and to own, use, hold, sell, convey, exchange, lease, mortgage, work, clear, improve, develop, divide, and otherwise handle, manage, operate, deal in, and dispose of, real estate, real property, lands, multiple-dwelling structures, houses, buildings and other works and any interest or right therein; to take, lease, purchase or otherwise acquire, and to own, use, hold, sell, convey, exchange, hire, lease, pledge, mortgage, and otherwise handle, and deal in and dispose of, as principal, agent, broker, and in any lawful capacity, such personal property, chattels, chattels real, rights, easements, privileges, choses in action, notes, bonds, mortgages, and securities as may lawfully be acquired, held, or disposed of; and to acquire, purchase, sell, assign, transfer, dispose of, and generally deal in and with, as principal, agent, broker, and in any lawful capacity, mortgages and other interests in real, personal, and mixed properties; to carry on a general construction, contracting, building, and realty management business as principal, agent, representative, contractor, subcontractor, and in any other lawful capacity.

To carry on a general mercantile, industrial, investing, and trading business in all its branches; to devise, invent, manufacture, fabricate, assemble, install, service, maintain, alter, buy, sell, import, export, license as licensor or licensee, lease as lessor or lessee, distribute, job, enter into, negotiate, execute, acquire, and assign contracts in respect of, acquire, receive, grant and assign contracts in respect of, acquire, receive, grant and assign licensing arrangements, as principal, and as sales, business, special, or general agent, representative, broker, factor, merchant, distributor, jobber, advisor, and in any other lawful capacity, goods, wares, merchandise, commodities, and unimproved, improved, finished, processed, and other real, personal, and mixed property of any and all kinds, together with the components, resultants, and by-products thereof.

To apply for, register, obtain, purchase, lease, take licenses in respect of, or otherwise acquire, and to hold, own, use, operate, develop, enjoy, turn to account, grant licenses, franchises and immunities in respect of, manufacture under and to introduce, sell, assign, mortgage, pledge or otherwise dispose of, and, in any manner, deal with and contract with reference to:

(a) inventions, devices, formulae, processes and any improvements and modifications thereof;

(b) letters patent, patent rights, patented processes, copyrights, designs, and similar rights, trade-marks, trade names, trade symbols and other indications of

origin and ownership granted by or recognized under the laws of the United States of America, the District of Columbia, any state or subdivision thereof, and any commonwealth, territory, possession, dependency, colony, agency or instrumentality of the United States of America and of any foreign country, and all rights connected therewith or appertaining thereunto;

(c) franchises, licenses, grants and concessions.

To guarantee, purchase, take, receive, subscribe for, and otherwise acquire, own, hold, use, and otherwise employ, sell, lease, exchange, transfer, and otherwise dispose of, mortgage, lend, pledge, and otherwise deal in and with, securities (which term, for the purpose of this Article THIRD, includes, without limitation of the generality thereof, any shares of stock, bonds, debentures, notes, mortgages, other obligations, and any certificates, receipts or other instruments representing rights to receive, purchase or subscribe for the same, or representing any other rights or interests therein or in any property or assets) of any persons, domestic and foreign firms, associations, and corporations, and by any government or agency or instrumentality thereof; to make payment therefor in any lawful manner; and, while owner of any such securities, to exercise any and all rights, powers and privileges in respect thereof, including the right to vote.

To make, enter into, perform and carry out contracts of every kind and description with any person, firm, association, corporation or government or agency or instrumentality thereof.

To acquire by purchase, exchange or otherwise, all, or any part of, or any interest in, the properties, assets, business and good will of any one or more persons, firms, associations or corporations heretofore or hereafter engaged in any business for which a corporation may now or hereafter be organized under the laws of the State of Delaware; to pay for the same in cash, property or its own or other securities; to hold, operate, reorganize, liquidate, sell or in any manner dispose of the whole or any part thereof; and in connection therewith, to assume or guarantee performance of any liabilities, obligations or contracts of such persons, firms, associations or corporations, and to conduct the whole or any part of any business thus acquired.

To lend money in furtherance of its corporate purposes and to invest and reinvest its funds from time to time to such extent, to such persons, firms, associations, corporations, governments or agencies or instrumentalities thereof, and on such terms and on such security, if any, as the Board of Directors of the corporation may determine.

To make contracts of guaranty and suretyship of all kinds and endorse or guarantee the payment of principal, interest or dividends upon, and to guarantee the performance of sinking fund or other obligations of, any securities, and to guarantee in any way permitted by law the performance of any of the contracts or other undertakings in which the corporation may otherwise be or become interested, of any persons, firm, association, corporation, government or agency or instrumentality thereof, or of any other combination, organization or entity whatsoever.

To borrow money without limit as to amount and at such rates of interest as it may determine; from time to time to issue and sell its own securities, including its shares of stock, notes, bonds, debentures, and other obligations, in such amounts, on such terms and conditions, for such purposes and for such prices, now or hereafter permitted by the laws of the State of Delaware and by this certificate of incorporation, as the Board of Directors of the corporation may determine; and to secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income.

To be a promoter or manager of other corporations of any type or kind; and to participate with others in any corporation, partnership, limited partnership, joint venture, or other association of any kind, or in any transaction, undertaking or arrangement which the corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others.

To draw, make, accept, endorse, discount, execute, and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments and evidences of indebtedness whether secured by mortgage or otherwise, as well as to secure the same by mortgage or otherwise, so far as may be permitted by the laws of the State of Delaware.

To purchase, receive, take, reacquire or otherwise acquire, own and hold, sell, lend, exchange, reissue, transfer or otherwise dispose of, pledge, use, cancel, and otherwise deal in and with its own shares and its other securities from time to time to such an extent and in such manner and upon such terms as the Board of Directors of the corporation shall determine; provided that the corporation shall not use its funds or property for the purchase of its own shares of capital stock when its capital is impaired or when such use would cause any impairment of its capital, except to the extent permitted by law.

To organize, as an incorporator, or cause to be organized under the laws of the State of Delaware, or of any other state of the United States of America, or of the District of Columbia, or of any commonwealth, territory, dependency, colony, possession, agency or instrumentality of the United States of America, or of any foreign country, a corporation or corporations for the purpose of conducting and promoting any business or purpose for which corporations may be organized, and to dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations or to cause the same to be dissolved, wound up, liquidated, merged or consolidated.

To conduct its business, promote its purposes, and carry on its operations in any and all of its branches and maintain offices both within and without the State of Delaware, in any and all States of the United States of America, in the District of Columbia, and in any or all commonwealths, territories, dependencies, colonies, possessions, agencies or instrumentalities of the United States of America and of foreign governments.

To promote and exercise all or any part of the foregoing purposes and powers in any and all parts of the world, and to conduct its business in all or any of its branches as principal, agent, broker, factor, contractor, and in any other lawful capacity, either alone or through or in conjunction with any corporations, associations, partnerships,



firms, trustees, syndicates, individuals, organizations, and other entities in any part of the world, and, in conducting its business and promoting any of its purposes, to maintain offices, branches and agencies in any part of the world, to make and perform any contracts and to do any acts and things, and to carry on any business, and to exercise any powers and privileges suitable, convenient, or proper for the conduct, promotion, and attainment of any of the business and purposes herein specified or which at any time may be incidental thereto or may appear conducive to, or expedient for, the accomplishment of any of such business and purposes and which might be engaged in or carried on by a corporation incorporated or organized under the General Corporation Law of the State of Delaware, and to have and exercise all of the powers conferred by the laws of the State of Delaware upon corporations incorporated or organized under the General Corporation Law of the State of Delaware.

The foregoing provisions of this Article THIRD shall be construed both as purposes and powers and each as an independent purpose and power. The foregoing enumeration of specific purposes and powers of the corporation, and the purposes and powers herein specified shall, except when otherwise provided in this Article THIRD, be in no wise limited or restricted by reference to, or inference from, the terms of any provision of this Article of this certificate of incorporation; provided, that the corporation shall not conduct any business, promote any purpose, or exercise any power or privilege within or without the State of Delaware which, under the laws thereof, the corporation may not lawfully conduct, promote, or exercise.

FOURTH: The total number of shares of stock which the corporation shall have the authority to issue is One Thousand (1,000) all of which are without par value. All such shares are of one class and are Common Stock.

FIFTH: No holder of any of the shares of the stock of the corporation, whether now or hereafter authorized and issued, shall be entitled as of right to purchase or subscribe for (1) any unissued stock of any class, (2) any additional shares of any class to be issued by reason of any increase in the authorized capital stock of the corporation of any class, or (3) bonds, certificates of indebtedness, debentures or other securities convertible into stock of the corporation, or carrying any right to purchase stock of any class, but any such unissued stock or such additional authorized issue of any stock or of other securities convertible into stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its discretion.

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

Ira B. Rose, Esq.  
Phillips, Nizer, Benjamin, Krim & Ballon  
40 West 57th Street  
New York, New York 10019

SEVENTH: The corporation is to have perpetual existence.

EIGHTH: Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution of section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or the stockholders or class of stockholders of this corporation, as the case may be to be summoned in such manner as the said court directs. If a majority in number representing three-fourth in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

NINTH: For the management of the business and for the conduct of the affairs of the corporation, and in further definition, limitation and regulation of the powers of the corporation and of its directors and of its stockholders or any class thereof, as the case may be, it is further provided:

1. The management of the business and the conduct of the affairs of the corporation, including the election of the Chairman of the Board of Directors, if any, the President, the Treasurer, the Secretary, and other principal officers of the corporation, shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the By-Laws. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, to wit, the total number of directors which the corporation would have if there were no vacancies. No election of directors need be by written ballot.
2. The original By-Laws of the corporation shall be adopted by the incorporator unless the certificate of incorporation shall name the initial Board of Directors therein.

Thereafter, the power to make, alter, or repeal the By-Laws, and to adopt any new By-Law, except a By-Law classifying directors for election for staggered terms, shall be vested in the Board of Directors.

3. Whenever the corporation shall be authorized to issue only one class of stock, each outstanding share shall entitle the holder thereof to notice of, and the right to vote at, any meeting of stockholders. Whenever the corporation shall be authorized to issue more than one class of stock, no outstanding share of any class of stock which is denied voting power under the provisions of the certificate of incorporation shall entitle the holder thereof to notice of, and the right to vote at, any meeting of stockholders, except as the provisions of paragraph (d) (2) of Section 242 of the General Corporation Law and of sections 251, 252 and 253 of the General Corporation Law shall otherwise require; provided, that no share of any such class which is otherwise denied voting power shall entitle the holder thereof to vote upon the increase or decrease in the number of authorized shares of said class.
4. In lieu of taking any permissive or requisite action by vote at a meeting of stockholders, any such vote and any such meeting may be dispensed with if either all of the stockholders entitled to vote upon the action at any such meeting shall consent in writing to any such corporate action being taken; provided, that any such action taken upon less than the unanimous written consent of all shareholders entitled to vote upon any such action shall be by the written consent of the stockholders holding at least the minimum percentage of the votes required to be cast to authorize any such action under the provisions of the General Corporation Law; and, provided, that prompt notice be given to all stockholders entitled to vote on any such action or the taking of such action without a meeting and by less than unanimous written consent.

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

1. The material facts as to his interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by a vote sufficient for such purpose without counting the vote of the interested director or directors; or
2. The material facts as to his interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or
3. The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders.
4. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ELEVENTH: (a) The corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses

(including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless, and only to the extent that, the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

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

(d) Any indemnification under paragraphs (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

(e) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this Article.

(f) The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

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

TWELFTH: From time to time any of the provisions of this certificate of incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the corporation by this certificate of incorporation are granted subject to the provisions of this article TWELFTH.

Executed at New York, New York on December 15, 1975.

/s/ Ira B. Rose

Ira B. Rose, Esq., Incorporator

CERTIFICATE OF CHANGE OF REGISTERED AGENT

AND

REGISTERED OFFICE

Willinger Bros., Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does HEREBY CERTIFY:

The present registered agent of the Corporation is The Prentice-Hall Corporation System, Inc. and the present registered office of the Corporation is in the county of Kent, 32 Loockerman Square Suite L-100, Dover, DE 19904.

The Board of Directors of the Corporation, Inc. adopted the following resolution on the 26th day of October, 1995.

"Resolved, that the registered office of Willinger Bros., Inc. in the State of Delaware be and it hereby is changed to Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, and the authorization of the present registered agent of this Corporation be and the same is hereby withdrawn, and The Corporation Trust Company shall be and is hereby constituted and appointed the registered agent of this Corporation at the address of its registered office."

IN WITNESS WHEREOF, Willinger Bros., Inc. has caused this statement to be signed by William S. Woodson, its Vice President, and attested by Rae G. Paltiel, its Secretary, this 26th day of October, 1995.

By /s/ William S. Woodson  
William S. Woodson  
Vice President

ATTEST:

By /s/ Rae G. Paltiel  
Rae G. Paltiel  
Secretary

BY - LAWS  
OF  
WILLINGER BROS., INC.  
(a Delaware Corporation)

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ARTICLE I  
STOCKHOLDERS

1. CERTIFICATES REPRESENTING STOCK. Every holder of stock in the corporation shall be entitled to have a certificate signed by, or in the name of, the corporation by the Chairman or Vice-Chairman of the Board of Directors, if any, or by the President or a Vice-President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation certifying the number of shares owned by him in the corporation. If such certificate is countersigned by a transfer agent other than the corporation or its employee or by a registrar other than the corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Whenever the corporation shall be authorized to issue more than one class of stock or more than one series of any class of stock, and whenever the corporation shall issue any shares of its stock as partly paid stock, the certificates representing shares of any such class or series or of any such partly paid stock shall set forth thereon the statements prescribed by the General Corporation Law. Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

The corporation may issue a new certificate of stock in place of any certificate theretofore issued by it, alleged to have been lost, stolen, or destroyed, and the Board of Directors may require the owner of any lost, stolen, or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify the corporation



against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate or the issuance of any such new certificate.

2. FRACTIONAL SHARE INTERESTS. The corporation may, but shall not be required to, issue fractions of a share. In lieu thereof it shall either pay in cash the fair value of fractions of a share, as determined by the Board of Directors, to those entitled thereto or issue scrip or fractional warrants in registered or bearer form over the manual or facsimile signature of an officer of the corporation or of its agent, exchangeable as therein provided for full shares, but such scrip or fractional warrants shall not entitle the holder to any rights of a stockholder except as therein provided. Such scrip or fractional warrants may be issued subject to the condition that the same shall become void if not exchanged for certificates representing full shares of stock before a specified date, or subject to the condition that the shares of stock for which such scrip or fractional warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or fractional warrants, or subject to any other conditions which the Board of Directors may determine.

3. STOCK TRANSFERS. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers of shares of stock of the corporation shall be made only on the stock ledger of the corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the corporation or with a transfer agent or a registrar, if any, and on surrender of the certificate or certificates for such shares of stock properly endorsed and the payment of all taxes due thereon.

4. RECORD DATE FOR STOCKHOLDERS. For the purpose of determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to or dissent from any corporate action in writing without a meeting, or for the purpose of determining stockholders entitled to receive payment of any dividend or other distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock, or for the purpose of any other lawful action, the directors may fix, in advance, a date as the record date for any such determination of stockholders. Such date shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. If no record date is fixed, the record date for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. When a determination of stockholders of record entitled to notice of or to vote at any meeting of a stockholders has been made as provided in this paragraph, such determination shall apply to any adjournment thereof; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

5. MEANING OF CERTAIN TERMS. As used herein in respect of the right to notice of a meeting of stockholders or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "share" or "shares" or "share of stock" or "shares of stock" or "stockholder" or "stockholders" refers to an outstanding share or shares of stock and to a holder or holders of record of outstanding shares of stock when the corporation is authorized to issue only one class of shares of stock, and said reference is also intended to include any outstanding share or shares of stock and any holder or holders of record of outstanding shares of stock of any class upon which or upon whom the certificate of incorporation confers such rights where there are two or more classes or series of shares of stock or upon which or upon whom the General Corporation Law confers such rights notwithstanding that the certificate of incorporation may provide for more than one class or series of shares of stock, one or more of which are limited or denied such rights thereunder; provided, however, that no such right shall vest in the event of an increase or a decrease in the authorized number of shares of stock of any class or series which is otherwise denied voting rights under the provisions of the certificate of incorporation.

6. STOCKHOLDERS MEETINGS.

TIME. The annual meeting shall be held on the date and at the time fixed, from time to time, by the directors, provided, that the first annual meeting shall be held on a date within thirteen months after the organization of the corporation, and each successive annual meeting shall be held on a date within thirteen months after the date of the preceding annual meeting. A special meeting shall be held on the date and at the time fixed by the directors.

PLACE. Annual meetings and special meetings shall be held at such place, within or without the State of Delaware, as the directors may, from time to time fix. Whenever the directors shall fail to fix such place, the meeting shall be held at the registered office of the corporation in the State of Delaware.

CALL. Annual meetings and special meetings may be called by the directors or by any officer instructed by the directors to call the meeting.

NOTICE OR WAIVER OF NOTICE. Written notice of all meetings shall be given, stating the place, date, and hour of the meeting and stating the place within the city or other municipality or community at which the list of stockholders of the corporation may be examined. The notice of an annual meeting shall state that the meeting is called for the election of directors and for the transaction of other business which may properly come before the meeting, and shall, (if any other action which could be taken at a special meeting is to be taken at such annual meeting) state the purpose or purposes. The notice of a special meeting shall in all instances state the purpose or purposes for which the meeting is called. If any action is proposed to be taken which would, if taken, entitle stockholders to receive payment for their shares of stock, the notice shall include a statement of that purpose and to that effect. Except as otherwise provided by the General Corporation Law, a copy of the notice of any meeting shall be

given, personally or by mail, not less than ten days nor more than fifty days before the date of the meeting, unless the lapse of the prescribed period of time shall have been waived, and directed to each stockholder at his record address or at such other address which he may have furnished by request in writing to the Secretary of the corporation. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in the United States mail. If a meeting is adjourned to another time, not more than thirty days hence, and/or to another place, and if an announcement of the adjourned time and/or place is made at the meeting, it shall not be necessary to give notice of the adjourned meeting unless the directors, after adjournment, fix a new record date for the adjourned meeting. Notice need not be given to any stockholder who submits a written waiver of notice by him before or after the time stated therein. Attendance of a person at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice.

**STOCKHOLDER LIST.** The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city or other municipality or community where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote at any meeting of stockholders.

**CONDUCT OF MEETING.** Meetings of the stockholders shall be presided over by one of the following officers in the order of seniority and if present and acting - the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President, a Vice-President, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by the stockholders. The Secretary of the corporation, or in his absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present the chairman of the meeting shall appoint a secretary of the meeting.

**PROXY REPRESENTATION.** Every stockholder may authorize another person or persons to act for him by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed

by the stockholder or by his attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

**INSPECTORS AND JUDGES.** The directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election or judges of the vote, as the case may be, to act at the meeting or any adjournment thereof. If an inspector or inspectors or judge or judges are not appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors or judges. In case any person who may be appointed as an inspector or judge fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector or judge, if any, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector or judge at such meeting with strict impartiality and according to the best of his ability. The inspectors or judges, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors or judge or judges, if any, shall make a report in writing of any challenge, question or matter determined by him or them and execute a certificate of any fact found by him or them.

**QUORUM.** The holders of majority of the outstanding shares of stock shall constitute a quorum at a meeting of stockholders for the transaction of any business. The stockholders present may adjourn the meeting despite the absence of a quorum.

**VOTING.** Each share of stock shall entitle the holder thereof to one vote. In the election of directors, a plurality of the votes cast shall elect. Any other action shall be authorized by a majority of the votes cast except where the General Corporation Law prescribes a different percentage of votes and/or a different exercise of voting power. In the election of directors, voting need not be by ballot. Voting by ballot shall not be required for any other corporate action except as otherwise provided by the General Corporation Law.

**7. STOCKHOLDER ACTION WITHOUT MEETINGS.** Whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, the meeting and vote of stockholders may be dispensed with if all of the stockholders who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such corporate action being taken; or if less than all of said stockholders, but not less than those having at least the

minimum voting power required to take corporate action under the provisions of the General Corporation Law, shall consent in writing to such corporate action; provided that prompt notice be given to all stockholders of the taking of such action without a meeting and by less than unanimous written consent.

## ARTICLE II

### DIRECTORS

1. FUNCTIONS AND DEFINITION. The business of the corporation shall be managed by the Board of Directors of the corporation. The use of the phrase "whole board" herein refers to the total number of directors which the corporation would have if there were no vacancies.

2. QUALIFICATIONS AND NUMBER. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The number of directors constituting the whole board shall be at least three, except that, where all the shares of stock of the corporation are owned beneficially and of record by less than three stockholders, the number of directors may be less than three but not less than the number of such stockholders. Subject to the foregoing limitation, such number may be fixed from time to time by action of the stockholders or of the directors, or, if the number is not fixed, the number shall be three. The number of directors may be increased or decreased by action of the stockholders or of the directors.

3. ELECTION AND TERM. The first Board of Directors, unless the members thereof shall have been named in the certificate of incorporation, shall be elected by the incorporator or incorporators and shall hold office until the first annual meeting of stockholders and until their successors have been elected and qualified or until their earlier resignation or removal. Any director may resign at any time upon written notice to the corporation. Thereafter, directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of stockholders and until their successors have been elected and qualified or until their earlier resignation or removal. In the interim between annual meetings of stockholders or of special meetings of stockholders called for the election of directors and/or for the removal of one or more directors and for the filling of any vacancy in that connection, newly created directorships and any vacancies in the Board of Directors, including vacancies resulting from the removal of directors for cause or without cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director.

#### 4. MEETINGS

TIME. Meetings shall be held at such time as the Board shall fix, except that the first meeting of a newly elected Board shall be held as soon after its election as the directors may conveniently assemble.

PLACE. Meetings shall be held at such place within or without the State of Delaware as shall be fixed by the Board.

CALL. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, or the President, or of a majority of the directors in office.

NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat. The notice of any meeting need not specify the purpose of the meeting. Any requirements of furnishing a notice shall be waived by any director who signs a written waiver of such notice before or after the time stated therein.

QUORUM AND ACTION. A majority of the whole Board shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided, that such majority shall constitute at least one-third of the whole Board. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the General Corporation Law, the act of the Board shall be the act by vote of a majority of the directors present at a meeting, a quorum being present. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the General Corporation Law and these By-Laws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board.

CHAIRMAN OF THE MEETING. The Chairman of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairman of the Board, if any and if present and acting, or the President, if present and acting, or any other director chosen by the Board, shall preside.

5. REMOVAL OF DIRECTORS. Any or all of the directors may be removed for cause or without cause by the stockholders. One or more of the directors may be removed for cause by the Board of Directors.

6. COMMITTEES. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of two or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.

In the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

7. ACTION IN WRITING. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

### ARTICLE III

#### OFFICERS

The directors shall elect a President, a Secretary, and a Treasurer, and may elect a Chairman of the Board of Directors, a Vice-Chairman thereof, and one or more Vice-Presidents, Assistant Secretaries, and Assistant Treasurers, and may elect or appoint such other officers and agents as are desired. The President may but need not be a director. Any number of offices may be held by the same person.

Unless otherwise provided in the resolution of election or appointment, each officer shall hold office until the meeting of the Board of Directors following the next annual meeting of stockholders and until his successor has been elected and qualified. Any officer may resign at any time upon written notice.

Officers shall have the powers and duties defined in the resolutions appointing them; provided, that the Secretary shall record all proceedings of the meetings or of the written actions of the Stockholders and of the directors, and any committee thereof, in a book to be kept for that purpose.

The Board of Directors may remove any officer for cause or without cause.

### ARTICLE IV

#### CORPORATE SEAL

The corporate seal shall be in such form as the Board of Directors shall prescribe.

### ARTICLE V

#### FISCAL YEAR

The fiscal year of the corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE VI

CONTROL OVER BY-LAWS

The power to amend, alter, and repeal these By-Laws and to adopt new By-Laws, except a By-Law classifying directors for election for staggered terms, shall be vested in the Board of Directors as well as in the stockholders.

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of the By-Laws of WILLINGER BROS., INC. a Delaware corporation, as in effect on the date hereof.

WITNESS my hand and the seal of the corporation.

Dated: New York, New York  
January 9, 1976

/s/ Allan H. Willinger  
Allan H. Willinger, Secretary



THIRD AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
WPC BRANDS, INC.

The undersigned certifies that he is and that at all times here mentioned has been the duly appointed and acting President of WPC Brands, Inc., formerly known as Wisconsin Pharmacal Company, Inc. (the "Corporation"), and further certifies that:

1. The name of the corporation is WPC Brands, Inc.
2. The Third Amended and Restated Articles of Incorporation of the Corporation duly adopted pursuant to the authority and provisions of Chapter 180 of the Wisconsin Statutes set forth below, supersede and take the place of the heretofore existing Second Amended and Restated Articles of Incorporation and any amendment thereto effective as of September 1, 2004.
3. The Third Amended and Restated Articles of Incorporation of the Corporation are as follows:

ARTICLE I

Name

The name of the Corporation is WPC Brands, Inc.

ARTICLE II

Organization

The Corporation is organized under Chapter 180 of the Wisconsin Statutes.

ARTICLE III

Capital Stock

The aggregate number of shares which the Corporation shall have authority to issue shall be Thirty Thousand (30,000) shares consisting of one class only, designated as "Common Stock" having a par value of \$0.01 per share.

ARTICLE IV

Registered Agent

The name of the Corporation's initial registered agent is CSC - Lawyer's Incorporating Service Company.

ARTICLE V

Registered Office

The street address of the registered office of the Corporation is 25 West Main, Madison, Wisconsin 53703.

ARTICLE VI

Preemptive Rights

No shareholder of the Corporation shall have any preemptive right to acquire any shares of any class of stock of this Corporation, whether now or hereafter authorized, or any securities or obligations (including, but not limited to, securities or obligations convertible into any class of stock issued by this Corporation), whether issued or sold for cash, property, services or otherwise.

ARTICLE VII

Board of Directors

The number of directors to constitute the Board of Directors shall be fixed by, or in the manner provided in, the Bylaws of the Corporation, but in no case shall such number be less than one (1).

ARTICLE VIII

Cumulative Voting

In all elections of directors, each shareholder entitled to vote shall have the right to cast only as many votes as shall equal the number of shares held by the shareholder in the Corporation. There shall be no right to cumulative voting in the election of directors.

ARTICLE IX

Existence

The duration of the Corporation is perpetual.

ARTICLE X

Purpose

The Corporation is formed to engage in any lawful business.

ARTICLE XI

Indemnity

The Corporation undertakes to provide indemnity pursuant to the provisions of this Article XI:

(1) Nature of Indemnity. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he, or a person of whom he is the legal representative, is or was a director or officer, of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Corporation to the fullest extent which it is empowered to do so unless prohibited from doing so by the Wisconsin 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 said law permitted the Corporation to provide prior to such amendment) against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding) and such indemnification shall inure to the benefit of his heirs, executors and administrators; provided, however, that, except as provided in subsection 2 hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the Corporation. The right to indemnification conferred in this Article XI shall be a contract right and, subject to subsections 2 and 5 hereof, shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition. The Corporation may, by action of its board of directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(2) Procedure for Indemnification of Directors and Officers. Any indemnification of a director or officer of the Corporation under subsection 1 of this Article XI or advance of expenses under subsection 5 of this Article XI shall be made promptly, and in any event within thirty (30) days, upon the written request of the director or officer. If a determination by the Corporation that the director or officer is entitled to indemnification pursuant to this Article XI is required, and the Corporation fails to respond within sixty (60) days to a written request for indemnity, the Corporation shall be deemed to have approved the request. If the

Corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty (30) days, the right to indemnification or advances as granted by this Article XI shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the Wisconsin Business Corporation Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including its board of directors, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Wisconsin Business Corporation Law, nor an actual determination by the Corporation (including its board of directors, independent legal counsel, or its shareholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(3) Article Not Exclusive. The rights to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article XI shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the articles of incorporation, by-law, agreement, vote of shareholders or disinterested directors or otherwise.

(4) Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such liability under this Article XI.

(5) Expenses. Expenses incurred by any person described in subsection 1 of this Article XI in defending a proceeding shall be paid by the Corporation in advance of such proceeding's final disposition unless otherwise determined by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(6) Employees and Agents. Persons who are not covered by the foregoing provisions of this Article XI and who are or were employees or agents of the Corporation, or who are or were serving at the request of the Corporation as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the board of directors.

(7) Contract Rights. The provisions of this Article XI shall be deemed to be a contract right between the Corporation and each director or officer who serves in any such capacity at any time while this Article XI and the relevant provisions of the Wisconsin Business Corporation Law or other applicable law are in effect, and any repeal or modification of this Article XI or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

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

## ARTICLE XII

### Amendments

Amendments to the Articles of Incorporation shall be made in the manner prescribed by the Wisconsin Business Corporation Law. The power to make, alter, amend, or repeal the By-Laws of the Corporation shall be vested in the Board of Directors.

4. These Third Amended and Restated Articles of Incorporation contain certain amendments to the Corporation's existing Second Amended and Restated Articles of Incorporation which require shareholder approval for adoption. These Third Amended and Restated Articles of Incorporation were adopted by written consent of all the Corporation's shareholders in accordance with the requirements of Section 180.1003 and 180.1004 of the Wisconsin Business Corporation Law on September 1, 2004.

WPC BRANDS, INC.

By /s/ Robert L. Caulk

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Robert L. Caulk, President

This document was drafted by:

Michael G. Pfefferkorn  
WPC Brands, Inc.  
2150 Schuetz Road  
St. Louis, MO 63146

This document was not executed in Wisconsin. Please return this document to the drafter at the address set forth above.

\* \* \* \* \*

BY-LAWS  
OF  
WPC BRANDS, INC.

Effective As Of: September 1, 2004

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BY-LAWS

OF

WPC BRANDS, INC.

ARTICLE I. OFFICES

The principal office of the Corporation in the State of Missouri shall be located at c/o United Industries Corporation, 2150 Schuetz Road, St. Louis, Missouri 63146. The Corporation may have such other office(s), either within or without the State of Missouri, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

The registered office of the Corporation required by the Wisconsin Business Corporation Law to be maintained in the State of Wisconsin shall be CT Corporation, 8025 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

ARTICLE II. SHAREHOLDERS

Section 2.1. Annual Meeting. The annual meeting of the shareholders shall be held on the third Monday of February, in each year, beginning with the year 2005, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Missouri, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the shareholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as conveniently may be arranged.

Section 2.2. Special Meetings. A special meeting of the shareholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, by the Board of Directors, or by the holders of not less than one-fifth of all the outstanding shares of the Corporation entitled to vote at such meeting.

Section 2.3. Place of Meeting. The Board of Directors may designate any place, either within or without the State of Wisconsin or Missouri, as the place of meeting for any annual meeting of the shareholders or for any special meeting of the shareholders called by the Board of Directors, except that a meeting called expressly for the purpose of removal of a director shall be held at the registered office or principal business office of the Corporation in the State of Missouri or in the city or county of the State of Missouri in which the principal business office of the Corporation is located. A waiver of notice signed by all shareholders entitled to vote at a meeting may designate any place, either within or without the State of Wisconsin or Missouri, as the place for the holding of such meeting unless such meeting is called expressly for the purpose of removal of one or more directors, in which event such meeting shall be held at the registered office or principal business office of the Corporation in the State of Missouri or in the city or county of the State of Missouri in which the principal business office of the Corporation is located. If no designation is made, the place of meeting shall be the principal business office of the Corporation in the State of Missouri.

Section 2.4. Notice of Meeting. Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, unless otherwise allowed or prescribed by statute, be delivered not less than ten nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the President, or the Secretary, or the persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his or her address as it appears on the records of the Corporation, with postage thereon prepaid.

Section 2.5. Meetings, How Convened. Every meeting, for whatever purpose, of the shareholders of the Corporation shall be convened by the President, Secretary or other officer, or any of the persons calling the meeting by notice given as herein provided.

Section 2.6. Closing Transfer Books; Record Date. The Board of Directors shall have power to close the transfer books of the Corporation for a period not exceeding seventy days preceding the date of any meeting of shareholders, or the date of payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect; provided, however, that in lieu of closing the stock transfer books, the Board of Directors may fix in advance a date, not exceeding seventy days preceding the date of any meeting of shareholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at, the meeting and any adjournment thereof, or to receive payment of the dividend, or to receive the allotment of rights, or to exercise the rights in respect of the change, conversion or exchange of shares. In such case, only the shareholders who are shareholders of record on the date of closing the transfer books, or on the record date so fixed, shall be entitled to notice of, and to vote at, the meeting and any adjournment thereof, or to receive payment of the dividend, or to receive the allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the Corporation after the date of closing of the transfer books or the record date fixed as aforesaid. If the Board of Directors does not close the transfer books or set a record date, only the shareholders who are shareholders of record at the close of business on the day preceding the date before the first notice is given to shareholders shall be entitled to notice of, and to vote at, the meeting, and any adjournment of the meeting; except that, if prior to the meeting written waivers of notice of the meeting are signed and delivered to the Corporation by all of the shareholders of record at the time the meeting is convened, only the shareholders who are shareholders of record at the time the meeting is convened shall be entitled to vote at the meeting, and any adjournment of the meeting.

Section 2.7. Voting Lists. The officer having charge of the transfer book for shares of the Corporation shall make a complete list of the shareholders entitled to

vote at such meeting, arranged by class or series of shares, in alphabetical order, with the address of and the number of shares held by each, which list, beginning two business days after notice of the meeting is given for which such list was prepared and continuing to the date of the meeting, shall be kept on file at the principal office of the Corporation in the State of Missouri and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer books, or a duplicate thereof kept in the State of Missouri, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of the shareholders.

Section 2.8. Quorum. A majority of the outstanding shares of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders. If less than a quorum is present, those present may adjourn the meeting until a specified date, not longer than ninety days after such adjournment, and no notice need be given of such adjournment to shareholders not present at the meeting. Every decision of a majority of such quorum shall be valid as a corporate act unless a different vote is required by law, the Articles of Incorporation or the By-Laws of the Corporation.

Section 2.9. Proxies. At all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. A duly executed proxy shall be irrevocable only if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power of attorney. The interest with which it is coupled need not be an interest in the shares themselves. If any instrument of proxy designates two or more persons to act as proxy, in the absence of any provisions in the proxy to the contrary, the persons designated may represent and vote the shares in accordance with the vote or consent of the majority of the persons named as proxies. If only one such proxy is present, the proxy may vote all of the shares, and all the shares standing in the name of the principal or principals for whom such proxy acts shall be deemed represented for the purpose of obtaining a quorum. The foregoing provisions shall apply to the voting of shares by proxies for any two or more personal representatives, trustees or other fiduciaries, unless an instrument or order of court appointing them otherwise directs.

Section 2.10. Voting of Shares. Subject to the provisions of Section 2.13, each outstanding share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of the shareholders.

Section 2.11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by such officer, agent or proxy as the by-laws of such corporation may prescribe, or, in the absence of such provision, as the Board of Directors of such corporation may determine.

Shares standing in the name of a deceased person may be voted by his or her personal representative, either in person or by proxy. Shares standing in the name of a conservator or trustee may be voted by such fiduciary, either in person or by proxy, but no conservator or trustee shall be entitled, as a fiduciary to vote shares held by him or her without a transfer of such shares into his or her name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his or her name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Neither shares of its own stock held by the Corporation, nor those held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation are owned beneficially and of record (and not in trust) by this Corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

Section 2.12. Shareholder Action Without a Meeting. Any action required to be taken at a meeting of the shareholders, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if consents in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consents shall have the same force and effect as a unanimous vote of the shareholders at a meeting duly held. The Secretary of the Corporation shall file such consents with the minutes of the meetings of the shareholders.

Section 2.13. Cumulative Voting Rights Denied. In all elections for directors, each shareholder entitled to vote shall have the right to cast only as many votes as shall equal the number of votes held by him in the Corporation. There shall be no right to cumulative voting in the election of directors.

Section 2.14. Shareholders' Right to Examine Books and Records. This Corporation shall keep correct and complete books and records of account, including the amount of its assets and liabilities, minutes of the proceedings of its shareholders and Board of Directors, and the names and places of residence of its officers; and it shall keep at its registered office or principal place of business in this state, or at the office of its transfer agent in this state, if any, books and records in which shall be recorded the number of shares subscribed, the names of the owners of the shares, the numbers owned by them respectively, the amount of shares paid, and by whom, and the transfer of such shares with the date of transfer. Each shareholder may, during normal business hours, have access to the books of the Corporation, to examine the same. The Board of Directors may, from time to time, further prescribe regulations with respect to any such examination.

ARTICLE III. BOARD OF DIRECTORS

Section 3.1. General Powers. The property and business of the Corporation shall be controlled and managed by its Board of Directors.

Section 3.2. Number, Term and Qualifications. There shall be two directors of the corporation, and each director shall hold office until the next annual meeting of the shareholders and until his successor shall have been duly elected and qualified. A director need not be a resident of Wisconsin nor a shareholder of the corporation.

Section 3.3. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of shareholders. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Wisconsin or Missouri, for the holding of additional regular meetings without other notice than such resolution.

Section 3.4. Special Meetings. A special meeting of the Board of Directors may be called by, or at the request of, the President or any director. The person or persons authorized to call such special meeting of the Board of Directors may fix any place, either within or without the State of Wisconsin or Missouri, as the place for holding such special meeting.

Section 3.5. Notice. Notice of any special meeting shall be delivered at least ten (10) days prior thereto by written notice delivered personally or left at or mailed to each director at his or her business or residence address, or by telegram or telefax. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice be given by telegram or telefax, such notice shall be deemed to be delivered when the text of the telegram or telefax is delivered to the telegraph or telefax company. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 3.6. Quorum; Participation by Telephone. A majority of the full Board of Directors shall constitute a quorum for the transaction of business, but if less than a majority are present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice. Members of the Board of Directors may participate in a meeting of the Board of Directors, whether regular or special, by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 3.7. Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a different number is required by statute, the Articles of Incorporation or these By-Laws.

Section 3.8. Action Without a Meeting. Any action that may be taken at a meeting of the Board of Directors or of a committee of directors may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by all of the members of the Board of Directors or of the committee, as the case may be. Such written consents shall be filed by the Secretary with the minutes of the proceedings of the Board of Directors or of the committee, as the case may be, and shall have the same force and effect as a unanimous vote at a meeting duly held.

Section 3.9. Resignations. Any director may resign at any time by delivering written notice to the Board of Directors, the President or the Secretary of the Corporation. Any written notice delivered in person to the President or the Secretary shall be effective upon delivery, unless otherwise provided therein. Written notice may be delivered by certified or registered mail, with postage thereon prepaid and a return receipt requested. Such resignation shall take effect on the date of the receipt of such notice which date of receipt shall be deemed to be the date indicated upon the registered or certified mail return receipt, or at any later time specified therein. Unless otherwise specified, acceptance of such resignation shall not be necessary to make it effective.

Section 3.10. Removal by Shareholders. Any director or directors may be removed, with or without cause, at a meeting of the shareholders called expressly for that purpose. The entire Board of Directors may be removed by a vote of the holders of a majority of shares then entitled to vote at an election of directors. If less than the entire board is to be removed, one or more of the directors may be removed if the shareholders of a majority of the outstanding shares entitled to vote are voted for the removal of such director.

Section 3.11. Removal by Board of Directors. Any director may be removed for cause by action of a majority of the entire Board of Directors if the director to be removed shall, at the time of removal, fail to meet the Corporation's qualifications for election as a director as set forth in its Articles of Incorporation or in these By-Laws, or if the director shall be in breach of any agreement between such director and the Corporation relating to such director's services as a director or employee of the Corporation. Notice of the proposed removal shall be given to all directors of the Corporation prior to action thereon.

Section 3.12. Vacancies. In case of the death, incapacity or resignation of one or more of the directors, or in the case of a newly created directorship resulting from any increase in the number of directors to constitute the Board of Directors, a majority of the directors then in office, although less than a quorum, or the sole remaining director, may fill the vacancy or vacancies until the next election of directors by the shareholders.

Section 3.13. Compensation. By resolution of the Board of Directors, each director may be paid his or her expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a stated salary as director or a fixed sum for attendance at each meeting of the Board of Directors or both. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.14. Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the director dissents or abstains at such meeting, and the fact of such dissent or abstention (a) is entered in the minutes of the meeting, or (b) shall be filed by the director in writing with the person acting as secretary of the meeting before the adjournment thereof, or (c) shall have been recorded by the director and forwarded by registered mail to the Secretary of the Corporation promptly after the adjournment of the meeting.

Section 3.15. Committee. The Board of Directors, by resolution adopted by a majority of the board, may designate two or more directors to constitute (a) an executive committee, which committee shall have and exercise all of the authority of the Board of Directors in the management of the Corporation, or (b) any other committee which shall have the name, purpose, power and authority delegated to it by such resolution.

#### ARTICLE IV. OFFICERS

Section 4.1. Number. The officers of the Corporation shall be the President, one or more Vice Presidents (the number thereof to be determined by the Board of Directors) and a Secretary, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person.

Section 4.2. Election and Term of Office. The officers of the Corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after the first annual meeting of the shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be arranged. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided.

Section 4.3. Removal. Any officer, agent, or other employee elected or appointed by the Board of Directors may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.



Section 4.4. Resignations. Any officer may resign, at any time by giving written notice to the Board of Directors, the President or the Secretary of the Corporation. Any written notice delivered in person to the President or the Secretary shall be effective upon delivery unless otherwise provided therein. Written notice may be delivered by certified or registered mail, with postage thereon prepaid and a return receipt requested. Such resignation shall take effect on the date of the receipt of such notice which date of receipt shall be deemed to be the date indicated upon the registered or certified mail return receipt, or at any later time specified therein. Unless otherwise specified herein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.5. Vacancies . A vacancy in any office because of death, incapacity, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 4.6. President. The President shall be the chief operating officer of the Corporation and shall in general supervise and control all of the business and affairs of the Corporation. The President may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Board of Directors, certificates for shares of the Corporation, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed. The President may vote in person or by proxy shares in other corporations standing in the name of this Corporation. The President shall in general perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 4.7. Vice President(s). In the absence of the President, whether due to resignation, incapacity or any other cause, or in the event of the President's death, inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall exercise such powers only so long as the President remains absent or incapacitated, or until the Board of Directors elects a new President. Any Vice President may sign, with the Secretary, an Assistant Secretary, Treasurer or an Assistant Treasurer, certificates for shares of the Corporation; and shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

Section 4.8. Secretary. The Secretary shall (a) keep the minutes of the proceedings of the shareholders and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; (d) keep a register of the post office address of each shareholder

which shall be furnished to the Secretary by such shareholder; (e) sign with the President, or a Vice President, certificates for shares of the Corporation, the issuance of which shall have been authorized by resolution of the Board of Directors; (f) have general charge of the stock transfer books of the Corporation; and (g) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board of Directors.

Section 4.9. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that the officer is also a director of the Corporation and participated in determining and voting upon the salary.

#### ARTICLE V. CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 5.1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 5.2. Loans. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 5.3. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 5.4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

#### ARTICLE VI. CERTIFICATES FOR SHARES AND THEIR TRANSFER

Section 6.1. Certificates for Shares. Certificates representing shares of the Corporation shall be in such form as shall be determined by the Board of Directors.

The shares of the Corporation shall be represented by certificates signed by the President or a Vice President, and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of the Corporation and sealed with the seal of the Corporation. Such seal may be facsimile, engraved or printed. Any signatures on the certificates may be facsimile. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Corporation. All certificates surrendered to the Corporation for transfer shall be cancelled, and no new certificate shall be issued until the

former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms as the Board of Directors may prescribe.

Section 6.2. Transfer of Shares. Transfer of shares of the Corporation shall be made only on the stock transfer books of the Corporation by the holder of record thereof or by his or her legal representative, or by his or her attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the Corporation shall be deemed by the Corporation to be the owner thereof for all purposes.

#### ARTICLE VII. FISCAL YEAR

The fiscal year of the Corporation shall be as fixed from time to time by the Board of Directors.

#### ARTICLE VIII. DIVIDENDS

The Board of Directors may, from time to time, declare and the Corporation may pay dividends on its outstanding shares in the manner, and upon the terms and conditions provided by law and the Articles of Incorporation of the Corporation.

#### ARTICLE IX. FINANCIAL INTEREST OF CORPORATE OFFICERS; EFFECT ON CONTRACTS

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

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

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

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

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee which authorizes the contract or transactions.

ARTICLE X. CORPORATE SEAL

The Corporation shall have no corporate seal unless so provided for in a resolution adopted by the Board of Directors. In the event that the Board of Directors shall adopt such resolution providing for a corporate seal, such seal shall be in the form of a circle with the name of the Corporation inscribed thereon.

ARTICLE XI. WAIVER OF NOTICE

Whenever any notice is required to be given to any shareholder or director of the Corporation under the provisions of these By-Laws or of the Articles of Incorporation or the Wisconsin Business Corporation Law, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII. AMENDMENTS

These By-Laws may be altered, amended or repealed and new By-Laws adopted by action of a majority of the directors at any regular or special meeting of the directors.

\* \* \* \*

Adopted on September 1, 2004.

/s/ Robert L. Caulk

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Robert L. Caulk, President

ATTEST:

/s/ Louis N. Laderman

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Louis N. Laderman, Vice President & Secretary

[Skadden, Arps, Slate, Meagher &amp; Flom LLP Letterhead]

June 3, 2005

Spectrum Brands, Inc.  
Six Concourse Parkway, Suite 3300  
Atlanta, Georgia 30328

Re: Spectrum Brands, Inc.  
Registration Statement on Form S-4

Ladies and Gentlemen:

We are acting as special counsel to Spectrum Brands, Inc., a Wisconsin corporation (the "Company"), in connection with the issuance of up to \$700,000,000 aggregate principal amount of the Company's 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes Due 2015 (the "Exchange Notes") and related guarantees (the "Subsidiary Guarantees") by the Subsidiary Guarantors (as defined below). The Exchange Notes are to be issued pursuant to an exchange offer (the "Exchange Offer") in exchange for a like principal amount of the Company's issued and outstanding 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes Due 2015, together with the guarantees thereof by the Subsidiary Guarantors (the "Original Notes"), under the Indenture dated as of February 7, 2005, as amended by the Supplemental Indenture, dated as of May 3, 2005 (as so amended, the "Indenture"), among the Company, U.S. Bank National Association, as trustee (the "Trustee"), and the Subsidiary Guarantors, as contemplated by the Registration Rights Agreement, dated as of February 7, 2005 (the "Registration Rights Agreement"), by and among the Company, the Subsidiary Guarantors, Banc of America Securities LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and ABN AMRO Incorporated.

AQ Holdings, Inc., Aquarium Systems, Inc., IB Nitrogen Inc., Jungle Talk International, Inc., Nu-Gro America Corp., Nu-Gro US Holdco Corporation, Nu-Gro Technologies, Inc., Perfecto Holding Corp., Perfecto Manufacturing, Inc., ROV Holding, Inc., Sylorr Plant Corp., Tetra Holding (US), Inc., United Industries Corporation, United Pet Group, Inc. and Willinger Bros., Inc., each a Delaware corporation and a wholly owned subsidiary of the Company, and Aquaria, Inc., Pets' N People, Inc., ROVCAL, Inc. and Southern California Foam, Inc., each a California corporation and a wholly owned subsidiary of the Company, are collectively referred to herein as the "Select Subsidiary Guarantors." Ground Zero, Inc. and Schultz Company, each a Missouri corporation and a wholly owned subsidiary of the Company, WPC Brands, Inc., a Wisconsin company and a

wholly owned subsidiary of the Company, and DB Online, LLC, a Hawaii limited liability company and a wholly owned subsidiary of the Company, are collectively referred to herein as the "Other Subsidiary Guarantors." The Select Subsidiary Guarantors and the Other Subsidiary Guarantors are collectively referred to herein as the "Subsidiary Guarantors."

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933, as amended (the "Act").

In connection with this opinion, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of (i) the Registration Statement on Form S-4 to be filed with the Securities and Exchange Commission (the "Commission") on the date hereof under the Act (the "Registration Statement"); (ii) an executed copy of the Registration Rights Agreement; (iii) an executed copy of the Indenture; (iv) the Form T-1 of the Trustee to be filed as an exhibit to the Registration Statement; (v) the Certificate of Incorporation or Articles of Incorporation, as the case may be, of each Select Subsidiary Guarantor, certified as in effect on the date hereof; (vi) the By-Laws of each Select Subsidiary Guarantor, certified as in effect on the date hereof; (vii) the form of the Exchange Notes; and (viii) the form of the Subsidiary Guarantees. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and the Select Subsidiary Guarantors and such agreements, certificates of public officials, certificates of officers or other representatives of the Company, the Select Subsidiary Guarantors and others, and such other documents, certificates and records as we have deemed necessary or appropriate as a basis for the opinions set forth herein.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified, conformed or photostatic copies and the authenticity of the originals of such latter documents. In making our examination of documents executed or to be executed, we have assumed that all parties thereto (other than the Select Subsidiary Guarantors), had or will have the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents and that, except to the extent expressly set forth below, such documents constitute valid and binding obligations of such parties. We have also assumed that the Company and each Other Subsidiary Guarantor is validly existing in good standing under the laws of its jurisdiction of incorporation and that the Company and each Subsidiary Guarantor has been duly organized and has complied with all aspects of applicable laws of all jurisdictions (including their respective jurisdictions of incorporation) in connection with the transactions contemplated by the Exchange Offer. As to any facts material to the opinions expressed herein which we have not independently established or verified, we have relied upon statements and representations of officers and other representatives of the Company, the Subsidiary Guarantors, public officials and others.

Our opinion set forth herein is limited to the Delaware General Corporation Law, the California Corporation Code and the laws of the State of New York that, in our experience, are normally applicable to transactions of the type contemplated by the Exchange Offer and, to the extent that judicial or regulatory orders or decrees or consents, approvals, licenses, authorizations, validations, filings, recordings or registrations with governmental authorities are relevant, to those required under such laws (all of the foregoing being referred to as "Opined-on Law"). We do not express any opinion with respect to the laws of any jurisdiction other than the Opined-on Law or as to the effect of any such non-opined-on law on the opinions herein stated. To the extent our opinion relates to the enforceability of the choice of New York law and choice of New York forum provisions of the Exchange Notes and the Subsidiary Guarantees, our opinion is rendered in reliance upon N.Y. Gen. Oblig. Law §§ 5-1401, 5-1402 (McKinney 2001) and N.Y. C.P.L.R. 327(b) (McKinney 2001) and is subject to the qualification that such enforceability may be limited by public policy considerations of any jurisdiction, other than the courts of the State of New York, in which enforcement of such provisions, or of a judgment upon an agreement containing such provisions, is sought. Additionally, we do not express any opinion as to the enforceability of the Subsidiary Guarantees to the extent that the same provide that the obligations of the Subsidiary Guarantors are unconditional irrespective of the validity, regularity or enforceability of the Exchange Notes or the Indenture or the effect thereof on the opinions herein stated.

Based upon and subject to the foregoing and the limitations, qualifications, exceptions and assumptions set forth herein, we are of the opinion that when the Exchange Notes and the Subsidiary Guarantees (in the forms examined by us) have been duly executed and authenticated in accordance with the terms of the Indenture and have been delivered upon consummation of the Exchange Offer against receipt of the Original Notes and related guarantees surrendered in exchange therefor in accordance with the terms of the Exchange Offer, (a) the Exchange Notes will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and (b) each Subsidiary Guarantee will constitute a valid and binding obligation of the Subsidiary Guarantor that is a party thereto, enforceable against such Subsidiary Guarantor in accordance with its terms, except, in each case, with respect to the Exchange Notes and each Subsidiary Guarantee, to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

In rendering the opinion set forth above, we have assumed that the execution and delivery by the Company of the Indenture and the Exchange Notes and the performance by the Company of its obligations thereunder and the execution and delivery by each of the Subsidiary Guarantors of their respective Subsidiary Guarantees and the performance by each Subsidiary Guarantor of its obligations thereunder and under the Indenture do not and will not violate, conflict with or constitute a default under any agreement or instrument to which the Company, the Subsidiary Guarantors or any of their properties are subject, except for those agreements and instruments which have been identified to us by the Company as being material to it and which are listed under Item 21(a) in Part II of the Registration Statement or listed as exhibits to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2004.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. We also consent to the reference to our firm under the caption "Legal Matters" in the Registration Statement. In giving this consent, we do not thereby admit

that we are included in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP



[Spectrum Brands, Inc. Letterhead]

June 3, 2005

Spectrum Brands, Inc.  
Six Concourse Parkway, Suite 3300  
Atlanta, Georgia 30328

Re: Spectrum Brands, Inc.  
Registration Statement on Form S-4

Ladies and Gentlemen:

I am Senior Vice President, General Counsel & Secretary for Spectrum Brands, Inc., a Wisconsin corporation (the "Company"), and am acting as counsel to the Company in connection with the issuance of up to \$700,000,000 aggregate principal amount of the Company's 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes Due 2015 (the "Exchange Notes") and related guarantees (the "Subsidiary Guarantees") by the Subsidiary Guarantors (as defined below). The Exchange Notes are to be issued pursuant to an exchange offer (the "Exchange Offer") in exchange for a like principal amount of the Company's issued and outstanding 7<sup>3</sup>/<sub>8</sub>% Senior Notes Due 2015, together with the guarantees thereof by the Subsidiary Guarantors (the "Original Notes") under the Indenture, dated as of February 7, 2005, as amended by the Supplemental Indenture dated as of May 3, 2005 (as so amended, the "Indenture"), among the Company, U.S. Bank National Association, as trustee (the "Trustee"), and the Subsidiary Guarantors, as contemplated by the Registration Rights Agreement, dated as of February 7, 2005 (the "Registration Rights Agreement"), by and among the Company, the Subsidiary Guarantors, Banc of America Securities LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and ABN AMRO Incorporated.

AQ Holdings, Inc., Aquarium Systems, Inc., IB Nitrogen Inc., Jungle Talk International, Inc., Nu-Gro America Corp., Nu-Gro US Holdco Corporation, Nu-Gro Technologies, Inc., Perfecto Holding Corp., Perfecto Manufacturing, Inc., ROV Holding, Inc., Sylorr Plant Corp., Tetra Holding (US), Inc., United Industries Corporation, United Pet Group, Inc. and Willinger Bros., Inc., each a Delaware corporation and a wholly owned subsidiary of the Company, Aquaria, Inc., Pets' N People, Inc., ROVCAL, Inc. and Southern California Foam, Inc., each a California corporation and a wholly owned subsidiary of the Company, DB Online, LLC, a Hawaii limited liability company and a wholly owned subsidiary of the Company, Ground Zero, Inc. and Schultz Company, each

a Missouri corporation and a wholly owned subsidiary of the Company, and WPC Brands, Inc., a Wisconsin corporation and a wholly owned subsidiary of the Company, are collectively referred to herein as the "Subsidiary Guarantors."

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933, as amended (the "Act").

In rendering the opinion set forth herein, I have examined and relied on originals or copies of the following: (a) the Registration Statement on Form S-4 to be filed with the Securities and Exchange Commission (the "Commission") on the date hereof under the Act (the "Registration Statement"); (b) the form of the Exchange Notes; (c) the form of the guarantees by the Subsidiary Guarantors pursuant to the Indenture (the "Subsidiary Guarantees"); (d) an executed copy of the Indenture; (e) an executed copy of the Registration Rights Agreement; (f) the Form T-1 of the Trustee to be filed as an exhibit to the Registration Statement; (g) the Amended and Restated Articles of Incorporation of the Company, as in effect on the date hereof; (h) the Amended and Restated By-Laws of the Company, as in effect on the date hereof; and (i) certain resolutions adopted by the board of directors of the Company relating to the Exchange Offer, the issuance of the Original Notes and the Exchange Notes, the Indenture and related matters. I have also examined originals or copies, certified or otherwise identified to my satisfaction, of such records of the Company and such agreements, certificates of public officials, certificates of officers or other representatives of the Company and others, and such other documents, certificates and records as I have deemed necessary or appropriate as a basis for the opinions set forth below.

In my examination, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as facsimile, electronic, certified, conformed or photostatic copies and the authenticity of the originals of such latter documents. In making my examination of documents executed or to be executed, I have assumed that the parties thereto, other than the Company, had or will have the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents, and the validity and binding effect thereof. As to any facts material to the opinions expressed herein which we have not independently established or verified, I have relied upon statements and representations of officers and other representatives of the Company, public officials and others.

My opinion set forth herein is limited to the laws of the State of Wisconsin which are normally applicable to transactions of the type contemplated by the Exchange Offer (the "Opined on Law"). I do not express any opinion with respect to the laws of any other jurisdiction other than the Opined on Law or as to the effect of any such non-opined on law on the opinions herein stated. I am a member of the Bar in the State of Wisconsin.

Based upon and subject to the foregoing limitations, qualifications, exceptions and assumptions set forth herein, I am of the opinion that the Exchange Notes have been duly and validly authorized by the Company.

I hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement.

Very truly yours,

/s/ James T. Lucke

James T. Lucke

Senior Vice President, General Counsel & Secretary

[Thompson Coburn LLP Letterhead]

June 3, 2005

Spectrum Brands, Inc.  
Six Concourse Parkway, Suite 3300  
Atlanta, Georgia 30328

Ladies and Gentlemen:

We have acted as special Missouri counsel to Ground Zero Inc., a Missouri corporation ("Ground Zero"), and Schultz Company, a Missouri corporation ("Schultz") and together with Ground Zero each a "Company" and collectively, the "Companies", in connection with (i) the issuance of the Exchange Notes pursuant to the terms of the Indenture dated as of February 7, 2005 (the "Indenture") among you, the guarantors named therein (the "Guarantors"), including without limitation, the Companies, and U.S. Bank National Association, as trustee, and (ii) the authorization, execution and delivery of the Note Guarantees applicable to the Exchange Notes (the "Guarantees") executed by each Company in the form attached to the Indenture as Exhibit D (the Indenture and the Guarantees are hereinafter collectively referred to as the "Transaction Documents"). Capitalized terms defined in the Indenture and used (but not otherwise defined) herein are used herein as so defined.

In connection with this opinion, we have examined and relied upon copies of (a) the Transaction Documents, and (b) such corporate records, agreements, documents and other instruments, and such certificates or comparable documents of public officials and of officers and representatives of the Companies, and have made such inquiries of such officers and representatives, as we have deemed relevant and necessary as a basis for the opinions hereinafter set forth.

In rendering the opinions expressed herein, we have assumed: (i) the genuineness of all signatures, other than the signatures of officers of the Companies signed in our presence, on all Transaction Documents; (ii) the authenticity of all documents submitted to us as originals; (iii) the conformity to the originals of all documents submitted to us as copies, whether photographic, facsimile or electronic, and the authenticity of the originals of such documents; (iv) the legal capacity of all natural persons executing documents; (v) that except for the Transaction Documents, there are no agreements or undertakings to which either Company, on

the one hand, and you, on the other hand, are parties which would have an effect on the opinions expressed herein; (vi) that all certificates and telecopied and telephonic confirmations given by public officials have been properly given and are accurate; and (vii) the solvency of the Companies and the fairness and adequacy of the consideration and value received by the Companies in the transactions contemplated by the Transaction Documents.

We are opining herein as to the effect on the subject transactions only of the substantive laws of the State of Missouri, and we express no opinion with respect to (a) the applicability to such transactions, or the effect on such transactions, of any other laws, or (b) any matters of municipal law or the laws of any other local agencies within the State of Missouri.

Based on the foregoing, and subject to the assumptions and qualifications set forth herein, we are of the opinion that:

1. Each Company is a corporation validly existing and in good standing under the laws of the State of Missouri.

2. Each of the Guarantees to which a Company will be a party has been duly authorized. When the Guarantees (in the form examined by us) have been duly executed and authenticated in accordance with the terms of the Indenture and have been delivered upon consummation of the Exchange Offer against receipt of the original Notes issued on the Issue Date and the related guarantees surrendered in exchange therefor in accordance with the terms of the Exchange Offer, each of the Guarantees to which a Company is a party will constitute the legal, valid and binding obligation of such Company.

3. The performance by each Company of its respective obligations under the Guarantees would be enforceable in accordance with their terms if such Guarantees were governed by the laws of the State of Missouri.

The opinions expressed above are based upon and subject to the following qualifications, limitations and exceptions:

1. This opinion is subject to the effect of liquidation, conservatorships, insolvency, bankruptcy, reorganization, moratorium, fraudulent transfer or conveyance, and other laws affecting the enforceability of creditors' rights or the collection of debtors' obligations.

2. This opinion is also subject to: (i) general principles of equity regardless of whether enforcement is sought in a proceeding in equity or law; (ii) the effect of other applicable federal and state laws, statutes, ordinances, rules, regulations, decisions and principles which may modify, limit, render unenforceable or delay certain rights or remedies.

3. Whenever our opinion herein is indicated to be based on our knowledge, it is limited to the actual current knowledge of the attorneys of our firm who have devoted substantive attention to legal matters referred to us by the Companies and to the results of inquiry by such attorneys of appropriate officers of the Companies. Except to the extent expressly set forth herein, however, we have not undertaken any independent investigation to determine the existence or the absence of such facts, and no inference as to our knowledge of the existence or absence of such facts should be drawn from our representation of the Companies.

This opinion is rendered as of the date hereof, and we undertake no obligation to advise you of any future changes or developments which might affect any matters or opinions herein set forth.

We hereby consent to the filing of this opinion with the Securities and Exchange Commission (the "Commission") as an exhibit to the Registration Statement on Form S-4 to be filed with the Commission on the date hereof (the "Registration Statement") under the Securities Act of 1933, as amended (the "Act"). We also consent to the reference to our firm under the caption "Legal Matters" in the Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

Very truly yours

/s/ Thompson Coburn LLP

[Foley &amp; Lardner LLP Letterhead]

June 3, 2005

Spectrum Brands, Inc.  
Six Concourse Parkway  
Suite 3300  
Atlanta, GA 30328

Ladies/Gentlemen:

We have acted as special Wisconsin counsel to WPC Brands, Inc., a Wisconsin corporation (the "Company"), in connection with the registration and issuance by Spectrum Brands, Inc. (f/k/a Rayovac Corporation), a Wisconsin corporation ("Parent"), of up to \$700,000,000 aggregate principal amount of 7 3/8% Senior Subordinated Notes due 2015 (the "Exchange Notes") and related guarantees by certain of Parent's subsidiaries (each a "Notation of Guarantee"), pursuant to: (i) the Indenture, dated as of February 7, 2005 (the "Indenture"), by and among Parent and the guarantors named therein, including the Company (collectively, the "Guarantors"), and U.S. Bank National Association as Trustee ("U.S. Bank"); and (ii) the Registration Rights Agreement, dated as of February 7, 2005 (the "Registration Rights Agreement"), by and among Parent, the Guarantors, and the several initial purchasers named therein (the "Initial Purchasers").

In connection with the delivery of this opinion, we have examined copies of the following documents:

1. the Indenture;
2. the Registration Rights Agreement;
3. forms of the Notation of Guarantees of the Company, to be executed in accordance with the form provided by the Indenture (the "Exchange Guarantees"); and
4. forms of the Exchange Notes.

The documents numbered 1-4 above are referred to herein as the "Transaction Documents."

In rendering this opinion we have, with your permission, relied on the officer's certificate annexed hereto as Exhibit A (the "Officer's Certificate") as to certain factual matters and assumed, without investigation, verification or inquiry that:

- (a) Each of the parties to the Transaction Documents, other than the Company, is a corporation or association duly organized and validly existing under the laws of its jurisdiction of incorporation or organization;
- (b) Each of the parties to the Transaction Documents, other than the Company, has the necessary right, power and authority to execute and deliver, and perform its obligations under, the Transaction Documents; the transactions therein contemplated have been duly authorized by all parties thereto other than the Company and the Transaction Documents constitute or, when executed, will constitute, the legal, valid and binding obligations of all parties thereto other than the Company;

- (c) The Transaction Documents have been, or will be, duly executed, delivered and accepted by all parties thereto other than the Company;
- (d) There is no oral or written agreement, understanding, course of dealing or usage of trade that affects the rights and obligations of the parties set forth in the Transaction Documents or that would have an effect on the opinions expressed herein; all material terms and conditions of the relevant transactions are correctly and completely reflected in the Transaction Documents; and there has been no waiver of any of the provisions of the Transaction Documents by conduct of the parties or otherwise; and
- (e) All natural persons who are signatories to the Transaction Documents or the other documents reviewed by us were, or will be, legally competent at the time of execution; all signatures on the Transaction Documents and the other documents reviewed by us are genuine; the copies of all documents submitted to us are accurate and complete, each such document that is original is authentic, and each such document that is a copy conforms to an authentic original.

Based upon the foregoing, but subject to the assumptions, qualifications and limitations set forth herein, we are of the opinion that, when the Registration Statement (as defined in the last paragraph of this opinion letter) has become effective under the Securities Act of 1933, as amended (the "Act"), and the Exchange Guarantees are executed and delivered in accordance with the terms of the exchange offer, and if governed by Wisconsin law, the Exchange Guarantees would be the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

The foregoing opinions are subject to the following additional assumptions and qualifications:

i. Our opinions are limited by:

- (1) Applicable bankruptcy, receivership, reorganization, insolvency, moratorium, fraudulent conveyance or transfer, and other laws and judicially developed doctrines relating to or affecting creditors' or secured creditors' rights and remedies generally;
- (2) General principles of equity, regardless of whether such enforcement is considered in a proceeding in equity or at law, and limitations on the availability of specific performance, injunctive relief and other equitable remedies; and
- (3) The possibility that certain rights, remedies, waivers and other provisions of the Exchange Guarantees may not be enforceable; nevertheless, such unenforceability will not render the Exchange Guarantees invalid as a whole or preclude (a) judicial enforcement of the obligation of the Company to repay the principal, together with the interest thereon (to the extent not deemed a penalty) as provided in the Exchange Guarantees and the Indenture; or (b) acceleration of the obligation of the Company to repay such principal, together with such interest, upon a material default in a material provision of the Indenture.

ii. We have not examined the records of Parent, the Guarantors, U.S. Bank, the Initial Purchasers or the Company or any court or any public, quasi-public, private or other office in any jurisdiction or the files of our firm, and our opinions are subject to matters that an examination of such records would reveal.



iii. We express no opinion concerning compliance with federal securities laws or state “blue sky” laws. In addition, we express no opinion concerning enforcement of any rights to indemnification and contribution, which may be limited by applicable federal or state laws or the public policy underlying such laws.

The opinions expressed herein are limited to the federal laws of the United States and the laws of the State of Wisconsin in effect on the date hereof as they presently apply and we express no opinion herein as to the laws of any other jurisdiction. These opinions are given as of the date hereof, they are intended to apply only to those facts and circumstances that exist as of the date hereof, and we assume no obligation or responsibility to update or supplement these opinions to reflect any facts or circumstances that may hereafter come to our attention or any changes in laws that may hereafter occur, or to inform the addressee(s) of any change in circumstances occurring after the date hereof that would alter the opinions rendered herein.

This opinion is limited to the matters set forth herein, and no opinion may be inferred or implied beyond the matters expressly contained herein. Except as expressly set forth herein, this opinion is being rendered solely for the benefit of the addressee(s) hereof. This opinion may not be used or relied upon for any other purpose, relied upon by any other party, or filed with or disclosed to any governmental authority other than a court in connection with the enforcement or protection of the rights or remedies of the Initial Purchasers under any of the Transaction Documents or to a regulator in connection with an examination of any Initial Purchaser by such governmental authority, without our prior written consent; *provided, however*, that we hereby consent to the filing of this opinion with the Securities and Exchange Commission (the “Commission”) as an exhibit to the Registration Statement on Form S-4 to be filed with the Commission on the date hereof (the “Registration Statement”) under the Act. We also consent to the reference to our firm under the caption “Legal Matters” in the Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

Very truly yours,  
/S/ FOLEY & LARDNER LLP  
FOLEY & LARDNER LLP

[Cades Schutte a limited liability law partnership letterhead]

June 3, 2005

Spectrum Brands, Inc.  
Six Concourse Parkway, Suite 3300  
Atlanta, Georgia, 30328

Attention: General Counsel

Ladies and Gentlemen:

We have acted as special Hawaii counsel to DB Online, LLC, a Hawaii limited liability company (“DB Online”), in connection with the Notations of Guarantee (collectively, the “Subsidiary Guarantees”) to be executed by DB Online and the other parties thereto pursuant to that certain Indenture dated as of February 7, 2005 (the “Indenture”), among Rayovac Corporation, a Wisconsin corporation now known as Spectrum Brands, Inc., DB Online and the other parties thereto, which Subsidiary Guarantees relate to the Exchange Notes issued pursuant to the terms of the Indenture. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Indenture.

This opinion letter is provided to you at the request of DB Online. The law covered by the opinions expressed herein is limited to the laws of the State of Hawaii.

For purposes of rendering our opinions, we have reviewed the Indenture, the Registration Rights Agreement, the form of Exchange Notes and the form of Subsidiary Guarantees (collectively the “Documents”), certain documents and certificates of public officials and a certificate of Louis N. Laderman, the corporate secretary of the sole member of DB Online (the “Officer’s Certificate”). We have given consideration to such matters of law and fact as we have deemed appropriate, in our professional judgment, to render such opinions.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies.

We have relied, without investigation or analysis, upon information in certificates issued by any governmental official, office or agency concerning a person’s property or status. Except to the extent the information constitutes a statement, directly or in practical effect, of any legal conclusion at issue, we have relied, without investigation or analysis, upon the information provided in the Officer’s Certificate.

In rendering the following opinions, we have assumed:

(a) That all statements of facts contained in the Documents and all other documents and certificates are true and correct.

(b) Each party to the Documents, other than DB Online, has satisfied those legal requirements that are applicable to it to the extent necessary to make the Documents to which it is a party enforceable against it.

(c) Each party to the Documents, other than DB Online, has complied with all legal requirements pertaining to its status as such status relates to its rights to enforce the Documents against any other party thereto.

Based upon and subject to the foregoing, and to the qualifications set forth below, we are of the opinion that:

1. DB Online was organized under the laws of the State of Hawaii and is a validly existing limited liability company in good standing.

2. DB Online has the limited liability company power to execute, deliver and perform its obligations under the Subsidiary Guarantees.

3. The Subsidiary Guarantees have been duly authorized by all necessary limited liability company action on the part of DB Online.

4. Execution and delivery by DB Online of, and the performance by DB Online of its agreements in, the Subsidiary Guarantees will not violate its articles of organization or operating agreement.

5. To our knowledge, without having made any special investigation for purposes of this opinion, the execution and delivery of the Subsidiary Guarantees by DB Online, and the performance by DB Online of its obligations thereunder, in accordance with its terms, will not violate, conflict with, or result in any contravention of, any Applicable Law or any Applicable Order. As used in this opinion, "Applicable Law" means the laws of the State of Hawaii that, in our experience, are normally applicable to transactions of the type contemplated by the Documents (other than securities or blue sky laws), but without our having made any special investigation as to the applicability of any specific law; and "Applicable Order" means those judgments, orders or decrees of any governmental authorities specifically identified to us by DB Online to be applicable to DB Online.

6. If governed by the laws of the State of Hawaii, the Subsidiary Guarantees, upon execution and delivery, would be the valid and binding obligation of DB Online, enforceable against it in accordance with their terms subject to (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statutes, rules, regulations or other laws affecting the enforcement of creditors' rights and remedies generally and (ii) the unavailability

of, or limitation on the availability of, a particular right or remedy (whether in a proceeding in equity or at law) because of an equitable principle or a requirement as to commercial reasonableness, conscionability or good faith.

We express no opinions as to tax laws or blue sky and securities laws.

We hereby consent to the filing of this opinion with the Securities and Exchange Commission (the "Commission") as an exhibit to the Registration Statement on Form S-4 to be filed with the Commission on the date hereof (the "Registration Statement") under the Securities Act of 1933, as amended (the "Act"). We also consent to the reference to our firm under the caption "Legal Matters" in the Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

Very truly yours,

/s/ Cades Schutte LLP

**RAYOVAC CORPORATION**  
**COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES**  
(Dollars in millions)

	FISCAL YEAR ENDED SEPTEMBER 30,					SIX MONTHS ENDED	
	2000	2001	2002	2003	2004	MARCH 28, 2004	APRIL 3, 2005
<b>Fixed charges:</b>							
Interest expense	\$30.6	\$27.2	\$16.0	\$37.2	\$65.7	\$33.4	\$55.9
Capitalized interest	0.4	—	—	—	—	—	—
<b>Total fixed charges(1)</b>	<b>\$31.0</b>	<b>\$27.2</b>	<b>\$16.0</b>	<b>\$37.2</b>	<b>\$65.7</b>	<b>\$33.4</b>	<b>\$55.9</b>
<b>Earnings:</b>							
Earnings from continuing operations before income taxes and minority interests	\$58.0	\$17.5	\$45.7	\$23.0	\$90.5	\$40.2	\$41.2
<b>Add:</b>							
Fixed charges	31.0	27.2	16.0	37.2	65.7	33.4	55.9
Amortization of capitalized interest	0.3	0.3	0.3	0.3	0.3	0.3	0.3
<b>Less:</b>							
Capitalized interest	(0.4)	—	—	—	—	—	—
<b>Total adjusted earnings</b>	<b>\$88.9</b>	<b>\$45.0</b>	<b>\$62.0</b>	<b>\$60.5</b>	<b>\$156.5</b>	<b>\$73.9</b>	<b>\$97.4</b>
<b>Ratio of earnings to fixed charges</b>	<b>2.9x</b>	<b>1.7x</b>	<b>3.9x</b>	<b>1.6x</b>	<b>2.4x</b>	<b>2.2x</b>	<b>1.7x</b>

(1) Total fixed charges defined as sum of interest expense, capitalized interest, amortization of debt issuance costs and the portion of operating rental expense which management believes is representative of the interest component of rent expense.

## SUBSIDIARY

Anabasis Handelsgesellschaft mbH  
 Biorell Gesellschaft mit beschränkter Haftung  
 Brisco Electronics B.V.  
 Brisco Electronics GmbH  
 Distribuidora Rayovac Guatemala, S.A.  
 Distribuidora Rayovac Honduras, S.A.  
 Distribuidora Ray-O-Vac/Varta, S.A. de C.V.  
 Minera Vidaluz, S.A. de C.V.  
 Pile D'Alsac S.A.S.  
 Rayovac (UK) Limited  
 Rayovac Argentina S.R.L.  
 Rayovac Canada Inc.  
 Rayovac Chile Ltda.  
 Rayovac Colombia, S.A.  
 Rayovac Costa Rica, S.A.  
 Ray-O-Vac de Mexico, S.A. de C.V.  
 Rayovac Dominican Republic, S.A.  
 Rayovac El Salvador, S.A. de C.V.  
 Rayovac Europe B.V.  
 Rayovac Europe GmbH  
 Rayovac Europe Limited  
 Rayovac Far East Limited  
 Rayovac Foreign Sales Corporation  
 Rayovac Guatemala, S.A.  
 Rayovac Honduras, S.A.  
 Rayovac Latin America, Ltd.  
 Rayovac Overseas Corp.  
 Rayovac Venezuela, S.A.  
 Remington Consumer Products (Ireland) Ltd.  
 Remington Consumer Products Limited  
 Remington Licensing Corporation  
 Remington Products Australia Pty. Ltd.  
 Remington Products Company, L.L.C.  
 Remington Products GmbH  
 Remington Products New Zealand Ltd.  
 Remington Products, Inc.  
 ROV German Finance GmbH  
 ROV German General Partner GmbH  
 ROV German Limited GmbH  
 ROV Holding, Inc.  
 ROV International Finance Company  
 Rovcal, Inc.  
 Spectrum Brands Europe GmbH

## JURISDICTION OF ORGANIZATION

Germany  
 Germany  
 Netherlands  
 Federal Republic of Germany  
 Guatemala  
 Honduras  
 Mexico  
 Mexico  
 France  
 U.K.  
 Argentina  
 Canada  
 Chile (Santiago)  
 Colombia  
 Costa Rica  
 Mexico  
 Dominican Republic (Santo Domingo)  
 El Salvador  
 Netherlands  
 Germany  
 U.K.  
 Hong Kong  
 Barbados  
 Guatemala  
 Honduras  
 Cayman Islands  
 Panama  
 Venezuela  
 Ireland  
 United Kingdom  
 USA (DE)  
 Australia  
 USA (DE)  
 Germany  
 New Zealand  
 Canada  
 Germany  
 Germany  
 Germany  
 USA (DE)  
 Cayman Islands  
 USA (CA)  
 Germany

Spectrum Brands Holding B.V.  
Spectrum Brands Lux S.à. r.l.  
Tetra (UK) Limited  
Tetra Aquatic Asia Pacific Private Limited  
Tetra France S.A.S.  
Tetra GmbH  
Tetra HoldCo GmbH & Co. KG  
Tetra Holding (US), Inc.  
Tetra Holding GmbH  
Tetra International Holding GmbH  
Tetra Italia S.r.l.  
Tetra Japan K.K.  
Tetra Management GmbH  
Varta B.V.  
Varta Batterie Sp. Zo.o  
VARTA Batterie spol.s. r.o.  
Varta Batterie AB  
Varta Batterie GmbH  
Varta Batterie S.p.A.  
Varta Consumer Batteries A/S  
Varta Geratebatterie GmbH  
Varta Ltd.  
Varta Pilleri Ticaret Ltd. Sirketi  
Varta S.A.  
Varta S.A.  
Varta-Hungaria Kreskedelmi es Szolgaltato KFT  
Willinger Bros., Inc.  
Zoepfos International N.V.  
Zoomedica Frickhinger GmbH

Netherlands  
Luxembourg  
U.K.  
Singapore  
France  
Germany  
Germany  
USA (DE)  
Germany  
Germany  
Italy  
Japan  
Germany  
Netherlands  
Poland  
Czech Republic  
Sweden  
Austria  
Italy  
Denmark  
Germany  
England  
Turkey  
Colombia  
France  
Hungary  
USA (DE)  
Netherlands Antilles  
Germany

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement on Form S-4 dated June 3, 2005 of Spectrum Brands, Inc. (formerly Rayovac Corporation) of our report dated November 12, 2004, with respect to the consolidated balance sheets of Rayovac Corporation as of September 30, 2004 and 2003, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the years in the three-year period ended September 30, 2004, which report appears in the Form 10-K of Rayovac Corporation dated December 14, 2004, and to the reference to our firm under the heading "Experts" in such Registration Statement.

/s/ KPMG LLP

Atlanta, Georgia  
June 3, 2005



**Consent of Independent Registered Public Accounting Firm**

We hereby consent to the incorporation by reference in this Registration Statement on Form S-4 dated June 3, 2005 of Spectrum Brands, Inc. (formerly Rayovac Corporation) of our report dated July 8, 2004 relating to the consolidated financial statements of Microlite S.A. which appears in the Current Report on Form 8-K/A of Rayovac Corporation dated May 28, 2004. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers

PricewaterhouseCoopers  
Auditores Independentes  
Sao Paulo, Brazil  
June 3, 2005

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-4 of Spectrum Brands, Inc. of our report dated March 30, 2005 relating to the financial statements of United Industries Corporation and its subsidiaries, which appears in the Current Report on Form 8-K of Rayovac Corporation dated April 27, 2005. We also consent to the references to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP  
St. Louis, Missouri  
June 3, 2005

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-4 of Spectrum Brands, Inc. of our report dated February 27, 2004 relating to the financial statements of United Pet Group, Inc. and its subsidiaries, which appears in the Current Report on Form 8-K/A of Rayovac Corporation dated April 19, 2005. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP  
St. Louis, Missouri  
June 3, 2005

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in this Registration Statement on Form S-4 dated June 3, 2005 of Spectrum Brands Inc., formerly Rayovac Corporation, of our report dated October 24, 2003, except as to note 24, which is as of April 30, 2004, relating to the consolidated financial statements of The Nu-Gro Corporation and Subsidiaries as of September 30, 2003 and 2002 and for the years then ended incorporated in such Registration Statement by reference to the Current Report in the Form 8-K of Spectrum Brands Inc., formerly Rayovac Corporation, dated April 27, 2005. We also consent to the reference to our firm under the heading "Experts" in such Registration Statement.

/s/ Ernst & Young LLP

Chartered Accountants  
Kitchener, Canada,  
June 3, 2005.

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement on Form S-4 dated June 3, 2005 of Spectrum Brands, Inc. of our report dated March 4, 2005, except as to note 16, which is as of April 29, 2005, with respect to the consolidated balance sheet of Tetra Holding (US), Inc. and subsidiary as of December 31, 2004, and the related consolidated statements of income, changes in stockholder's equity and comprehensive income, and cash flows for the year then ended, which report is included in the Current Report on Form 8-K filed by Spectrum Brands, Inc. on June 2, 2005, and to the reference to our firm under the heading "Experts" in such Registration Statement.

/s/ KPMG LLP

Roanoke, Virginia  
June 3, 2005

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM T-1****STATEMENT OF ELIGIBILITY UNDER  
THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE**Check if an Application to Determine Eligibility of  
a Trustee Pursuant to Section 305(b)(2)

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**U.S. BANK NATIONAL ASSOCIATION**

(Exact name of Trustee as specified in its charter)

**31-0841368**

I.R.S. Employer Identification No.

**800 Nicollet Mall  
Minneapolis, Minnesota**  
(Address of principal executive offices)**55402**  
(Zip Code)**Richard Prokosch  
U.S. Bank National Association  
60 Livingston Avenue  
St. Paul, MN 55107  
(651) 495-3918**

(Name, address and telephone number of agent for service)

**Spectrum Brands, Inc.**

(Issuer with respect to the Securities)

**Wisconsin**  
(State or other jurisdiction of incorporation or organization)**22-2423556**  
(I.R.S. Employer Identification No.)**Six Concourse Parkway  
Suite 3300  
Atlanta, Georgia**  
(Address of Principal Executive Offices)**30328**  
(Zip Code)**7-3/8% Senior Subordinated Notes due 2015**(Title of the Indenture Securities)

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**TABLE OF ADDITIONAL REGISTRANTS**

<b>Exact Name of Additional Registrants</b>	<b>Jurisdiction of Incorporation</b>	<b>Primary Standard Industrial Classification Code Number</b>	<b>I.R.S. Employer Identification Number</b>
ROV Holding, Inc.*	Delaware	551112	22-2423555
Rovcal, Inc.*	California	335900	52-2068284
United Industries Corporation, 2150 Schuetz Road, St. Louis, Missouri 63146, (314) 427-0780	Delaware	325900	43-1025604
AQ Holdings, Inc.**	Delaware	551112	04-3429328
Aquaria, Inc.**	California	339900	95-2556867
Aquarium Systems, Inc.**	Delaware	339900	34-1820457
DB Online, LLC**	Hawaii	N/A	N/A <sup>1</sup>
Ground Zero, Inc.**	Missouri	Inactive	43-1807196
IB Nitrogen, Inc., 10 Craig Street, Brantford, Ontario N3R7J1, (519) 757-0077	Delaware	325300	52-2115627
Jungle Talk International, Inc.**	Delaware	321900	34-1839601
Nu-Gro US Holdco Corporation***	Delaware	551112	20-0971051
Nu-Gro America Corp. ***	Delaware	551112	98-0191327
Nu-Gro Technologies, Inc.***	Delaware	325300	14-1817561
Perfecto Holding Corp. **	Delaware	551112	59-3380422
Perfecto Manufacturing, Inc.**	Delaware	339900	59-3380419
Pets 'N People, Inc.**	California	453910	95-3603453
Schultz Company**	Missouri	325300	43-0625762
Southern California Foam, Inc.**	California	339900	95-4236597
Sylorr Plant Corp.**	Delaware	325900	02-0644834
United Pet Group, Inc.**	Delaware	311110	11-2392851
WPC Brands, Inc.**	Wisconsin	325900	39-1786169
Tetra Holding (US), Inc., 3001 Commerce Street, Blacksburg, Virginia 24060, (540) 951-5400	Delaware	311119	42-1560545
Willinger Bros., Inc.****	Delaware	311119	13-2847371

\* Address and telephone number of principal executive offices are the same as those of Spectrum Brands, Inc.  
 \*\* Address and telephone number of principal executive offices are the same as those of United Industries Corporation.  
 \*\*\* Address and telephone number of principal executive offices are the same as those of IB Nitrogen, Inc.  
 \*\*\*\* Address and telephone number of principal executive offices are the same as those of Tetra Holding (US), Inc.  
<sup>1</sup> Single member LLC disregarded for US tax purposes.

**FORM T-1**

**Item 1. GENERAL INFORMATION.** Furnish the following information as to the Trustee.

- a) *Name and address of each examining or supervising authority to which it is subject.*  
Comptroller of the Currency  
Washington, D.C.
- b) *Whether it is authorized to exercise corporate trust powers.*  
Yes

**Item 2. AFFILIATIONS WITH OBLIGOR.** *If the obligor is an affiliate of the Trustee, describe each such affiliation.*

None

**Items 3-15** *Items 3-15 are not applicable because to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

**Item 16. LIST OF EXHIBITS:** *List below all exhibits filed as a part of this statement of eligibility and qualification.*

- 1. A copy of the Articles of Association of the Trustee.\*
- 2. A copy of the certificate of authority of the Trustee to commence business.\*
- 3. A copy of the certificate of authority of the Trustee to exercise corporate trust powers.\*
- 4. A copy of the existing bylaws of the Trustee.\*
- 5. A copy of each Indenture referred to in Item 4. Not applicable.
- 6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939, attached as Exhibit 6.
- 7. Report of Condition of the Trustee as of March 31, 2005 published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 7.

\* Incorporated by reference to Registration Number 333-67188.



**NOTE**

The answers to this statement insofar as such answers relate to what persons have been underwriters for any securities of the obligors within three years prior to the date of filing this statement, or what persons are owners of 10% or more of the voting securities of the obligors, or affiliates, are based upon information furnished to the Trustee by the obligors. While the Trustee has no reason to doubt the accuracy of any such information, it cannot accept any responsibility therefor.

**SIGNATURE**

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of St. Paul, State of Minnesota on the 31<sup>st</sup> of May, 2005.

By: /s/ Richard Prokosch

Richard Prokosch  
Vice President

By: /s/ Benjamin J. Krueger

Benjamin J. Krueger  
Assistant Vice President

**Exhibit 6**

**CONSENT**

In accordance with Section 321(b) of the Trust Indenture Act of 1939, the undersigned, U.S. BANK NATIONAL ASSOCIATION hereby consents that reports of examination of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Dated: May 31, 2005

By: /s/ Richard Prokosch

Richard Prokosch  
Vice President

By: /s/ Benjamin J. Krueger

Benjamin J. Krueger  
Assistant Vice President

**Exhibit 7**  
**U.S. Bank National Association**  
**Statement of Financial Condition**  
**As of 3/31/2005**

(\$000's)

3/31/2005

<b>Assets</b>	
Cash and Due From Depository Institutions	\$ 8,894,661
Federal Reserve Stock	0
Securities	42,846,194
Federal Funds	2,861,316
Loans & Lease Financing Receivables	125,284,459
Fixed Assets	1,780,370
Intangible Assets	10,263,150
Other Assets	8,917,028
<b>Total Assets</b>	<b>\$ 197,847,178</b>
<b>Liabilities</b>	
Deposits	\$ 126,268,324
Fed Funds	10,290,860
Treasury Demand Notes	0
Trading Liabilities	144,277
Other Borrowed Money	27,701,315
Acceptances	91,307
Subordinated Notes and Debentures	6,814,193
Other Liabilities	6,028,535
<b>Total Liabilities</b>	<b>\$ 177,338,811</b>
<b>Equity</b>	
Minority Interest in Subsidiaries	\$ 1,022,821
Common and Preferred Stock	18,200
Surplus	11,792,288
Undivided Profits	7,675,058
<b>Total Equity Capital</b>	<b>\$ 20,508,367</b>
<b>Total Liabilities and Equity Capital</b>	<b>\$ 197,847,178</b>

To the best of the undersigned's determination, as of the date hereof, the above financial information is true and correct.

**U.S. Bank National Association**

By: /s/ Richard Prokosch  
Vice President

Date: May 31, 2005

LETTER OF TRANSMITTAL  
 SPECTRUM BRANDS, INC.  
 OFFER FOR ALL OUTSTANDING

7<sup>3</sup>/<sub>8</sub>% SENIOR SUBORDINATED NOTES DUE 2015

IN EXCHANGE FOR

7<sup>3</sup>/<sub>8</sub>% SENIOR SUBORDINATED NOTES DUE 2015

WHICH HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS  
 AMENDED PURSUANT TO THE PROSPECTUS DATED \_\_\_\_\_, 2005

THE EXCHANGE OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON \_\_\_\_\_, 2005, UNLESS EXTENDED (THE "EXPIRATION DATE"). TENDERS MAY BE WITHDRAWN PRIOR TO 5:00 P.M., NEW YORK CITY TIME, ON THE EXPIRATION DATE.

THE EXCHANGE AGENT FOR THE EXCHANGE OFFER IS:  
 U.S. BANK NATIONAL ASSOCIATION

BY REGISTERED OR CERTIFIED MAIL,  
 HAND DELIVERY  
 OR OVERNIGHT DELIVERY:  
 U.S. Bank National Association  
 EP-MN-WS2N  
 60 Livingston Avenue  
 St. Paul, MN 55107  
 Telephone: (800) 934-6802

FACSIMILE TRANSMISSIONS  
 (651) 495-8158

or  
 (651) 495-8159  
 (Eligible Institutions Only)

CONFIRMATION BY TELEPHONE: (800) 934-6802

DELIVERY OF THIS LETTER OF TRANSMITTAL TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE OR TRANSMISSION OF THIS LETTER OF TRANSMITTAL VIA FACSIMILE TO A NUMBER OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY.

THE INSTRUCTIONS CONTAINED HEREIN SHOULD BE READ CAREFULLY BEFORE THIS LETTER OF TRANSMITTAL IS COMPLETED.

The undersigned acknowledges that he or she has received and reviewed the prospectus dated \_\_\_\_\_, 2005, referred to as the prospectus, of Spectrum Brands, Inc., a Wisconsin corporation, and this Letter of Transmittal, which together constitute Spectrum's offer, referred to as the exchange offer, to exchange an aggregate principal amount of up to \$700,000,000 of its 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015 which have been registered under the Securities Act of 1933, as amended, referred to as the exchange notes, for a like principal amount of its issued and outstanding 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015, referred to as the original notes. Capitalized terms used but not defined herein shall have the same meaning given to them in the prospectus, as it may be amended or supplemented.

This letter of transmittal is to be completed by a holder of original notes either if (a) certificates for such original notes are to be forwarded herewith or (b) a tender of original notes is to be made by book-entry transfer to the account of U.S. Bank National Association, the exchange agent for the exchange offer, at the Depository Trust Company, or DTC, pursuant to the procedures for tender by book-entry transfer set forth under "The Exchange Offer—Procedures for Tendering Original Notes—Book-Entry Transfers" in the prospectus.

Certificates or book-entry confirmation of the transfer of original notes into the exchange agent's account at DTC, as well as this letter of transmittal or a facsimile hereof, properly completed and duly executed, with any required signature guarantees, and any other documents required by this letter of transmittal, must be received by the exchange agent at its address set forth herein on or prior to the expiration date. Tenders by book-entry transfer may also be made by delivering an agent's message in lieu of this letter of transmittal. The term "book-entry confirmation" means a confirmation of a book-entry transfer of original notes into the exchange agent's account at DTC. The term "agent's message" means a message to the exchange agent by DTC which states that DTC has received an express acknowledgment that the tendering holder agrees to be bound by the letter of transmittal and that Spectrum may enforce the letter of transmittal against such holder. The agent's message forms a part of a book-entry transfer.

If original notes are tendered pursuant to book-entry procedures, the exchange agent must receive, no later than 5:00 p.m., New York City time, on the expiration date, book-entry confirmation of the tender of the original notes into the exchange agent's account at DTC, along with a completed letter of transmittal or an agent's message.

BY CREDITING THE ORIGINAL NOTES TO THE EXCHANGE AGENT'S ACCOUNT AT DTC AND BY COMPLYING WITH THE APPLICABLE PROCEDURES OF DTC'S AUTOMATED TENDER OFFER PROGRAM, OR ATOP, WITH RESPECT TO THE TENDER OF THE ORIGINAL NOTES, INCLUDING BY THE TRANSMISSION OF AN AGENT'S MESSAGE, THE HOLDER OF ORIGINAL NOTES ACKNOWLEDGES AND AGREES TO BE BOUND BY THE TERMS OF THIS LETTER OF TRANSMITTAL, AND THE PARTICIPANT IN DTC CONFIRMS ON BEHALF OF ITSELF AND THE BENEFICIAL OWNERS OF SUCH ORIGINAL NOTES ALL PROVISIONS OF THIS LETTER OF TRANSMITTAL AS BEING APPLICABLE TO IT AND SUCH BENEFICIAL OWNERS AS FULLY AS IF SUCH PARTICIPANT AND EACH SUCH BENEFICIAL OWNER HAD PROVIDED THE INFORMATION REQUIRED HEREIN AND EXECUTED AND TRANSMITTED THIS LETTER OF TRANSMITTAL TO THE EXCHANGE AGENT.

Holders of original notes whose certificates for such original notes are not immediately available or who are unlikely to be able to deliver all required documents to the exchange agent on or prior to the expiration date or who cannot complete a book-entry transfer on a timely basis may tender their original notes according to the guaranteed delivery procedures described in "The Exchange Offer—Procedures for Tendering Original Notes—Guaranteed Delivery" in the prospectus.

DELIVERY OF DOCUMENTS TO DTC DOES NOT CONSTITUTE DELIVERY TO THE EXCHANGE AGENT.

The undersigned has completed the appropriate boxes below and signed this letter of transmittal to indicate the action the undersigned desires to take with respect to the exchange offer.

List below the original notes to which this letter of transmittal relates. If the space provided below is inadequate, the certificate numbers and principal amount of original notes should be listed on a separate, signed schedule affixed hereto.

DESCRIPTION OF ORIGINAL NOTES

NAME(S) AND ADDRESS(ES) OF REGISTERED HOLDER(S) (PLEASE FILL IN, IF BLANK)	CERTIFICATE NUMBER(S)*	AGGREGATE PRINCIPAL AMOUNT OF ORIGINAL NOTES	PRINCIPAL AMOUNT TENDERED**
	TOTAL:		

\* Need not be completed if original notes are being tendered by book-entry transfer.  
 \*\* Unless otherwise indicated in this column, a holder will be deemed to have tendered ALL of the original notes represented by the original notes indicated in column 2. See Instruction 4. Original notes tendered hereby must be in denominations of \$1,000 or any integral multiple thereof.

CHECK HERE IF TENDERED ORIGINAL NOTES ARE BEING DELIVERED BY BOOK ENTRY TRANSFER TO THE ACCOUNT MAINTAINED BY THE EXCHANGE AGENT WITH DTC AND COMPLETE THE FOLLOWING:

Name of Tendering Institution \_\_\_\_\_  
 DTC Account Number \_\_\_\_\_  
 Transaction Code Number \_\_\_\_\_

CHECK HERE IF TENDERED ORIGINAL NOTES ARE ENCLOSED HERewith.

CHECK HERE AND ENCLOSE A PHOTOCOPY OF THE NOTICE OF GUARANTEED DELIVERY IF TENDERED ORIGINAL NOTES ARE BEING DELIVERED PURSUANT TO A NOTICE OF GUARANTEED DELIVERY PREVIOUSLY SENT TO THE EXCHANGE AGENT AND COMPLETE THE FOLLOWING (SEE INSTRUCTION 1):

Name(s) of Registered Holder(s) \_\_\_\_\_  
 Window Ticket Number (if any) \_\_\_\_\_  
 Date of Execution of Notice of Guaranteed Delivery \_\_\_\_\_  
 Name of Eligible Institution which Guaranteed Delivery \_\_\_\_\_  
 If Guaranteed Delivery is to be Made by Book-Entry Transfer: \_\_\_\_\_  
 Name of Tendering Institution \_\_\_\_\_  
 DTC Account Number \_\_\_\_\_  
 Transaction Code Number \_\_\_\_\_

CHECK HERE IF YOU ARE A BROKER-DEALER AND WISH TO RECEIVE 10 ADDITIONAL COPIES OF THE PROSPECTUS AND 10 COPIES OF ANY AMENDMENTS OR SUPPLEMENTS THERETO.\*

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

\* You are entitled to as many copies as you reasonably believe necessary. If you require more than 10 copies, please indicate the total number required in the following space: \_\_\_\_\_

Ladies and Gentlemen:

The undersigned hereby tenders to Spectrum the principal amount of original notes indicated above, upon the terms and subject to the conditions of the exchange offer. Subject to and effective upon the acceptance for exchange of all or any portion of the original notes tendered herewith in accordance with the terms and conditions of the exchange offer, including, if the exchange offer is extended or amended, the terms and conditions of any such extension or amendment, the undersigned hereby irrevocably sells, assigns and transfers to or upon the order of Spectrum all right, title and interest in and to such original notes.

The undersigned hereby irrevocably constitutes and appoints the exchange agent as its agent and attorney-in-fact, with full knowledge that the exchange agent is also acting as agent of Spectrum in connection with the exchange offer and as trustee under the indenture governing the original notes and the exchange notes, with respect to the tendered original notes, with full power of substitution (such power of attorney being deemed to be an irrevocable power coupled with an interest) subject only to the right of withdrawal described in the prospectus, to (1) deliver certificates representing such original notes, together with all accompanying evidences of transfer and authenticity, to or upon the order of Spectrum upon receipt by the exchange agent, as the undersigned's agent, of the exchange notes to be issued in exchange for such original notes, (2) present certificates for such original notes for transfer and to transfer the original notes on the books of Spectrum and (3) receive for the account of Spectrum all benefits and otherwise exercise all rights of beneficial ownership of such original notes, all in accordance with the terms and conditions of the exchange offer.

The undersigned hereby represents and warrants that (1) the undersigned has full power and authority to tender, exchange, sell, assign and transfer the original notes tendered hereby, (2) Spectrum will acquire good, marketable and unencumbered title to the tendered original notes, free and clear of all liens, restrictions, charges and other encumbrances, and (3) the original notes tendered hereby are not subject to any adverse claims or proxies. The undersigned warrants and agrees that the undersigned will, upon request, execute and deliver any additional documents requested by Spectrum or the exchange agent to complete the exchange, sale, assignment and transfer of the original notes tendered hereby. The undersigned has read and agrees to all of the terms and conditions of the exchange offer.

The name(s) and address(es) of the registered holder(s) of the original notes tendered hereby should be printed above, if they are not already set forth above, as they appear on the certificates representing such original notes. The certificate number(s) and the original notes that the undersigned wishes to tender should be indicated in the appropriate boxes above.

If any tendered original notes are not exchanged pursuant to the exchange offer for any reason, or if certificates are submitted for more original notes than are tendered or accepted for exchange, certificates for such nonexchanged or nontendered original notes will be returned, or, in the case of original notes tendered by book-entry transfer, such original notes will be credited to an account maintained at DTC, without expense to the tendering holder, promptly following the expiration or termination of the exchange offer.

The undersigned understands that tenders of original notes pursuant to any one of the procedures described in "The Exchange Offer—Procedures for Tendering Original Notes" in the prospectus and in the instructions attached hereto will, upon Spectrum's acceptance for exchange of such tendered original notes, constitute a binding agreement between the undersigned and Spectrum upon the terms and subject to the conditions of the exchange offer and that the tendering holder will be deemed to have waived the right to receive any payment in respect of interest or otherwise on such original notes accrued up to the date of issuance of the exchange notes. The undersigned recognizes that, under certain circumstances set forth in the prospectus, Spectrum may not be required to accept for exchange any of the original notes tendered hereby.

Unless otherwise indicated herein in the box entitled “Special Issuance Instructions” below, the undersigned hereby directs that the exchange notes be issued in the name(s) of the undersigned or, in the case of a book-entry transfer of original notes, that such exchange notes be credited to the account indicated above maintained at DTC. If applicable, substitute certificates representing original notes not exchanged or not accepted for exchange will be issued to the undersigned or, in the case of a book-entry transfer of original notes, will be credited to the account indicated above maintained at DTC. Similarly, unless otherwise indicated under “Special Delivery Instructions,” the undersigned hereby directs that the exchange notes be delivered to the undersigned at the address shown below the undersigned’s signature. The undersigned recognizes that Spectrum Brands, Inc. has no obligation pursuant to “Special Delivery Instructions” to transfer any original notes from a registered holder thereof if Spectrum Brands, Inc. does not accept for exchange any of the principal amount of such original notes so tendered.

By tendering original notes and executing this letter of transmittal, the undersigned, if not a participating broker-dealer, as defined below, hereby represents that (1) the exchange notes acquired in the exchange offer are being obtained in the ordinary course of business of the person receiving the exchange notes, whether or not that person is the holder; (2) neither the holder nor any other person receiving the exchange notes is engaged in, intends to engage in or has an arrangement or understanding with any person to participate in a “distribution” (within the meaning of the Securities Act) of the exchange notes; and (3) neither the holder nor any other person receiving the exchange notes is an “affiliate” (within the meaning of the Securities Act) of Spectrum.

The undersigned acknowledges that this exchange offer is being made in reliance on interpretations by the staff of the Securities and Exchange Commission, or the “SEC”, as set forth in no-action letters issued to third parties, that the exchange notes issued pursuant to the exchange offer in exchange for the original notes may be offered for resale, resold and otherwise transferred by holders thereof (other than any such holder that is an “affiliate” of Spectrum within the meaning of Rule 405 under the Securities Act), without compliance with the registration and prospectus delivery provisions of the Securities Act, provided that such exchange notes are acquired in the ordinary course of such holders’ business and such holders have no arrangement with any person to participate in the distribution of such exchange notes. However, the SEC has not considered the exchange offer in the context of a no-action letter and there can be no assurance that the staff of the SEC would make a similar determination with respect to the exchange offer as in other circumstances. If the undersigned is not a broker-dealer, the undersigned represents that it is not engaged in, and does not intend to engage in, a distribution of exchange notes and has no arrangement or understanding to participate in a distribution of exchange notes. If any holder is an affiliate of Spectrum, is engaged in or intends to engage in or has any arrangement or understanding with respect to the distribution of the exchange notes to be acquired pursuant to the exchange offer, such holder (i) could not rely on the applicable interpretation of the staff of the SEC and (ii) must comply with the registration and prospectus deliver requirements of the Securities Act in connection with any resale transaction.

If the undersigned is a broker-dealer that will receive exchange notes for its own account in exchange for original notes, it represents that the original notes to be exchanged for the exchange notes were acquired by it as a result of market-making activities or other trading activities and acknowledges that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any offer to resell, resale or other retransfer of such exchange notes pursuant to the exchange offer. However, by so acknowledging and delivering a prospectus, the undersigned will not be deemed to admit that it is an “underwriter” (within the meaning of the Securities Act). Any such broker-dealer is referred to as a participating broker-dealer.

Spectrum has agreed that, to the extent that any participating broker-dealer participates in the exchange offer, Spectrum shall use all commercially reasonable efforts to maintain the effectiveness of the registration statement of which the prospectus forms a part, referred to as the exchange offer registration statement, for a period of 180 days following the consummation of the exchange offer as the same may be extended as provided in the registration rights agreement, is referred to herein as the applicable period. Spectrum has also agreed that, subject to the provisions of the registration rights agreement, the prospectus, as amended or supplemented, will be made available to participating broker-dealers for use in connection with offers to resell, resales or retransfers of exchange notes



received in exchange for original notes pursuant to the exchange offer during the applicable period. Spectrum will advise each participating broker-dealer (i) when a prospectus supplement or post-effective amendment has been filed or has become effective, (ii) of any request by the SEC for amendments or supplements to the registration statement of the prospectus or for additional information relating thereto, (iii) of the issuance by the SEC of any stop order suspending the effectiveness of the exchange offer registration statement or of the suspension by any state securities commission of the qualification of the exchange notes for offering or sale in any jurisdiction and (iv) of the existence of any fact or the happening of any event that makes any statement of a material fact made in the exchange offer registration statement, the prospectus, any amendment or supplement thereto or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the exchange offer registration statement in order to make the statements therein not misleading, or that requires the making of any additions to or changes in the prospectus in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Any participating broker-dealer by tendering original notes and executing this letter of transmittal or effecting delivery of an agent's message in lieu thereof, agrees that, upon receipt of notice from Spectrum of the existence of any fact of the kind described in (iii) and (iv) above, such participating broker-dealer will discontinue disposition of the exchange notes pursuant to the exchange offer registration statement until receipt of the amended or supplemented the prospectus or until Spectrum has given notice that the use of the prospectus may be resumed, as the case may be. If Spectrum gives such notice to suspend the sale of the exchange notes, it shall extend the 180-day period referred to above during which participating broker-dealers are entitled to use the prospectus in connection with the resale of exchange notes by the number of days during the period from and including the date of the giving of such notice to and including the date when participating broker-dealers shall have received copies of the supplemented or amended prospectus necessary to permit resales of the exchange notes or to and including the date on which Spectrum has given notice that the sale of exchange notes may be resumed, as the case may be.

As a result, a participating broker-dealer that intends to use the prospectus in connection with offers to resell, resales or retransfers of exchange notes received in exchange for original notes pursuant to the exchange offer must notify Spectrum, or cause Spectrum to be notified, on or prior to the expiration date, that it is a participating broker-dealer. Such notice may be given in the space provided above or may be delivered to the exchange agent at the address set forth in the prospectus under "The Exchange Offer—Exchange Agent."

The undersigned will, upon request, execute and deliver any additional documents deemed by Spectrum to be necessary or desirable to complete the sale, assignment and transfer of the original notes tendered hereby.

All authority conferred or agreed to be conferred herein and every obligation of the undersigned under this letter of transmittal shall survive the death or incapacity of the undersigned, and any obligation of the undersigned hereunder shall be binding upon the heirs, executors, administrators, personal representatives, trustees in bankruptcy, legal representatives, successors and assigns of the undersigned. Except as stated in the prospectus under "The Exchange Offer—Withdrawal Rights," this tender is irrevocable.

THE UNDERSIGNED, BY COMPLETING THE BOX ENTITLED "DESCRIPTION OF ORIGINAL NOTES" ABOVE AND SIGNING THIS LETTER OF TRANSMITTAL, WILL BE DEEMED TO HAVE TENDERED THE ORIGINAL NOTES AS SET FORTH IN SUCH BOX.

TO BE COMPLETED BY ALL TENDERING HOLDERS  
(SEE INSTRUCTIONS 2 AND 6)

PLEASE SIGN HERE  
(PLEASE COMPLETE SUBSTITUTE FORM W-9 ON PAGE 14 OR A FORM W-8; SEE  
INSTRUCTION 10)

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SIGNATURE(S) OF HOLDER(S)

Date: \_\_\_\_\_

(Must be signed by the registered holder(s) exactly as name(s) appear(s) on certificate(s) for the original notes tendered or on a security position listing or by person(s) authorized to become the registered holder(s) by certificates and documents transmitted herewith. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, please provide the following information and see Instruction 6.)

Name(s): \_\_\_\_\_  
(PLEASE PRINT)

Capacity (full title): \_\_\_\_\_

Address: \_\_\_\_\_

Area Code and Telephone No.: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

GUARANTEE OF SIGNATURE(S)  
(SEE INSTRUCTION 2)

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
(PLEASE TYPE OR PRINT)

Title: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_  
(INCLUDE ZIP CODE)

Area Code and Telephone No.: \_\_\_\_\_

Date: \_\_\_\_\_

SPECIAL ISSUANCE INSTRUCTIONS  
(SIGNATURE GUARANTEE REQUIRED—SEE INSTRUCTIONS 2, 7 AND 14)

TO BE COMPLETED ONLY if exchange notes or original notes not tendered or not accepted are to be issued in the name of someone other than the registered holder(s) of the original notes whose signature(s) appear(s) above, or if original notes delivered by book-entry transfer and not accepted for exchange are to be returned for credit to an account maintained at DTC other than the account indicated above.

Issue (check appropriate box(es))

- Original notes to: \_\_\_\_\_  
 Exchange notes to: \_\_\_\_\_

Name \_\_\_\_\_  
(PLEASE PRINT)

Address \_\_\_\_\_  
(INCLUDE ZIP CODE)

TAXPAYER IDENTIFICATION NUMBER

- Credit unaccepted original notes tendered by book-entry transfer to the following account at DTC: \_\_\_\_\_

SPECIAL DELIVERY INSTRUCTIONS  
(SIGNATURE GUARANTEE REQUIRED—SEE INSTRUCTIONS 2, 7 AND 14)

TO BE COMPLETED ONLY if exchange notes or original notes not tendered or not accepted are to be sent to someone other than the registered holder(s) of the original notes whose signature(s) appear(s) above, or to such registered holder at an address other than that shown above.

Deliver (check appropriate box(es))

- Original notes to: \_\_\_\_\_  
 Exchange notes to: \_\_\_\_\_

Name \_\_\_\_\_  
(PLEASE PRINT)

Address \_\_\_\_\_  
(INCLUDE ZIP CODE)

INSTRUCTIONS  
FORMING PART OF THE TERMS AND CONDITIONS  
OF THE EXCHANGE OFFER

1. DELIVERY OF LETTER OF TRANSMITTAL AND CERTIFICATES; GUARANTEED DELIVERY PROCEDURES. This letter of transmittal is to be completed by a holder of original notes to tender such holder's original notes either if (a) certificates are to be forwarded herewith or (b) tenders are to be made pursuant to the procedures for tender by book-entry transfer set forth in "The Exchange Offer—Procedures for Tendering Original Notes—Book-Entry Transfers" in the prospectus and an agent's message, as defined on page 2 hereof, is not delivered. Certificates or book-entry confirmation of transfer of original notes into the exchange agent's account at DTC, as well as this letter of transmittal or a facsimile hereof, properly completed and duly executed, with any required signature guarantees, and any other documents required by this letter of transmittal, must be received by the exchange agent at its address set forth herein on or prior to the expiration date. If the tender of original notes is effected in accordance with applicable ATOP procedures for book-entry transfer, an agent's message may be transmitted to the exchange agent in lieu of an executed letter of transmittal. Original notes may be tendered in whole or in part in integral multiples of \$1,000.

For purposes of the exchange offer, the term "holder" includes any participant in DTC named in a securities position listing as a holder of original notes. Only a holder of record may tender original notes in the exchange offer. Any beneficial owner of original notes who wishes to tender some or all of such original notes should arrange with DTC, a DTC participant or the record owner of such original notes to execute and deliver this letter of transmittal or to send an electronic instruction effecting a book-entry transfer on his or her behalf. See Instruction 6.

Holders who wish to tender their original notes and (i) whose certificates for the original notes are not immediately available or for whom all required documents are unlikely to reach the exchange agent on or prior to the expiration date; or (ii) who cannot complete the procedures for delivery by book-entry transfer on a timely basis, may tender their original notes by properly completing and duly executing a notice of guaranteed delivery pursuant to the guaranteed delivery procedures set forth in "The Exchange Offer—Procedures for Tendering Original Notes—Guaranteed Delivery" in the prospectus. Pursuant to such procedures: (i) such tender must be made by or through an eligible institution; (ii) a properly completed and duly executed notice of guaranteed delivery, substantially in the form made available by Spectrum Brands, Inc., must be received by the exchange agent on or prior to the expiration date; and (iii) the certificates for the original notes, or a book-entry confirmation, together with a properly completed and duly executed letter of transmittal or a facsimile hereof, or an agent's message in lieu thereof, with any required signature guarantees and any other documents required by this letter of transmittal, must be received by the exchange agent within three New York Stock Exchange trading days after the date of execution of such notice of guaranteed delivery for all such tendered original notes, all as provided in "The Exchange Offer—Procedures for Tendering Original Notes—Guaranteed Delivery" in the prospectus.

The notice of guaranteed delivery may be delivered by hand, facsimile, mail or overnight delivery to the exchange agent, and must include a guarantee by an eligible institution in the form set forth in such notice of guaranteed delivery. For original notes to be properly tendered pursuant to the guaranteed delivery procedure, the exchange agent must receive a notice of guaranteed delivery on or prior to the expiration date. As used herein, "eligible institution" means a firm or other entity which is identified as an "Eligible Guarantor Institution" in Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended, including a bank; a broker, dealer, municipal securities broker or dealer or government securities broker or dealer; a credit union; a national securities exchange, registered securities association or clearing agency; or a savings association.

THE METHOD OF DELIVERY OF CERTIFICATES FOR THE ORIGINAL NOTES, THIS LETTER OF TRANSMITTAL AND ALL OTHER REQUIRED DOCUMENTS IS AT THE ELECTION AND SOLE RISK OF THE TENDERING HOLDER. IF DELIVERY IS BY MAIL, REGISTERED MAIL WITH RETURN

RECEIPT REQUESTED, PROPERLY INSURED, OR OVERNIGHT DELIVERY SERVICE IS RECOMMENDED. IN ALL CASES, SUFFICIENT TIME SHOULD BE ALLOWED TO ENSURE TIMELY DELIVERY. NO LETTERS OF TRANSMITTAL OR ORIGINAL NOTES SHOULD BE SENT TO SPECTRUM. DELIVERY IS COMPLETE WHEN THE EXCHANGE AGENT ACTUALLY RECEIVES THE ITEMS TO BE DELIVERED. DELIVERY OF DOCUMENTS TO DTC IN ACCORDANCE WITH DTC'S PROCEDURES DOES NOT CONSTITUTE DELIVERY TO THE EXCHANGE AGENT.

Spectrum will not accept any alternative, conditional or contingent tenders. Each tendering holder, by execution of a letter of transmittal or a facsimile hereof or by causing the transmission of an agent's message, waives any right to receive any notice of the acceptance of such tender.

2. GUARANTEE OF SIGNATURES. No signature guarantee on this letter of transmittal is required if:

- a. this letter of transmittal is signed by the registered holder (which term, for purposes of this document, shall include any participant in DTC whose name appears on a security position listing as the owner of the original notes) of original notes tendered herewith, unless such holder has completed either the box entitled "Special Issuance Instructions" or the box entitled "Special Delivery Instructions" above; or
- b. such original notes are tendered for the account of a firm that is an eligible institution.

In all other cases, an eligible institution must guarantee the signature(s) on this letter of transmittal. See Instruction 6.

3. INADEQUATE SPACE. If the space provided in the box captioned "Description of Original Notes" is inadequate, the certificate number(s) and/or the principal amount of original notes and any other required information should be listed on a separate, signed schedule which is attached to this letter of transmittal.

4. PARTIAL TENDERS (NOT APPLICABLE TO HOLDERS WHO TENDER BY BOOK-ENTRY TRANSFER). If less than all the original notes evidenced by any certificate submitted are to be tendered, fill in the principal amount of original notes which are to be tendered in the "Principal Amount Tendered" column of the box entitled "Description of Original Notes" on page 3 of this letter of transmittal. In such case, new certificate(s) for the remainder of the original notes that were evidenced by your old certificate(s) will be sent only to the holder of the original notes as promptly as practicable after the expiration date. All original notes represented by certificates delivered to the exchange agent will be deemed to have been tendered unless otherwise indicated. Tender of original notes will be accepted only in integral multiples of \$1,000.

5. WITHDRAWAL RIGHTS. Except as otherwise provided herein, tenders of original notes may be withdrawn at any time on or prior to the expiration date. In order for a withdrawal to be effective on or prior to that time, a written notice of withdrawal must be timely received by the exchange agent at its address set forth above and in the prospectus on or prior to the expiration date. Any such notice of withdrawal must specify the name of the person who tendered the original notes to be withdrawn, identify the original notes to be withdrawn, including the total principal amount of original notes to be withdrawn, and where certificates for original notes are transmitted, the name of the registered holder of the original notes, if different from that of the person withdrawing such original notes. If certificates for the original notes have been delivered or otherwise identified to the exchange agent, then the tendering holder must submit the serial numbers of the original notes to be withdrawn and the signature on the notice of withdrawal must be guaranteed by an eligible institution, except in the case of original notes tendered for the account of an eligible institution. If original notes have been tendered pursuant to the procedures for book-entry transfer set forth in the prospectus under "The Exchange Offer—Procedures for Tendering Original Notes—Book-Entry Transfers," the notice of withdrawal must specify the name and number of the account at DTC to be credited with the withdrawn original notes and the notice of withdrawal must be delivered to the exchange agent. Withdrawals of tenders of original notes may not be rescinded; however, original notes properly withdrawn may again be tendered at any time on or prior to the expiration date by following any of the procedures described in the prospectus under "The Exchange Offer—Procedures for Tendering Original Notes."

All questions regarding the form of withdrawal, validity, eligibility, including time of receipt, and acceptance of withdrawal notices will be determined by Spectrum, in its sole discretion, which determination of such questions and terms and conditions of the exchange offer will be final and binding on all parties. Neither Spectrum, any of its affiliates or assigns, the exchange agent nor any other person is under any obligation to give notice of any irregularities in any notice of withdrawal, nor will they be liable for failing to give any such notice.

Original notes tendered by book-entry transfer through DTC that are withdrawn or not exchanged for any reason will be credited to an account maintained with DTC. Withdrawn original notes will be returned to the holder after withdrawal. The original notes will be returned or credited to the account maintained at DTC as soon as practicable after withdrawal, rejection of tender or termination of the exchange offer. Any original notes which have been tendered for exchange but which are withdrawn or not exchanged for any reason will be returned to the holder thereof without cost to such holder.

6. SIGNATURES ON LETTER OF TRANSMITTAL, ASSIGNMENTS AND ENDORSEMENTS. If this letter of transmittal is signed by the registered holder(s) of the original notes tendered hereby, the signature(s) must correspond exactly with the name(s) as written on the face of the certificate(s) without alteration, enlargement or any change whatsoever.

If any original notes tendered hereby are owned of record by two or more joint owners, all such owners must sign this letter of transmittal.

If any tendered original notes are registered in different name(s) on several certificates, it will be necessary to complete, sign and submit as many separate letters of transmittal or facsimiles hereof as there are different registrations of certificates.

If this letter of transmittal, any certificates or bond powers or any other document required by the letter of transmittal are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing and, unless waived by Spectrum, must submit proper evidence satisfactory to Spectrum, in its sole discretion, of each such person's authority so to act.

When this letter of transmittal is signed by the registered owner(s) of the original notes listed and transmitted hereby, no endorsement(s) of certificate(s) or separate bond power(s) are required unless exchange notes are to be issued in the name of a person other than the registered holder(s). Signature(s) on such certificate(s) or bond power(s) must be guaranteed by an eligible institution.

If this letter of transmittal is signed by a person other than the registered owner(s) of the original notes listed, the certificates must be endorsed or accompanied by appropriate bond powers, signed exactly as the name or names of the registered owner(s) appear(s) on the certificates, and also must be accompanied by such opinions of counsel, certifications and other information as Spectrum or the trustee for the original notes may require in accordance with the restrictions on transfer applicable to the original notes. Signatures on such certificates or bond powers must be guaranteed by an eligible institution.

7. SPECIAL ISSUANCE AND DELIVERY INSTRUCTIONS. If exchange notes are to be issued in the name of a person other than the signer of this letter of transmittal, or if exchange notes are to be sent to someone other than the signer of this letter of transmittal or to an address other than that shown above, the appropriate boxes on this letter of transmittal should be completed. In the case of issuance in a different name, the U.S. taxpayer identification number of the person named must also be indicated. A holder of original notes tendering original notes by book-entry transfer may instruct that original notes not exchanged be credited to such account maintained at DTC as such holder may designate. If no such instructions are given, certificates for original notes not exchanged will be returned by mail to the address of the signer of this letter of transmittal or, if the original notes not exchanged were tendered by book-entry transfer, such original notes will be returned by crediting the account indicated on page 3 above maintained at DTC. See Instruction 6.

8. **IRREGULARITIES.** Spectrum will determine, in its sole discretion, all questions regarding the form of documents, validity, eligibility, including time of receipt, and acceptance for exchange of any tendered original notes, which determination and interpretation of the terms and conditions of the exchange offer will be final and binding on all parties. Spectrum reserves the absolute right, in its sole and absolute discretion, to reject any tenders determined to be in improper form or the acceptance of which, or exchange for which, may, in the view of counsel to Spectrum, be unlawful. Spectrum also reserves the absolute right, subject to applicable law, to waive any of the conditions of the exchange offer set forth in the prospectus under “The Exchange Offer—Conditions to the Exchange Offer” or any condition or irregularity in any tender of original notes by any holder, whether or not we waived similar conditions or irregularities in the case of other holders. Spectrum’s interpretation of the terms and conditions of the exchange offer, including this letter of transmittal and the instructions hereto, will be final and binding on all parties. A tender of original notes is invalid until all defects and irregularities have been cured or waived. Neither Spectrum, any of its affiliates or assigns, the exchange agent nor any other person is under any obligation to give notice of any defects or irregularities in tenders nor will they be liable for failure to give any such notice.

9. **QUESTIONS, REQUESTS FOR ASSISTANCE AND ADDITIONAL COPIES.** Questions and requests for assistance may be directed to the exchange agent at its address and telephone number set forth on the front of this letter of transmittal. Additional copies of the prospectus, the letter of transmittal, the notice of guaranteed delivery and Forms W-8 (as defined in Instruction 10) may be obtained from the exchange agent at the address and telephone/facsimile numbers indicated above, or from your broker, dealer, commercial bank, trust company or other nominee.

10. **BACKUP WITHHOLDING; SUBSTITUTE FORM W-9; FORMS W-8.** Under the United States federal income tax laws, interest paid to holders of exchange notes received pursuant to the exchange offer may be subject to backup withholding. Generally, such payments will be subject to backup withholding unless the holder (i) is exempt from backup withholding or (ii) furnishes the payer with its correct taxpayer identification number (“TIN”) and certifies that the number provided is correct and further certifies that such holder is not subject to backup withholding as a result of a failure to report all interest or dividend income. Each holder that wants to avoid backup withholding should provide the exchange agent with such holder’s correct TIN (or with a certification that such holder is awaiting a TIN) and with a certification that such holder is not subject to backup withholding by completing Substitute Form W-9 below.

Certain holders (including, among others, all corporations and certain foreign individuals) are exempt from these backup withholding and reporting requirements. In general, in order for a foreign individual to qualify as an exempt recipient, that holder must submit a statement, signed under the penalties of perjury, attesting to that individual’s exempt status. Such statements may be obtained from the exchange agent. Exempt holders (other than foreign persons), while not required to file Substitute Form W-9, should file Substitute Form W-9 and write “exempt” on its face to avoid possible erroneous backup withholding. Foreign persons not subject to backup withholding should complete and submit to the exchange agent a Form W-8 BEN (Certificate of Foreign Status of Beneficial Owner For U.S. Withholding), and/or other applicable Form(s) W-8 (and any other required certifications), instead of the Substitute Form W-9. See the enclosed **GUIDELINES FOR REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION ON SUBSTITUTE FORM W-9** for additional instructions.

If backup withholding applies, Spectrum may be required to withhold at the applicable rate on interest payments made to a holder of exchange notes. Backup withholding is not an additional tax. Rather, the amount of backup withholding is treated, like any other withheld amounts, as an advance payment of a tax liability, and a holder’s U.S. federal income tax liability will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained.

#### PURPOSE OF SUBSTITUTE FORM W-9

To prevent backup withholding with respect to interest payments on the exchange notes, a holder should notify the exchange agent of its correct TIN by completing the Substitute Form W-9 below and certifying on

Substitute Form W-9 that the TIN provided is correct (or that the holder is awaiting a TIN). In addition, a holder is required to certify on Substitute Form W-9 that it is (i) exempt from backup withholding, or (ii) not subject to backup withholding due to prior under reporting of interest or dividend income, or (iii) the Internal Revenue Service (the "IRS") has notified the holder that the holder is no longer subject to backup withholding.

#### WHAT NUMBER TO GIVE THE DEPOSITARY

To avoid backup withholding with respect to interest payments on the exchange notes, a holder is required to give the exchange agent the TIN of the registered holder of the exchange notes. If such registered holder is an individual, the TIN is the taxpayer's social security number. For most other entities, the TIN is the employer identification number. If the exchange notes are in more than one name or are not in the name of the actual owner, consult the enclosed GUIDELINES FOR REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION ON SUBSTITUTE FORM W-9 for additional guidelines on what number to report. If the exchange agent is provided with an incorrect TIN, the holder may be subject to a \$500 penalty imposed by the IRS.

11. **WAIVER OF CONDITIONS.** Spectrum reserves the absolute right to waive satisfaction of any or all conditions, completely or partially, enumerated in the prospectus.

12. **NO CONDITIONAL TENDERS.** No alternative, conditional or contingent tenders will be accepted. All tendering holders of original notes, by execution of this letter of transmittal, shall waive any right to receive notice of the acceptance of original notes for exchange.

None of Spectrum, the exchange agent or any other person is obligated to give notice of any defect or irregularity with respect to any tender of original notes nor shall any of them incur any liability for failure to give any such notice.

13. **MUTILATED, LOST, DESTROYED OR STOLEN CERTIFICATES.** If any certificate(s) representing original notes have been mutilated, lost, destroyed or stolen, the holder should promptly notify the exchange agent. The holder will then be instructed as to the steps that must be taken in order to replace the certificate(s). This letter of transmittal and related documents cannot be processed until the procedures for replacing lost, destroyed or stolen certificate(s) have been followed.

14. **SECURITY TRANSFER TAXES.** Except as provided below, holders who tender their original notes for exchange will not be obligated to pay any transfer taxes in connection therewith. If, however, (i) exchange notes are to be delivered to, or are to be issued in the name of, any person other than the registered holder of the original notes tendered; (ii) tendered original notes are registered in the name of any person other than the person signing this letter of transmittal; or (iii) a transfer tax is imposed for any reason other than the exchange of original notes in connection with the exchange offer, then the amount of any such transfer tax (whether imposed on the registered holder or any other persons) will be payable by the tendering holder. The exchange agent must receive satisfactory evidence of the payment of such taxes or exemption therefrom or the amount of such transfer taxes will be billed directly to the tendering holder.

Except as provided in this Instruction 14, it is not necessary for transfer tax stamps to be affixed to the original notes specified in this letter of transmittal.

15. **INCORPORATION OF LETTER OF TRANSMITTAL.** This letter of transmittal shall be deemed to be incorporated in any tender of original notes by any DTC participant effected through procedures established by DTC and, by virtue of such tender, such participant shall be deemed to have acknowledged and accepted this letter of transmittal on behalf of itself and the beneficial owners of any original notes so tendered.



SUBSTITUTE FORM W-9

Department of Treasury  
Internal Revenue Service

Payor's Request for Taxpayer Identification  
Number ("TIN")

NAME:

Please check the appropriate box:

Individual Sole Proprietor  Corporation  Partnership  Other \_\_\_\_\_

PART 1-PLEASE PROVIDE YOUR TIN IN THE BOX  
AT RIGHT AND CERTIFY BY SIGNING AND  
DATING BELOW.

Social security number or Employer identification  
number

PART 2-Certification-Under Penalties of Perjury, I  
certify that:

PART 3-

Awaiting TIN

(1) the number shown on this form is my correct  
Taxpayer Identification Number (or I am waiting for a  
number to be issued to me) and

(2) I am not subject to backup withholding either  
because (a) I am exempt from backup withholding, or  
(b) I have not been notified by the Internal Revenue  
Service ("IRS") that I am subject to backup withholding  
as a result of failure to report all interest or dividends, or  
(c) the IRS has notified me that I am no longer subject  
to backup withholding; and

(3) I am a U.S. person.

Certification Instructions-You must cross out item (2) in Part 2 above if you have been notified by the IRS that  
you are subject to backup withholding because of under reporting interest or dividends on your tax return.  
However, if after being notified by the IRS that you were subject to backup withholding you received another  
notification from the IRS stating that you are no longer subject to backup withholding, do not cross out item (2).

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_, 2005

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM MAY RESULT IN BACKUP WITHHOLDING ON OF ANY PAYMENTS MADE TO YOU  
PURSUANT TO THE EXCHANGE, AS WELL AS FUTURE DIVIDEND PAYMENTS. PLEASE REVIEW THE ENCLOSED GUIDELINES FOR  
CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9 FOR ADDITIONAL INFORMATION.

YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU WROTE "APPLIED FOR" ON SUBSTITUTE FORM W-9.

CERTIFICATE OF AWAITING TAXPAYER IDENTIFICATION NUMBER

I certify under penalties of perjury that a taxpayer identification number has not been issued to me, and either (a) I have mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Officer or (b) I intend to mail or deliver an application in the near future. I understand that until I provide a taxpayer identification number all reportable payments made to me will be subject to backup withholding, but will be refunded if I provide a certified taxpayer identification number within 60 days.

\_\_\_\_\_, 2005  
Signature Date

THE IRS DOES NOT REQUIRE YOUR CONSENT TO ANY PROVISION OF THIS DOCUMENT OTHER THAN THE CERTIFICATIONS REQUIRED TO AVOID BACKUP WITHHOLDING.

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

Guidelines for Determining the Proper Identification Number for the Payee (You) to Give the Payer. Social security numbers have nine digits separated by two hyphens: i.e., 000-00-0000. Employee identification numbers have nine digits separated by only one hyphen: i.e., 00-0000000. The table below will help determine the number to give the payer. All "Section" references are to the Internal Revenue Code of 1986, as amended. "IRS" is the Internal Revenue Service.

**For this type of account:**

- 1. Individual
- 2. Two or more individuals (joint account)
- 3. Custodian account of a minor (Uniform Gift to Minors Act)
- 4. a. The usual revocable savings trust account (grantor is also trustee)
- b. So-called trust account that is not a legal or valid trust under state law
- 5.
- 6. Sole proprietorship

**Give the social security number of—**

- The Individual
- The actual owner of the account or, if combined funds, the first individual on the account(1)
- The minor(2)
- The grantor-trustee(1)
- The actual owner(1)
- 
- The owner(3)

**For this type of account:**

- 7. Sole proprietorship
- 8. A valid trust, estate, or pension trust
- 9. Corporate
- 10. Association, club, religious, charitable, educational, or other tax-exempt organization
- 11. Partnership

**Give the employer identification number of—**

- The owner(3)
- The legal entity(4)
- The corporation
- The organization
- The partnership

**For this type of account:**

**Give the employer identification number of—**

- |     |   |                       |
|-----|---|-----------------------|
| 12. | A broker or registered nominee  | The broker or nominee |
| 13. | Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments | The public entity     |

- (1) List first and circle the name of the person whose number you furnish. If only one person on a joint account has a social security number, that person's number must be furnished.
- (2) Circle the minor's name and furnish the minor's social security number.
- (3) You must show your individual name, but you may also enter your business or "doing business as" name. You may use either your social security number or your employer identification number (if you have one).
- (4) List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the taxpayer identification number of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

NOTE: IF NO NAME IS CIRCLED WHEN THERE IS MORE THAN ONE NAME, THE NUMBER WILL BE CONSIDERED TO BE THAT OF THE FIRST NAME LISTED.

#### OBTAINING A NUMBER

If you don't have a taxpayer identification number or you don't know your number, obtain Form SS-5, Application for a Social Security Card, at the local Social Administration office, or Form SS-4, Application for Employer Identification Number, by calling 1 (800) TAX FORM or visiting the IRS's Internet website at [www.irs.gov](http://www.irs.gov), and apply for a number.

#### PAYEES EXEMPT FROM BACKUP WITHHOLDING

##### PAYEES SPECIFICALLY EXEMPTED FROM WITHHOLDING INCLUDE:

- An organization exempt from tax under Section 501(a), an individual retirement account (IRA), or a custodial account under Section 403(b)(7), if the account satisfies the requirements of Section 401(f)(2).
- The United States or a state thereof, the District of Columbia, a possession of the United States, or a political subdivision or instrumentality of any one or more of the foregoing.
- An international organization or any agency or instrumentality thereof.
- A foreign government or any political subdivision, agency or instrumentality thereof.

##### PAYEES THAT MAY BE EXEMPT FROM BACKUP WITHHOLDING INCLUDE:

- A corporation.
- A financial institution.
- A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States.
- A real estate investment trust.
- A common trust fund operated by a bank under Section 584(a).
- An entity registered at all times during the tax year under the Investment Company Act of 1940.
- A middleman known in the investment community as a nominee or custodian.

- A futures commission merchant registered with the Commodity Futures Trading Commission.
- A foreign central bank of issue.
- A trust exempt from tax under Section 664 or described in Section 4947.

**PAYMENTS OF DIVIDENDS AND PATRONAGE DIVIDENDS GENERALLY EXEMPT FROM BACKUP WITHHOLDING INCLUDE:**

- Payments to nonresident aliens subject to withholding under Section 1441.
- Payments to partnerships not engaged in a trade or business in the United States and that have at least one nonresident alien partner.
- Payments of patronage dividends not paid in money.
- Payments made by certain foreign organizations.
- Section 404(k) payments made by an ESOP

**PAYMENTS OF INTEREST GENERALLY EXEMPT FROM BACKUP WITHHOLDING INCLUDE:**

- Payments of interest on obligations issued by individuals. Note: You may be subject to backup withholding if this interest is \$600 or more and you have not provided your correct taxpayer identification number to the payer.
- Payments of tax-exempt interest (including exempt-interest dividends under Section 852).
- Payments described in Section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under Section 1451.
- Payments made by certain foreign organizations.
- Mortgage or student loan interest paid to you.

Certain payments, other than payments of interest, dividends, and patronage dividends, that are exempt from information reporting are also exempt from backup withholding. For details, see the regulations under sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A and 6050N.

**EXEMPT PAYEES DESCRIBED ABOVE MUST PROVIDE FORM W-9 OR A SUBSTITUTE FORM W-9 TO AVOID POSSIBLE ERRONEOUS BACKUP WITHHOLDING FURNISH YOUR TAXPAYER IDENTIFICATION NUMBER, WRITE "EXEMPT" IN PART II OF THE FORM, SIGN AND DATE THE FORM, AND RETURN IT TO THE PAYER.**

**PRIVACY ACT NOTICE**—Section 6109 requires you to provide your correct taxpayer identification number to the payer, who must report the payments to the IRS. The IRS uses the numbers for identification purposes and may also provide this information to various government agencies for tax enforcement or litigation purposes. Payers must be given the numbers whether or not recipients are required to file tax returns. Payers must generally withhold a percentage of taxable interest, dividends, and certain other payments to a payee who does not furnish a taxpayer identification number to a payer. Certain penalties may also apply.

**PENALTIES**

- (1) **FAILURE TO FURNISH TAXPAYER IDENTIFICATION NUMBER.**—If you fail to furnish your taxpayer identification number to the payer, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

- (2) CIVIL PENALTY FOR FALSE INFORMATION WITH RESPECT TO WITHHOLDING.—If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.
- (3) CRIMINAL PENALTY FOR FALSIFYING INFORMATION.—Willfully falsifying certifications or affirmations may subject you to criminal penalties including times and/or imprisonment.

FOR ADDITIONAL INFORMATION CONTACT YOUR TAX CONSULTANT OR THE INTERNAL REVENUE SERVICE

## NOTICE OF GUARANTEED DELIVERY

SPECTRUM BRANDS, INC.

OFFER FOR ALL OUTSTANDING

7<sup>3</sup>/<sub>8</sub>% SENIOR SUBORDINATED NOTES DUE 2015

IN EXCHANGE FOR

7<sup>3</sup>/<sub>8</sub>% SENIOR SUBORDINATED NOTES DUE 2015WHICH HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS  
AMENDED PURSUANT TO THE PROSPECTUS DATED \_\_\_\_\_, 2005

This notice of guaranteed delivery, or one substantially equivalent to this form, must be used to accept the exchange offer, as defined below, if (i) certificates for Spectrum Brands, Inc.'s 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015, the original notes, are not immediately available or if all required documents are unlikely to reach U.S. Bank National Association, the exchange agent, on or prior to the expiration date, as defined below; or (ii) a book-entry transfer cannot be completed on a timely basis. This notice of guaranteed delivery may be delivered by hand, facsimile, mail or overnight carrier to the exchange agent. See "The Exchange Offer—Procedures for Tendering Original Notes" in the prospectus. In addition, in order to utilize the guaranteed delivery procedure to tender old notes pursuant to the exchange offer, (a) a properly completed and duly executed notice of guaranteed delivery must be delivered on or prior to the expiration date and (b) a properly completed and duly executed letter of transmittal relating to the old notes or a facsimile thereof, or an agent's message in lieu thereof, together with the old notes tendered hereby in proper form for transfer or confirmation of the book-entry transfer of such old notes to the exchange agent's account at The Depository Trust Company, must be received by the exchange agent within three (3) New York Stock Exchange trading days after the date of execution of this notice of guaranteed delivery. Unless indicated otherwise, capitalized terms used but not defined herein shall have the same meaning given them in the prospectus or the letter of transmittal, as the case may be.

THE EXCHANGE OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON \_\_\_\_\_, 2005, UNLESS EXTENDED (THE "EXPIRATION DATE"). TENDERS MAY BE WITHDRAWN PRIOR TO 5:00 P.M., NEW YORK CITY TIME, ON THE EXPIRATION DATE.

THE EXCHANGE AGENT FOR THE EXCHANGE OFFER IS:  
U.S. BANK NATIONAL ASSOCIATION

BY REGISTERED OR CERTIFIED MAIL, HAND  
DELIVERY OR OVERNIGHT DELIVERY:

U.S. Bank National Association  
EP-MN-WS2N  
60 Livingston Avenue  
St. Paul, MN 55107  
Telephone: (800) 934-6802

FACSIMILE TRANSMISSIONS

(651) 495-8158  
or  
(651) 495-8159  
(Eligible Institutions Only)

CONFIRMATION BY TELEPHONE: (800) 934-6802

DELIVERY OF THIS NOTICE OF GUARANTEED DELIVERY TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE OR TRANSMISSION OF THIS NOTICE OF GUARANTEED DELIVERY VIA FACSIMILE TO A NUMBER OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY.

This notice of guaranteed delivery is not to be used to guarantee signatures. If a signature on a letter of transmittal is required to be guaranteed by an "eligible institution" under the instructions thereto, such signature guarantee must appear in the applicable space provided in the signature box on the letter of transmittal.

Ladies and Gentlemen:

The undersigned hereby tenders to Spectrum Brands, Inc., a Wisconsin corporation, upon the terms and subject to the conditions set forth in the prospectus dated , 2005, as the same may be amended or supplemented from time to time, and the related letter of transmittal, which together constitute the exchange offer, receipt of which is hereby acknowledged, the aggregate principal amount of original notes set forth below pursuant to the guaranteed delivery procedures set forth in the prospectus under the caption "The Exchange Offer—Procedures for Tendering Original Notes—Guaranteed Delivery."

Aggregate Principal  
Amount Tendered:

Name(s) of Registered Holder(s):

\$ \_\_\_\_\_ \*

\_\_\_\_\_  
\_\_\_\_\_

Certificate No(s). (if available): \_\_\_\_\_

\$ \_\_\_\_\_

(Total Principal Amount Represented by Old Note Certificate(s))

If old notes will be tendered by book-entry transfer, provide the following information:

DTC Account Number: \_\_\_\_\_

Date: \_\_\_\_\_

\* Must be in integral multiples of \$1,000.

All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned and every obligation of the undersigned hereunder shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

PLEASE SIGN HERE

X  
\_\_\_\_\_

\_\_\_\_\_

X  
\_\_\_\_\_

\_\_\_\_\_

Signature(s) of Owner(s) or Authorized Signatory

Date

Telephone Number: \_\_\_\_\_

Must be signed by the holder(s) of the old notes as their name(s) appear(s) on certificates for old notes or on a security position listing, or by person(s) authorized to become registered holder(s) by endorsement and documents transmitted with this notice of guaranteed delivery. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer or other person acting in a fiduciary or representative capacity, such person must set forth his or her full title below and, unless waived by Spectrum, provide proper evidence satisfactory to Spectrum of such person's authority to so act.

PLEASE PRINT NAME(S) AND ADDRESS(ES)

Name(s): \_\_\_\_\_

Capacity: \_\_\_\_\_

Address(es): \_\_\_\_\_

GUARANTEE OF DELIVERY  
(NOT TO BE USED FOR SIGNATURE GUARANTEE)

The undersigned, a firm or other entity which is identified as an "Eligible Guarantor Institution" in Rule 17Ad-15 under the Securities and Exchange Act of 1934, as amended, including: a bank; a broker, dealer, municipal securities broker or dealer or government securities broker or dealer; a credit union; a national securities exchange, registered securities association or clearing agency; or a savings association, each of the foregoing being referred to as an "eligible institution," hereby guarantees to deliver to the exchange agent, at the address set forth herein, either the old notes tendered hereby in proper form for transfer, or confirmation of the book-entry transfer of such old notes to the exchange agent's account at DTC, pursuant to the procedures for book-entry transfer set forth in the prospectus, in either case together with a properly completed and duly executed letter of transmittal, or a facsimile thereof, or an agent's message in lieu thereof, and any other required documents within three (3) New York Stock Exchange trading days after the date of execution of this notice of guaranteed delivery.

The undersigned acknowledges that it must deliver to the exchange agent the letter of transmittal or a facsimile thereof, or an agent's message in lieu thereof, and the old notes tendered hereby in proper form for transfer or confirmation of the book-entry transfer of such old notes to the exchange agent's account at DTC within the time period set forth above and that failure to do so could result in a financial loss to the undersigned.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
(Please Type or Print)

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

NOTE: DO NOT SEND CERTIFICATES FOR OLD NOTES WITH THIS FORM. CERTIFICATES FOR OLD NOTES SHOULD ONLY BE SENT WITH YOUR LETTER OF TRANSMITTAL.



U.S. BANK  
60 LIVINGSTON AVENUE  
ST. PAUL, MN 55107

SPECTRUM BRANDS, INC.

OFFER FOR ALL OUTSTANDING

7<sup>3</sup>/<sub>8</sub>% SENIOR SUBORDINATED NOTES DUE 2015

IN EXCHANGE FOR

7<sup>3</sup>/<sub>8</sub>% SENIOR SUBORDINATED NOTES DUE 2015

WHICH HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS  
AMENDED PURSUANT TO THE PROSPECTUS DATED \_\_\_\_\_, 2005

THE EXCHANGE OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON \_\_\_\_\_, 2005, UNLESS EXTENDED (THE "EXPIRATION DATE"). TENDERS MAY BE WITHDRAWN PRIOR TO 5:00 P.M., NEW YORK CITY TIME, ON THE EXPIRATION DATE.

To Brokers, Dealers, Commercial Banks, Trust Companies and other Nominees:

We have been appointed by Spectrum Brands, Inc., a Wisconsin corporation, to act as the exchange agent in connection with the offer, referred to as the exchange offer, of Spectrum, to exchange an aggregate principal amount of up to \$700,000,000 of its 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015, referred to as the exchange notes, for a like principal amount of its 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015, referred to as the original notes, upon the terms and subject to the conditions set forth in the prospectus dated \_\_\_\_\_, 2005 and in the related letter of transmittal and the instructions thereto.

Enclosed herewith are copies of the following documents:

1. The prospectus;
2. The letter of transmittal for your use and for the information of your clients, including a substitute Internal Revenue Service Form W-9 for collection of information relating to backup federal income tax withholding;
3. A notice of guaranteed delivery to be used to accept the exchange offer with respect to original notes in certificated form or original notes accepted for clearance through the facilities of the Depository Trust Company, or DTC, if (i) certificates for original notes are not immediately available or all required documents are unlikely to reach the exchange agent on or prior to the expiration date or (ii) a book-entry transfer cannot be completed on a timely basis;
4. A form of letter which may be sent to your clients for whose account you hold the original notes in your name or in the name of a nominee, with space provided for obtaining such clients' instructions with regard to the exchange offer; and
5. Return envelopes addressed to U.S. Bank National Association, the exchange agent for the exchange offer.

PLEASE NOTE THAT THE EXCHANGE OFFER WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON \_\_\_\_\_, 2005, UNLESS EXTENDED. WE URGE YOU TO CONTACT YOUR CLIENTS AS PROMPTLY AS POSSIBLE.

Spectrum has not retained any dealer-manager in connection with the exchange offer and will not pay any fee or commission to any broker, dealer, nominee or other person, other than the exchange agent, for soliciting tenders of the original notes pursuant to the exchange offer. You will be reimbursed by Spectrum for customary mailing and handling expenses incurred by you in forwarding the enclosed materials to your clients and for handling or tendering for your clients.

Additional copies of the enclosed materials may be obtained by contacting the exchange agent as provided in the enclosed letter of transmittal.

Very truly yours,

U.S. BANK NATIONAL ASSOCIATION

NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL CONSTITUTE YOU OR ANY OTHER PERSON AS AN AGENT OF SPECTRUM OR THE EXCHANGE AGENT, OR AUTHORIZE YOU OR ANY OTHER PERSON TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATION ON BEHALF OF ANY OF THEM WITH RESPECT TO THE EXCHANGE OFFER NOT CONTAINED IN THE PROSPECTUS OR THE LETTER OF TRANSMITTAL.

SPECTRUM BRANDS, INC.

OFFER FOR ALL OUTSTANDING

7<sup>3</sup>/<sub>8</sub>% SENIOR SUBORDINATED NOTES DUE 2015

IN EXCHANGE FOR

7<sup>3</sup>/<sub>8</sub>% SENIOR SUBORDINATED NOTES DUE 2015

WHICH HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED PURSUANT TO THE PROSPECTUS DATED  
, 2005

THE EXCHANGE OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON , 2005, UNLESS EXTENDED (THE "EXPIRATION DATE"). TENDERS MAY BE WITHDRAWN PRIOR TO 5:00 P.M., NEW YORK CITY TIME, ON THE EXPIRATION DATE.

To Our Clients:

Enclosed for your consideration is a prospectus dated , 2005 and the related letter of transmittal and instructions thereto in connection with the offer, referred to as the exchange offer, of Spectrum Brands, Inc., a Wisconsin corporation, to exchange an aggregate principal amount of up to \$700,000,000 of its 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015, referred to as the exchange notes, for a like principal amount of its issued and outstanding 7<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015, referred to as the original notes, upon the terms and subject to the conditions set forth in the prospectus and the letter of transmittal. Consummation of the exchange offer is subject to certain conditions described in the prospectus.

WE ARE THE REGISTERED HOLDER OF ORIGINAL NOTES HELD BY US FOR YOUR ACCOUNT. A TENDER OF ANY SUCH ORIGINAL NOTES CAN BE MADE ONLY BY US AS THE REGISTERED HOLDER AND PURSUANT TO YOUR INSTRUCTIONS. THE LETTER OF TRANSMITTAL IS FURNISHED TO YOU FOR YOUR INFORMATION ONLY AND CANNOT BE USED BY YOU TO TENDER ORIGINAL NOTES HELD BY US FOR YOUR ACCOUNT.

Accordingly, we request instructions as to whether you wish us to tender any or all such original notes held by us for your account pursuant to the terms and conditions set forth in the prospectus and the letter of transmittal. WE URGE YOU TO READ THE PROSPECTUS AND THE LETTER OF TRANSMITTAL CAREFULLY BEFORE INSTRUCTING US TO TENDER YOUR ORIGINAL NOTES.

Your instructions to us should be forwarded as promptly as possible in order to permit us to tender original notes on your behalf in accordance with the provisions of the exchange offer. THE EXCHANGE OFFER WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON , 2005, UNLESS EXTENDED. Original notes tendered pursuant to the exchange offer may be withdrawn only under the circumstances described in the prospectus and the letter of transmittal.

Your attention is directed to the following:

1. The exchange offer is for the entire aggregate principal amount of outstanding original notes.
2. Consummation of the exchange offer is conditioned upon the terms and conditions set forth in the prospectus under the captions "The Exchange Offer—Terms of the Exchange Offer" and "The Exchange Offer—Conditions to the Exchange Offer."

3. Tendering holders may withdraw their tender at any time until 5:00 p.m., New York City time, on the expiration date.
4. Any transfer taxes incident to the transfer of original notes from the tendering holder to Spectrum will be paid by Spectrum, except as provided in the prospectus and the instructions to the letter of transmittal.
5. The exchange offer is not being made to, nor will the surrender of original notes for exchange be accepted from or on behalf of, holders of original notes in any jurisdiction in which the exchange offer or acceptance thereof would not be in compliance with the securities or blue sky laws of such jurisdiction.
6. The acceptance for exchange of original notes validly tendered and not withdrawn and the issuance of exchange notes will be made as soon as practicable after the expiration date.
7. Spectrum expressly reserves the right, in its reasonable discretion and in accordance with applicable law, (i) to delay accepting any original notes, (ii) to terminate the exchange offer and not accept any original notes for exchange if we determine that any of the conditions to the exchange offer, as set forth in the prospectus, have not occurred or been satisfied, (iii) to extend the expiration date of the exchange offer and retain all original notes tendered in the exchange offer other than those notes properly withdrawn, or (iv) to waive any condition or to amend the terms of the exchange offer in any manner. In the event of any extension, delay, non-acceptance, termination, waiver or amendment, Spectrum will as promptly as practicable give oral or written notice of the action to the exchange agent and make a public announcement of such action. In the case of an extension, such announcement will be made no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date.
8. Consummation of the exchange offer may have adverse consequences to non-tendering old note holders, including that the reduced amount of outstanding original notes as a result of the exchange offer may adversely affect the trading market, liquidity and market price of the original notes.

If you wish to have us tender any or all of the original notes held by us for your account, please so instruct us by completing, executing and returning to us the instruction form that follows.

SPECTRUM BRANDS, INC.

INSTRUCTIONS REGARDING THE EXCHANGE OFFER

WITH RESPECT TO THE

\$700,000,000 OF 7<sup>3</sup>/<sub>8</sub>% SENIOR SUBORDINATED NOTES DUE 2015  
("ORIGINAL NOTES")

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF YOUR LETTER AND THE ENCLOSED DOCUMENTS REFERRED TO THEREIN RELATING TO THE EXCHANGE OFFER OF SPECTRUM BRANDS, INC. WITH RESPECT TO THE ORIGINAL NOTES.

THIS WILL INSTRUCT YOU WHETHER TO TENDER THE PRINCIPAL AMOUNT OF ORIGINAL NOTES INDICATED BELOW HELD BY YOU FOR THE ACCOUNT OF THE UNDERSIGNED PURSUANT TO THE TERMS OF AND CONDITIONS SET FORTH IN THE PROSPECTUS AND THE LETTER OF TRANSMITTAL.

Box 1  Please tender the original notes held by you for my account, as indicated below.

Box 2  Please do not tender any original notes held by you for my account.

Date: \_\_\_\_\_, 2005

\_\_\_\_\_

Signature(s)\*

Principal Amount of Original notes to be Tendered:

\$ \_\_\_\_\_

(must be in the principal amount of \$1,000 or an integral multiple thereof)

\_\_\_\_\_  
Please Print Name(s) Here

\_\_\_\_\_  
Please Type or Print Address

\_\_\_\_\_  
Area Code and Telephone Number

\_\_\_\_\_  
Taxpayer Identification or Social Security Number

\_\_\_\_\_  
My Account Number with You

\* UNLESS OTHERWISE INDICATED, SIGNATURE (S) HEREON BY BENEFICIAL OWNER(S) SHALL CONSTITUTE AN INSTRUCTION TO THE NOMINEE TO TENDER ALL ORIGINAL NOTES OF SUCH BENEFICIAL OWNER(S).