

02-01-2001

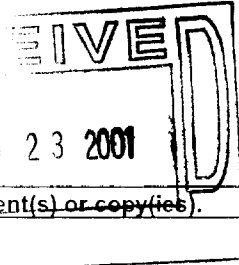


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1-23-01

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

JAN 23 2001



TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual  General Partnership  Limited Partnership

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

- Corporation  Association

Other

Citizenship/State of Incorporation/Organization

FOR OFFICE USE ONLY

01/31/2001 DBYRNE 00000108 75746208

01 FC:481 40.00 DP  
02 FC:482 200.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK  
REEL: 002226 FRAME: 0958

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

[Empty text box]

Address (line 1)

[Empty text box]

Address (line 2)

[Empty text box]

Address (line 3)

[Empty text box]

Address (line 4)

[Empty text box]

**FIVE**

JAN 2 2001

**Correspondent Name and Address**

Area Code and Telephone Number (816) 292-8393

Name

Dianne M. Smith-Misemer, Esq.

Address (line 1)

Spencer Fane Britt & Browne LLP

Address (line 2)

1000 Walnut Street

Address (line 3)

Suite 1400

Address (line 4)

Kansas City, MO 64106

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

# 11

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

75746208 76111651 76111654

[Empty text boxes]

75746203 76111650 76112772

[Empty text boxes]

76111652 76111046 76121838

[Empty text boxes]

**Number of Properties**

Enter the total number of properties involved.

# 9

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 240.00

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

# 500354

Authorization to charge additional fees:

Yes

No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Dianne M. Smith-Misemer

Name of Person Signing

*Dianne M. Smith-Misemer*  
Signature

1/23/01

Date Signed

*State of Delaware*  
*Office of the Secretary of State*

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PAGE 1

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

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, CHANGING ITS NAME FROM "NESCROW.COM, INC." TO "NESCROW TECHNOLOGIES, INC.", FILED THE TWENTY-FOURTH DAY OF AUGUST, A.D. 2000, AT 6 O'CLOCK P.M.



3026487 8100X

001635356

*Harriet Smith Windsor*  
Secretary of State

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AUTHENTICATION: 0903753

DATE: 01-08-01

TRADEMARK  
REEL: 002226 FRAME: 0960

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**NESCROW.COM, INC.**

NESCROW.COM, INC., a corporation organized and existing under the laws of the State of Delaware, certifies as follows:

1. The original Certificate of Incorporation of Nescrow.com, Inc. was filed with the Delaware Secretary of State on April 7, 1999.

2. This Restated Certificate of Incorporation amends and restates the provisions of the Certificate of Incorporation of this Corporation, and was duly adopted in accordance with Sections 245 and 228 of the General Corporation Law of the State of Delaware by the directors and the stockholders of the Corporation by written consent.

3. The text of the Certificate of Incorporation is amended and restated to read in its entirety as set forth below:

**First:** The name of the Corporation is Nescrow Technologies, Inc.

**Second:** The address of the Corporation's initial registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801, and the name of its initial registered agent at such address is The Corporation Trust Company.

**Third:** The Corporation is organized for profit, and its purpose is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

**Fourth:** The aggregate number of shares which the Corporation shall have authority to issue shall be 106,600,000 shares, divided into 100,000,000 shares of common stock ("Common Stock"), \$.001 par value, and 6,600,000 shares of preferred stock ("Preferred Stock"), \$.001 par value. The Preferred Stock shall be divided into series. The first series, the Series B1 Convertible Preferred Stock shall consist of 1,600,000 shares and is designated "Series B Preferred Stock." The second series, the Series C Convertible Preferred Stock, shall consist of 5,000,000 shares and is designated "Series C Preferred Stock." The powers, preferences, rights, restrictions, and other matters relating to the Series B and C Preferred Stock are as follows:

WA 344330.4

(1) **Dividends.**

(a) **Series B Preferred Stock.** The holders of the Series B Preferred Stock shall be entitled, when and if declared by the Board of Directors of the Corporation, to dividends out of assets of the Corporation legally available therefor in the amount of \$.02 per share of Series B Preferred Stock per annum, or, if greater, an amount per share equal to that paid on the Common Stock of the Corporation, when and if declared by the board of directors of the Corporation. Dividends on the Series B Preferred Stock shall be payable in preference and prior to any payment of any dividend on the Common Stock of the Corporation. The right to dividends on shares of the Series B Preferred Stock shall not be cumulative, and no right shall accrue to holders of the Series B Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior period.

(b) **Series C Preferred Stock.** The holders of Series C Preferred Stock shall be entitled, when and if declared by the Board of Directors of the Corporation, to dividends out of assets of the Corporation legally available therefor in the amount of \$.03 per share of Series C Preferred Stock per annum, or, if greater, an amount per share equal to that paid on the Common Stock of the Corporation, when and if declared by the board of directors of the Corporation. Dividends on the Series C Preferred Stock shall be payable in preference and prior to any payment of any dividend on the Series B Preferred Stock or the Common Stock of the Corporation. These dividends shall be cumulative from the date of issuance of the Series C Preferred Stock, whether or not earned, whether or not funds of the Corporation are legally available for the payment of dividends, and whether or not declared by the Board, but shall be paid only when, as, and if declared by the Board.

(2) **Redemption.** The shares of Series B and C Preferred Stock are not required to be redeemed by the Corporation.

(3) **Voting Rights.**

(a) **Common Stock.** On all matters submitted for Stockholder vote, each holder of Common Stock shall be entitled to one vote for each share of such stock registered in such holder's name on the books of the Corporation at the time the vote for such matter is being taken (or, if the Board of Directors has designated, or if the Bylaws have otherwise determined, a record date for the meeting at which such vote is being taken, on such record date).

(b) **Series B and C Preferred Stock.** Each holder of Series B or C Preferred Stock shall be entitled to cast on all matters submitted to a vote of the Corporation's stockholders that number of votes equal to the number of whole shares of \$.001 par value Common Stock of the Corporation computed using the conversion ratio set forth in Section 4(a) that would be issuable to such holder, if such holder were to convert such shares of Series B or C Preferred Stock as of the record date for purposes of voting at the meeting of

stockholders at which such vote would be taken. The holders of the Series B Preferred Stock, the Series C Preferred Stock and the Common Stock shall vote together as one class on all matters submitted to a vote of the Corporation's stockholders.

(4) **Conversion.** The holders of the Series B and C Preferred Stock shall have the right to convert such Series B and C Preferred Stock on and subject to the following terms and conditions.

(a) At the option of the holder of each share of Series B and C Preferred Stock, each share of Series B and C Preferred Stock shall be convertible into one (1) fully paid and non-assessable share of Common Stock, subject to the adjustment as hereinafter provided (the "Conversion Ratio"):

(b) In order to exercise the conversion right, the holder of any shares of Series B or C Preferred Stock to be converted shall surrender the certificate or certificates representing such shares for conversion to an agent designated by the Corporation (the "Agent") and shall give written notice to such Agent that the holder elects to convert such shares of Series B or C Preferred Stock. Such notice shall also state whether any shares of Series B or C Stock represented by the tendered certificate or certificates, if any, are not to be converted. Any certificate for the Common Stock issuable upon conversion of Series B or C Stock, together with any certificates for Series B or C Preferred stock representing the number of unconverted shares, if any ("Balance Certificate") shall be issued in the same name as the record holder of the certificate for Series B or C Preferred Stock tendered for such conversion. Certificates for Common Stock and any balance Certificates shall not be issued unless the certificate for Series B or C Preferred Stock tendered for conversion is duly endorsed by the record holder or their duly authorized attorney.

(c) As soon as practicable, after the receipt of the certificates representing the shares surrendered for conversion, accompanied by the notice required by Section 4(b) herein, the Corporation shall cause to be issued and delivered to the record holder of the shares so surrendered for conversion, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such shares of Series B or C Preferred Stock and a Balance Certificate, if any. Such conversion shall be deemed to have been effected on the date on which the Agent shall have received such certificates representing shares of Series B or Preferred Stock.

(d) The Corporation shall not be required to issue fractional shares of Series B or C Stock or of Common Stock or scrip upon conversion of shares of Series B or C Preferred Stock. If certificates representing more than one share of Series B or C Preferred Stock shall have been surrendered for conversion at one time by the same holder, the number of all shares issuable by the Corporation upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series B or C Preferred stock surrendered for conversion. In connection with the conversion of any Series B or C Preferred Stock, no fractional shares of

Common Stock shall be issued, but the Corporation shall pay to the holder of such fractional shares a cash payment for such fractional shares in an amount based on the Conversion rate.

(e) In case the Corporation shall (i) declare a dividend or make a distribution on shares of its Common Stock, (ii) subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock, (iii) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, or (iv) make any other change affecting the Common Stock as a class without receipt of consideration, the Conversion Ratio shall be adjusted to the extent necessary to prevent dilution or enlargement of the conversion rights granted to the holders of the Series B or C Preferred Stock hereunder.

(f) In case the Corporation shall merge or consolidate with another corporation or entity whereupon the Corporation shall not be the surviving entity thereof, the Series B or C Preferred Stock shall become convertible into the type and number of shares of the surviving entity or property (including cash) in the same manner as the Common Stock of the Corporation but otherwise subject to the same terms and conditions provided herein.

(g) The Corporation shall, at all times, provide, free from preemptive rights, out of its authorized but issued shares, or out of shares held in its treasury, shares of Common Stock into which the outstanding shares of Series B or C Preferred Stock are then convertible sufficient to provide for the conversion thereof. The Corporation covenants that all shares of Common Stock which may be issued upon conversion of the Series B or C Preferred Stock will be upon the issuance thereof fully paid and nonassessable and free from all taxes, liens, and charges with respect to the issue thereof.

(h) The Series B or C Preferred Stock will be automatically converted into shares of Common Stock at the Conversion Ratio in the event there is completed a public offering of the Corporation's Common Stock registered under the Securities Act of 1933, as amended.

(5) **Liquidation Rights.**

(a) *Series C Preferred Stock.* The shares of Series C Preferred Stock shall be preferred as to assets over the shares of the Series B Preferred Stock and the Common Stock upon liquidation, dissolution, or winding up of the Corporation so that in the event of any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series C Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus, or earnings, after distribution and payment in full to the holders of any other series of Preferred Stock of the Corporation ranking prior to the Series C Preferred Stock upon liquidation, dissolution or winding up of the Corporation of the preferential amounts and dividends payable thereon, and before any distribution is made to holders of shares of the Series B Preferred Stock or the Common Stock upon liquidation, dissolution or winding up of the

Corporation, an amount equal to \$.30 per share plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid on each share of Series C Preferred Stock to the date of final distribution. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or any proceeds thereof, distributable among the holders of shares of Series C Preferred Stock or any capital stock ranking on a par with the Series C Preferred Stock upon liquidation, dissolution, or winding up of the Corporation, shall be insufficient to pay in full the preferential amounts to which such stock would be entitled, then such assets, or the proceeds thereof, shall be distributable among such holders ratably in accordance with the respective amounts which would be payable on such shares if all amounts payable thereof were payable in full. For the purposes hereof, neither a consolidation nor a merger of the Corporation with one or more other corporations, nor a sale or a transfer of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution, or winding up, voluntary or involuntary, of the Corporation.

(b) *Series B Preferred Stock.* The shares of Series B Preferred Stock shall be preferred as to assets over the shares of the Common Stock upon liquidation, dissolution, or winding up of the Corporation so that in the event of any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series B Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus, or earnings, after distribution and payment in full to the holders of any other series of Preferred Stock of the Corporation ranking prior to the Series B Preferred Stock upon liquidation, dissolution or winding up of the Corporation of the preferential amounts and dividends payable thereon, and before any distribution is made to holders of shares of the Common Stock upon liquidation, dissolution or winding up of the Corporation, an amount equal to \$.25 per share plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid on each share of Series B Preferred Stock to the date of final distribution. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or any proceeds thereof, distributable among the holders of shares of Series B Preferred Stock or any capital stock ranking on a par with the Series B Preferred Stock upon liquidation, dissolution, or winding up of the Corporation, shall be insufficient to pay in full the preferential amounts to which such stock would be entitled, then such assets, or the proceeds thereof, shall be distributable among such holders ratably in accordance with the respective amounts which would be payable on such shares if all amounts payable thereof were payable in full. For the purposes hereof, neither a consolidation nor a merger of the Corporation with one or more other corporations, nor a sale or a transfer of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution, or winding up, voluntary or involuntary, of the Corporation.

(c) *Payments in Property.* Whenever the distribution provided for in this Section 5 shall be payable in securities or other property other than cash, the value of that distribution shall be the fair market value of those securities or other property as determined in good faith by the Board of Directors.



(6) **Restrictions.** So long as any shares of Series C Preferred Stock shall be outstanding, the Corporation shall not, without the approval by the vote or written consent of the holders of at least a majority of the then outstanding shares of Series C Preferred Stock, authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) senior to the Series C Preferred Stock as to dividend rights or liquidation preferences.

(7) **Increasing Stock.** Except as set forth in Section 6 herein, the number of authorized shares of Common Stock or any series of Preferred Stock may be increased or decreased (but not below the number of shares then outstanding) by an affirmative vote of the holders of a majority of the Common Stock and the Preferred Stock, voting together as a single class.

(8) **No Reissuance of Preferred Stock.** No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

**Fifth:** The number of directors constituting the entire Board of Directors shall be fixed from time to time in the manner provided in the bylaws.

**Sixth:** The Board of Directors shall have power to make, and from time to time alter, amend, or repeal the Bylaws of the Corporation; provided, however, that (a) the stockholders shall have the paramount power to alter, amend and repeal the Bylaws or adopt new Bylaws, exercisable by a majority vote of the stockholders present in person or by proxy at any annual or special meeting of stockholders, and (b) if and to the extent the stockholders exercise such power, the Board of Directors shall not thereafter suspend, alter, amend or repeal the Bylaws, or portions thereof, adopted by the stockholders, unless, in adopting such Bylaws, or portions thereof, the stockholders otherwise provide.

**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 the provisions of Section 174 of the Delaware General Corporation Law and amendments thereto, or (d) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended 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 Delaware General Corporation Law, as so amended. No amendment, repeal or adoption of any provision of this Certificate of Incorporation inconsistent with this Article Seventh shall apply or have any effect on the liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment, repeal, or adoption of any inconsistent provision.

(6) **Restrictions.** So long as any shares of Series C Preferred Stock shall be outstanding, the Corporation shall not, without the approval by the vote or written consent of the holders of at least a majority of the then outstanding shares of Series C Preferred Stock, authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) senior to the Series C Preferred Stock as to dividend rights or liquidation preferences.

(7) **Increasing Stock.** Except as set forth in Section 6 herein, the number of authorized shares of Common Stock or any series of Preferred Stock may be increased or decreased (but not below the number of shares then outstanding) by an affirmative vote of the holders of a majority of the Common Stock and the Preferred Stock, voting together as a single class.

(8) **No Reissuance of Preferred Stock.** No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

**Fifth:** The number of directors constituting the entire Board of Directors shall be fixed from time to time in the manner provided in the bylaws.

**Sixth:** The Board of Directors shall have power to make, and from time to time alter, amend, or repeal the Bylaws of the Corporation; provided, however, that (a) the stockholders shall have the paramount power to alter, amend and repeal the Bylaws or adopt new Bylaws, exercisable by a majority vote of the stockholders present in person or by proxy at any annual or special meeting of stockholders, and (b) if and to the extent the stockholders exercise such power, the Board of Directors shall not thereafter suspend, alter, amend or repeal the Bylaws, or portions thereof, adopted by the stockholders, unless, in adopting such Bylaws, or portions thereof, the stockholders otherwise provide.

**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 the provisions of Section 174 of the Delaware General Corporation Law and amendments thereto, or (d) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended 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 Delaware General Corporation Law, as so amended. No amendment, repeal or adoption of any provision of this Certificate of Incorporation inconsistent with this Article Seventh shall apply or have any effect on the liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment, repeal, or adoption of any inconsistent provision.

**Eighth:** The directors of the Corporation need not be elected by written ballot.

**Ninth:**

(a) Subject only to the exclusions set forth in paragraph (c) of this Article Ninth, the Corporation shall hold harmless and indemnify each director or officer of the Corporation (each, an "Indemnitee") against any and all expenses (including attorneys' fees), judgments, fines, excise taxes assessed with respect to any employee benefit plan, or penalties and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with 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), to which Indemnitee is, was or at any time becomes a party, or is threatened to be made a party, by reason of the fact that Indemnitee is, was or at any time becomes a director or officer of the Corporation, or is, or was serving, or at any time serves at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise.

(b) The expenses (including attorneys' fees) actually and reasonably incurred by Indemnitee in defending any proceeding and any judgments, fines or amounts to be paid in settlement shall be advanced by the Corporation at the request of the Indemnitee and upon delivery to the Corporation of an undertaking by such Indemnitee to repay all amounts so advanced if it shall ultimately be determined that Indemnitee was not entitled to be indemnified or was not to be fully indemnified.

(c) No indemnity pursuant to this Article Ninth shall be paid by the Corporation (i) for which payment is actually made to Indemnitee under a valid and collectible insurance policy, except in respect of any excess beyond the amount of payment under such insurance; (ii) for which Indemnitee is indemnified by the Corporation pursuant to applicable law or otherwise than pursuant to this Article Ninth; (iii) for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law or common law; (iv) on account of Indemnitee's conduct which is finally adjudged by a court to have been knowingly fraudulent, deliberately dishonest or willful misconduct; or (v) if a final decision by a court having jurisdiction in the matter shall determine that such indemnity is not lawful.

(d) All obligations of the Corporation contained herein shall continue during the period Indemnitee is a director or officer of the Corporation (or is, or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any possible claim or threatened, pending or completed action, suit or proceeding, whether civil, criminal or investigative, by reason of the fact that Indemnitee was a director or officer of the Corporation or serving in any other capacity referred to herein.

(e) Promptly after receipt by Indemnitee of notice of the commencement of any action, suit or proceeding, Indemnitee will, if a claim in respect thereof is to be made against the Corporation under this Article Ninth, notify the Corporation of the commencement thereof; but the omission so to notify the Corporation will not relieve it from any liability which it may have to Indemnitee otherwise than under this Article Ninth. With respect to any such action, suit or proceeding as to which Indemnitee notifies the Corporation of the commencement thereof, the Corporation will be entitled to participate therein at its own expense.

(f) Except as otherwise provided below, to the extent that it may wish, the Corporation jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof. After notice from the Corporation to Indemnitee of its election so to assume the defense thereof, the Corporation will not be liable to Indemnitee under this Article Ninth for any legal or other expenses subsequently incurred by Indemnitee in connection with the defense thereof other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its counsel in such action, suit or proceeding, but the fees and expenses of such counsel, incurred after notice from the Corporation of its assumption of the defense thereof, shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Corporation and Indemnitee in the conduct of the defense of such, subject to the approval of the Corporation, which approval shall not be unreasonably withheld, or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of counsel shall be at the expense of the Corporation. The Corporation shall not be entitled to assume the defense of any action, suit or proceeding brought by or on behalf of the Corporation or as to which Indemnitee shall have made the conclusion provided for in (ii) above.

(g) The Corporation shall not be liable to indemnify Indemnitee under this Article Ninth for any amounts paid in settlement of any action or claim effected without its written consent. The Corporation shall not settle any action or claim in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold their consent to any proposed settlement.

(h) In the event Indemnitee is required to bring any action to enforce rights or to collect moneys due under this Article Ninth and is successful in such action, the Corporation shall reimburse Indemnitee for all of Indemnitee's reasonable fees and expenses in bringing and pursuing such action.

(i) The provisions of this Article Ninth shall inure to the benefit of and be enforceable by the Indemnitee's personal or legal representatives, executors, administrators, heirs, devisees and legatees.

(j) The Corporation shall have power to purchase and maintain insurance, at its expense, on behalf of any person who is or was an officer, director, employee or agent of the Corporation or a subsidiary thereof, or is or was serving at the request of the Corporation as an officer, director,

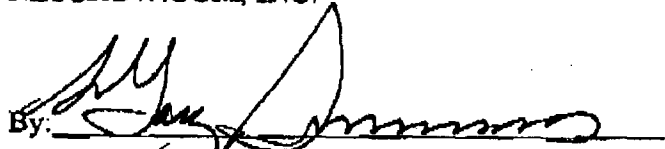
partner, member, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise, including any employee benefit plan, against any expense, liability or loss asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Bylaws, the provisions of this Article Ninth or the Delaware General Corporation Law.

(k) The indemnification provided by this Article Ninth shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, the Bylaws, other provisions of this Certificate of Incorporation, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in any other capacity while holding such office, and shall continue as to a person who has ceased to be an officer or director of the Corporation or a subsidiary thereof or an officer, director, partner, member, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise, including any employee benefit plan, and shall inure to the benefit of the heirs, executors and administrators of such person.

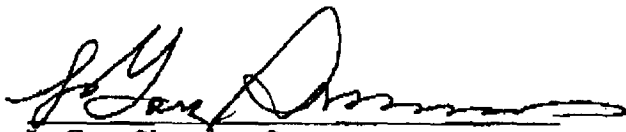
(l) This Article Ninth may be hereafter amended or repealed; provided, however, that no amendment or repeal shall reduce, terminate, or otherwise adversely affect the right of a person entitled to obtain indemnification hereunder with respect to acts or omissions of such person occurring prior to the effective date of such amendment or repeal.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed on behalf of the Corporation this 24 day of August, 2000.

NESCROW.COM, INC.

By:   
L. Gary Simmons, President

Attest:

  
L. Gary Simmons, Secretary