

VIISAGE TECHNOLOGY INC
Form PRE 14A
April 13, 2004

SCHEDULE 14A

(RULE 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES

EXCHANGE ACT OF 1934 (AMENDMENT NO.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- | | |
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| <input checked="" type="checkbox"/> Preliminary Proxy Statement | <input type="checkbox"/> Confidential, For Use of the Commission Only |
| <input type="checkbox"/> Definitive Proxy Statement | (as permitted by Rule 14a-6(e)(2)) |
| <input type="checkbox"/> Definitive Additional Materials | |
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Viisage Technology, Inc.

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
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- (1) Amount previously paid:
- (2) Form, Schedule or Registration Statement No.:
- (3) Filing Party:
- (4) Date Filed:

April , 2004

Dear Shareholder:

You are cordially invited to attend the 2004 Annual Meeting (the Meeting) of the Shareholders of Viisage Technology, Inc. (Viisage), to be held on Thursday, May 20, 2004. Your Board of Directors and management look forward to greeting those of you who are able to attend.

Our 2003 Annual Report is enclosed. I hope you will read it carefully. I also have enclosed our Notice of the 2004 Annual Meeting, Proxy Statement, and proxy card.

At the Meeting, your Board of Directors will be asking you to elect three Class II directors, to approve amendments to Viisage s 1996 Management Stock Option Plan to increase the number of shares available for issuance under the plan and to make certain other changes to the plan, to approve an amendment to the 1996 Directors Stock Option Plan to increase the number of shares available for issuance under the plan, to approve an amendment to our Certificate of Incorporation to increase the number of authorized shares of Viisage common stock, and to ratify the selection of Viisage s independent public accountants, as described more fully in the enclosed Proxy Statement. For the reasons set forth in the Proxy Statement, your Board of Directors recommends votes FOR each of the items described above.

Whether or not you plan to attend the Meeting, it is important that your shares be represented and voted. Accordingly, please read the enclosed material and mark, date, sign, and return the enclosed proxy card at your earliest convenience. If you attend the Meeting, you may revoke your proxy by requesting the right to vote in person.

Sincerely,

Denis K. Berube

Chairman of the Board of Directors

YOUR VOTE IS IMPORTANT.

PLEASE MARK, DATE, SIGN, AND RETURN YOUR PROXY CARD.

296 Concord Road

Third Floor

Billerica, Massachusetts 01821

NOTICE OF THE 2004 ANNUAL MEETING OF SHAREHOLDERS

The 2004 Annual Meeting of the Shareholders of Viisage Technology, Inc. (Viisage) will be held at 10:00 a.m. on Thursday, May 20, 2004 at Viisage s corporate headquarters, 296 Concord Road, Third Floor, Billerica, Massachusetts. The Meeting is being held for the following purposes:

1. To elect three Class II directors for three year terms;
2. To approve amendments to Viisage s 1996 Management Stock Option Plan to increase the number of shares available for issuance thereunder from 4,807,100 to 6,000,000, and to permit directors of Viisage who also are employees of Viisage to receive option grants thereunder;
3. To approve an amendment to Viisage s 1996 Directors Stock Option Plan to increase the number of shares available for issuance thereunder from 576,616 to 1,076,616;
4. To approve an amendment to Viisage s Restated Certificate of Incorporation to increase the authorized common stock of Viisage from 45,000,000 to 75,000,000 shares;
5. To ratify the selection of BDO Seidman, LLP as independent public accountants for Viisage for the year ending December 31, 2004; and
6. To transact such other business as may properly come before the Meeting.

Shareholders of record at the close of business on April 1, 2004, the record date for the Meeting, are entitled to receive notice of and to vote at the Meeting.

The enclosed proxy card, Proxy Statement, and Viisage s 2003 Annual Report are being sent to you along with this Notice.

By Order of the Board of Directors

Charles J. Johnson

Secretary

April , 2004

VIISAGE TECHNOLOGY, INC.

PROXY STATEMENT

FOR THE

2004 ANNUAL MEETING OF SHAREHOLDERS

TO BE HELD ON MAY 20, 2004

INFORMATION ABOUT SOLICITATION AND VOTING

General

This Proxy Statement is provided in connection with the solicitation of proxies by the Board of Directors of Viisage Technology, Inc., a Delaware corporation (the Company or Viisage), for the 2004 Annual Meeting of Shareholders to be held at 10:00 a.m. on Thursday, May 20, 2004, at Viisage's principal executive offices, 296 Concord Road, Third Floor, Billerica, Massachusetts, and at any adjournment thereof (the Meeting). This Proxy Statement and the accompanying proxy card are expected to be mailed on or about April 15, 2004 to all shareholders entitled to vote at the Meeting.

Viisage's Board of Directors (the Board of Directors or the Board) is soliciting proxies for the following purposes: (i) to elect three Class II directors, comprising the class of directors to be elected for the term expiring in 2007; (ii) to approve amendments to Viisage's 1996 Management Stock Option Plan to increase the number of shares available for issuance thereunder from 4,807,100 to 6,000,000, and to permit directors of Viisage who also are employees of Viisage to receive option grants thereunder; (iii) to approve an amendment to Viisage's 1996 Directors Stock Option Plan to increase the number of shares available for issuance thereunder from 576,616 to 1,076,616; (iv) to approve an amendment to Viisage's Restated Certificate of Incorporation to increase the authorized common stock of Viisage from 45,000,000 to 75,000,000 shares; and (v) to ratify the selection of BDO Seidman, LLP as independent public accountants for Viisage for the year ending December 31, 2004.

Stockholders Entitled to Vote

At the close of business on April 1, 2004, the record date for the Meeting, there were outstanding and entitled to vote 35,625,176 shares of the Company's common stock, \$0.001 par value per share (the Common Stock). Only shareholders of record at the close of business on April 1, 2004 are entitled to vote at the Meeting. Each outstanding share of Common Stock is entitled to one vote on each matter to be voted upon at the Meeting.

Quorum and Voting

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The representation, in person or by proxy, of at least a majority of the outstanding shares of Common Stock entitled to vote at the Meeting is necessary to establish a quorum. Assuming the presence of a quorum, Directors are elected by a plurality vote, which means that the three nominees receiving the most votes will be elected to fill the seats on the Board. The proposed amendment to our Restated Certificate of Incorporation must be approved by the affirmative vote of the holders of at least a majority of the outstanding shares of our common stock. All other actions considered at the meeting, including an adjournment, may be taken upon the favorable vote of a majority of the votes present in person or represented by proxy at the meeting. Shares of common stock represented in person or by proxy (including broker non-votes (as defined below) and shares that abstain or do not vote with respect to one or more of the matters to be voted upon) will be counted for the purpose of determining whether a quorum exists. If a quorum is not present, the annual meeting will be adjourned until a quorum is obtained.

Voting Shares Held in Street Name

If the shares you own are held in street name by a bank or brokerage firm, your bank or brokerage firm, as the record holder of your shares, is required to vote your shares according to your instructions. In order to vote your shares, you will need to follow the directions your bank or brokerage firm provides you. Many banks and brokerage firms also offer the option of voting over the Internet or by telephone, instructions for which would be provided by your bank or brokerage firm on your vote instruction form.

If your shares are held in street name, you must bring an account statement or letter from your brokerage firm or bank showing that you are the beneficial owner of the shares as of the record date in order to be admitted to the meeting on the record date. To be able to vote your shares held in street name at the meeting, you will need to obtain a proxy card from the holder of record.

Broker Non-Votes

If your shares are held in street name, your bank or brokerage firm will be prohibited under applicable regulations from using its discretion to vote your shares on the proposal to approve the amendments to the 1996 Management Stock Option Plan and the 1996 Directors Stock Option Plan. If your broker instructs us that you have not provided instructions on how to vote on that proposal, your shares will be treated as broker non-votes with respect to that proposal. However, even if you do not give your broker instructions as to how to vote on the other proposals described in this proxy statement, your broker may be entitled to use its discretion in voting your shares in accordance with industry practice.

Vote Required

Election of directors. The three nominees receiving the highest number of votes cast at the meeting will be elected, regardless of whether that number represents a majority of the votes cast. Abstentions and broker non-votes will have no effect on the outcome of this proposal.

Approval of Amendments to 1996 Management Stock Option Plan and 1996 Directors Stock Option Plan. The affirmative vote of the holders of a majority of the shares present or represented by proxy at the meeting is needed to approve the amendments to these plans. Abstentions will have the effect of negative votes on these proposals. For shares held in street name, broker non-votes will have no effect on the outcome of these proposals because your bank or brokerage does not have the authority to vote your shares on this proposal absent instructions from you.

Amendment to Certificate of Incorporation. The affirmative vote of the holders of a majority of the outstanding shares of our common stock is needed to approve the amendment of our Certificate of Incorporation. Abstentions and broker non-votes will have the effect of negative votes on this proposal.

Ratification of Selection of Independent Public Accountants. The affirmative vote of the holders of a majority of the shares present or represented by proxy at the meeting is needed to approve the ratification of the selection of our independent public accountants. Abstentions will have the effect of a negative vote on this proposal. For shares held in street name, broker non-votes will also have the effect of a negative vote on this proposal because your bank or brokerage does not have the authority to vote your shares on this proposal absent instructions from you.

Revocability of Proxies

A shareholder who returns a proxy card may revoke it at any time before the shareholder's shares are voted at the Meeting by written notice to the Secretary of the Company received prior to the Meeting, by executing and returning a later-dated proxy, or by voting by ballot at the Meeting.

Householding of Annual Meeting Materials

Some banks, brokers and other nominee record holders may be participating in the practice of householding proxy statements and annual reports. This means that only one copy of our proxy statement and annual report to stockholders may have been sent to multiple stockholders in your household. We will promptly deliver a separate copy of either document to you if you contact us at the Investor Relations address and telephone number listed above. If you want to receive separate copies of the proxy statement or annual report to stockholders in the future, or if you are receiving multiple copies and would like to receive only one copy per household, you should contact your bank, broker, or other nominee record holder, or you may contact us at the above address or telephone number.

PROPOSAL 1 ELECTION OF DIRECTORS

General

Pursuant to the Company's Restated Certificate of Incorporation and By-Laws, the Board has fixed the number of directors at nine. In addition, the Restated Certificate of Incorporation also provides that directors shall be divided into three classes of approximately the same number of directors; the Board has fixed the number of Class I directors at three, Class II directors at three and Class III directors at three.

Three Class II directors are to be elected at the Meeting to serve three-year terms expiring at the 2007 Annual Meeting of Shareholders and until their successors have been elected and duly qualified. Unless instructed otherwise, the proxy holders will vote the proxies received by them for the Company's nominees: Bernard C. Bailey, Harriet Mouchly-Weiss and Paul T. Principato. In the event that the nominees of the Company are unable or decline to serve as directors at the time of the Meeting, the proxies will be voted for any nominee who shall be designated by the present Board of Directors to fill the vacancy (unless another nominee is indicated in any particular proxy), or we may choose to leave the seat vacant. Mr. Bailey, Ms. Mouchly-Weiss and Mr. Principato have consented to serve as directors of the Company, and the Board of Directors has no reason to believe that they will be unavailable for service.

At a meeting of our Board of Directors on April 6, 2004, in accordance with our Restated Certificate of Incorporation, our Board of Directors appointed Mr. Bailey to fill the previously vacant Class II director seat and increased the number of directors from eight to nine which created a vacancy among the Class III directors. Certain Viisage shareholders who were the former shareholders of ZN Vision Technologies AG ("ZN"), a company which Viisage acquired in January 2004, have the right to appoint one director as long as such shareholders hold at least an aggregate of 2,000,000 shares of Viisage common stock. Dr. Christoph von der Malsburg was nominated by the former ZN shareholders as their representative on the Board. At the April 6, 2004 Board meeting, in accordance with our Restated Certificate of Incorporation, the Board appointed Dr. Malsburg to fill the vacant Class III director seat. Dr. Malsburg will hold office for the remainder of the term of office of Class III directors, which expires at the 2005 Annual Meeting of Shareholders, and until his successor has been elected and duly qualified, unless he is replaced by the former ZN shareholders. Prior to February 14, 2004, one of the Class I director seats also was vacant. In February 2004, the Board exercised its authority under the Company's Restated Certificate of Incorporation and appointed Mr. B.G. Beck to fill this vacancy. This appointment was made in connection with Viisage's acquisition of Trans Digital Technologies Corporation in February 2004, of which Mr. Beck was the President, Chief Executive Officer and sole stockholder. Mr. Beck will hold office for the remainder of the term of office of Class I directors, which expires at the 2006 Annual Meeting of Shareholders, and until his successor has been elected and duly qualified.

The Board recommends a vote **FOR** the proposed nominees to the Board.

Composition of the Board

The Company's Restated Certificate of Incorporation provides that directors shall be divided into three classes and that each director shall serve for a term of three years and until his or her successor is elected and qualified or until his or her earlier resignation, death, or removal. One class of directors is elected at each annual meeting for a three-year term.

The Class III directors (whose terms expire in 2005) are Peter Nessen, Thomas J. Reilly and Christoph von der Malsburg. The Class I directors (whose terms expire in 2006) are Denis Berube, Charles E. Levine and B.G. Beck. There are no family relationships between any of the directors or executive officers of the Company.

The following sets forth the names of and certain information about the persons nominated as directors and the directors whose terms do not expire at the Meeting. Information regarding their beneficial ownership of shares of the Company's Common Stock is reported in the section entitled Security Ownership of Certain Beneficial Owners, Directors and Management.

Nominees for Class II Director

Bernard C. Bailey, 50, joined Viisage in August 2002 as Chief Executive Officer and was appointed a director of Viisage in April 2004. From January 2001 through August 2002, Mr. Bailey served as the Chief Operating Officer of Art Technology Group, a provider of software applications for commerce and customer self-service. Between April 1984 and January 2001, Mr. Bailey served in various capacities at IBM Corporation, including several executive positions. A graduate of the US Naval Academy, Mr. Bailey served for eight years as an officer in the US Navy.

Harriet Mouchly-Weiss, 61, has served as a director of Viisage since its incorporation in May 1996. Ms. Mouchly-Weiss founded Strategy XXI Group, an international communications and consulting firm, in January 1993 and has served as its managing partner since that time. Ms. Mouchly-Weiss currently also serves as a member of the Board of Directors of American Greetings Corporation, a company engaged in the design, manufacture and sale of everyday and seasonal greeting cards and other social expression products.

Paul T. Principato, 50, has served as a director of Viisage since May 2001 and as Chief Financial Officer of Lau since its incorporation in March 1990. Prior to 1990, Mr. Principato served as Controller at Barry Wright Corp.

Directors whose terms expire at the 2005 Annual Meeting (Class III Directors)

Peter Nessen, 67, has served as a director of Viisage since its incorporation in May 1996. Since July 2003, Mr. Nessen has served as the President of Nessen Associates Ltd., a non-profit consulting company. From January 2003 to July 2003, Mr. Nessen served as an adviser to the Governor of the Commonwealth of Massachusetts on education matters. Mr. Nessen has been Chairman of the Board of NCN Financial, a private banking firm, since January 1995. From June 1993 through December 1994, Mr. Nessen was Dean for Resources and Special Projects at Harvard Medical School.

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Thomas J. Reilly, 65, has served as a director of Viisage since its incorporation in May 1996. Mr. Reilly has been a self-employed financial consultant since December 1994. From June 1966 through November 1994, Mr. Reilly was with Arthur Andersen LLP, a public accounting firm, where he became a partner in 1975.

Christoph von der Malsburg, 61, was appointed a director of Viisage in April 2004. Since 1988, Dr. Malsburg has been a Professor of Computer Science at the University of Southern California. Dr. Malsburg also is the founder of the Institute of Neural Computation in Bochum, Germany, and was a co-founder, executive officer and director of ZN prior to its acquisition by Viisage.

Directors Whose Terms Expire at the 2006 Annual Meeting (Class I Directors)

Denis K. Berube, 61, has been the Chairman of the Board of Directors of Viisage since the Company's incorporation in 1996. Mr. Berube is Executive Vice President and Chief Operating Officer of Lau Technologies (Lau). Lau is the largest holder of Viisage Common Stock, directly owning approximately 17% of its issued and outstanding Common Stock. Mr. Berube has been employed at Lau since 1990.

B.G. Beck, 67, was the President and Chief Executive Officer of Trans Digital Technologies Corporation from 1998 until its acquisition by Viisage in February 2004. Mr. Beck currently serves as a consultant to Viisage and also serves as a member of the Boards of Directors of Cardinal Bankshares Corporation, a provider of comprehensive individual and corporate banking services, and L-3 Communications MAS (US) Corporation, a leading supplier of a broad range of products used in a substantial number of aerospace and defense platforms.

Charles E. Levine, 51, has served as a director of Viisage since 1998. Mr. Levine retired in September 2002 from his position as President of Sprint PCS, a position he had held since January 1997. Before joining Sprint PCS, Mr. Levine served as Senior Vice President of Octel Services, a provider of voice systems services, from October 1994 through September 1996. Mr. Levine currently also serves as a member of the Boards of Directors of At Road, Inc., a wireless applications provider, Sierra Wireless Inc., a provider of a broad range of wireless products, including data modems, embedded modules and mobile phones, and Somera Communications, a provider of telecommunications operators with equipment and deployment services.

Board Independence

The Board has determined that a majority of its members do not have a relationship with Viisage which, in the Board's opinion, would interfere with their exercise of independent judgment. The Board has further determined that a majority of its members are independent within the meaning of the independence standards of the Nasdaq Stock Market, Inc., as currently in effect. Of the three nominees for election as directors at the Meeting, Ms. Mouchly-Weiss is independent within the meaning of the foregoing standards, and Messrs. Bailey and Principato are not independent within the meaning of those standards. Mr. Bailey is our Chief Executive Officer and Mr. Principato is the Chief Financial Officer of Lau Technologies which directly owns approximately 17% of our issued and outstanding Common Stock. The Board has determined that each of the members of each of the committees of the Board of Directors has no material relationship with Viisage (either directly or as a partner, shareholder or officer of an organization that has a relationship with Viisage) and is independent within the meaning of the independence standards of the Nasdaq Stock Market, Inc., as currently in effect.

Meetings of the Board of Directors and Committees

The Company's Board of Directors held nine meetings during 2003, and each director attended at least 75% of all meetings of the Board and any committee on which he or she served. Four members of the Board attended Viisage's 2003 Annual Meeting of Stockholders. The Board has established a Compensation Committee, an Audit Committee, a Nominating and Corporate Governance Committee, and a Marketing Committee, all of the members of which are independent directors.

The Compensation Committee, comprised of Mr. Reilly (chair), Ms. Mouchly-Weiss, and Mr. Nessen, reviews senior management performance, recommends executive compensation, and administers the Amended and Restated 1996 Directors Stock Option Plan, the Second Amended and Restated 1996 Management Stock Option Plan, and the 1997 Employee Stock Purchase Plan.

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The Audit Committee, comprised of Messrs. Nessen (chair), Reilly, and Levine, meets at least quarterly to review the Company's quarterly financial releases. Each member of the Audit Committee is independent within the meaning of Section 4200 of the National Association of Securities Dealers Marketplace Rules and as required pursuant to Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act).

The Audit Committee performs the functions described in the report included in this proxy statement under the caption Board Audit Committee Report. The Board has determined that each of the members of the Audit Committee is qualified as an audit committee financial expert within the meaning of applicable regulations issued under the Exchange Act. The Board of Directors has adopted a written charter for the Audit Committee, a copy of which was attached as an appendix to the proxy statement for the 2003 annual meeting of shareholders.

The Nominating and Corporate Governance Committee, comprised of Messrs. Levine (chair) and Nessen and Ms. Mouchly-Weiss, proposes nominees for election to the Board, assists the Board in its annual review of director performance, and develops and recommends corporate governance guidelines for Viisage. The Nominating and Corporate Governance Committee has adopted a written charter, a copy of which is attached as Appendix A to this proxy statement.

The Marketing Committee, comprised of Ms. Mouchly-Weiss (chair) and Mr. Levine, reviews and makes recommendations regarding the Company's marketing strategy and plans.

During 2003, the Compensation Committee met four times, the Audit Committee met six times, and the Marketing Committee met four times. The Nominating and Corporate Governance Committee was formed in February 2004 and therefore did not meet in 2003.

Compensation of Directors

Pursuant to the Company's 2001 Stock in Lieu of Cash Compensation for Directors Plan (the Director Compensation Plan) each director received aggregate compensation valued at \$60,000 for his or her service as a director in 2003. Three of the directors, Messrs. Berube and Nessen and Ms. Mouchly-Weiss elected, in accordance with the Director Compensation Plan, to take all of this compensation in shares of the Company's Common Stock valued at the closing price of \$3.81 on the Nasdaq National Market on February 25, 2003. Accordingly, each of such directors received 15,748 shares of Common Stock. The remaining three directors, Messrs. Levine, Principato and Reilly, elected, in accordance with the Director Compensation Plan, to take \$40,000 of this compensation in Common Stock and \$20,000 of this compensation in cash. Accordingly, each of these four directors received 10,498 shares of Common Stock. Directors did not receive any additional cash or fees for attending Board or committee meetings. However, the Company reimburses directors for their out-of-pocket expenses incurred in connection with any Board or committee meetings.

Directors also receive grants of nonqualified options under the Company's 1996 Directors Stock Option Plan, as amended (the Director Option Plan). In 2003, the Company granted each of the six directors then serving on the Board an option to purchase 10,000 shares of Common Stock pursuant to the Director Option Plan, which options were fully vested upon grant. On February 23, 2004, the Company granted each of the seven directors then serving on the Board an option to purchase 10,000 shares of Common Stock pursuant to the Director Option Plan, which options were fully vested upon grant.

Securities Authorized for Future Issuance under Equity Compensation Plans

The following table sets forth information about the Company's Common Stock that may be issued upon the exercise of options outstanding under its stock option plans and the number of shares that have been issued under all of its other equity compensation plans as of December 31, 2003. The figures below do not include any increase in the shares reserved for issuance under the 1996 Management Stock Option Plan or the 1996 Directors Stock Option Plan described in Proposals 2 and 3, respectively.

Plans	Number of Shares Subject to Outstanding Options/Shares Issued under Plan	Weighted-Average Exercise Price of Outstanding Options/Shares Issued under Plan	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in first column)
1996 Management Stock Option Plan	2,963,787	\$ 4.42	664,398
1996 Directors Stock Option Plan	374,792	\$ 5.53	125,000
1997 Employee Stock Purchase Plan			73,806
2001 Stock in Lieu of Cash Compensation for Directors Plan	435,288	\$ 2.13	364,712
Total:	3,773,867	\$ 4.27	1,227,916

Each of the plans listed above was approved by the stockholders of the Company.

Compensation Committee Interlocks and Insider Participation

The Compensation Committee consists of Mr. Reilly (chair), Ms. Mouchly-Weiss, and Mr. Nessen, none of whom are officers or employees of the Company. No interlocking relationship exists between our board or compensation committee and the board of directors or compensation committee of any other company, nor has any such interlocking relationship existed in the past.

Consideration of Director Nominees*Shareholder Nominees*

As adopted in February 2004, the policy of the Nominating and Corporate Governance Committee (the Nominating Committee) is to consider properly shareholder nominations for candidates for membership on the Board as described below under Identifying and Evaluating Nominees for Directors. In evaluating such nominations, like all nominations, the Board's criteria will include business experience and skills, independence, judgment, integrity, the ability to commit sufficient time and attention to Board activities and the absence of potential conflicts with the Company's interests. Any shareholder nominations proposed for consideration by the Nominating Committee should include the nominee's name and qualifications for Board membership and should be addressed to Nominating and Corporate Governance Committee c/o General Counsel, Viisage Technology, Inc., 296 Concord Road, Third Floor, Billerica, Massachusetts 01821.

In addition, the Company's by-laws permit shareholders to nominate directors for consideration at an annual meeting of shareholders for election by the shareholders of the meeting. Under the Company's by-laws, nominations for election of directors may be made by the Board or by any shareholder entitled to vote in the election of directors provided that no shareholder may nominate a person for election as a director unless written notice of such nomination is presented to the Company not later than 75 days nor more than 120 days prior to the anniversary date of the preceding year's annual meeting. No notice has been given by a shareholder with respect to the election of directors. As a result, no other nominees for election as director will be considered at the annual meeting except nominations made by the Board in the event one of the nominees named in the proxy statement should unexpectedly be unavailable.

Identifying and Evaluating Nominees for Directors

Pursuant to the policy set forth in its charter, the Nominating Committee will utilize a variety of methods for identifying and evaluating nominees for director. The Nominating Committee's policy is to assess the appropriate size of the Board, and whether any vacancies on the Board are expected due to retirement or otherwise. In the event that vacancies are anticipated, or otherwise arise, the Nominating Committee will consider various potential candidates for director. Candidates may come to the attention of the Nominating Committee through current Board members, shareholders or other persons. These candidates will be evaluated at regular or special meetings of the Nominating Committee, and may be considered at any point during the year. As described above, the Nominating Committee will consider properly submitted shareholder nominations for candidates for the Board. Following verification of the shareholder status of persons proposing candidates, recommendations will be aggregated and considered by the Nominating Committee at a regularly scheduled meeting. If any materials are provided by a shareholder in connection with the nomination of a director candidate, such materials will be forwarded to the Corporate Governance and Nominating Committee. There are no specific, minimum qualifications that must be met for any nominee.

We have not paid, to date, any third party a fee to assist in evaluating and identifying nominees. During 2003, no candidate was recommended to us by any beneficial owner of more than 5% of our common stock.

Executive Sessions

The Board, which is composed entirely of outside directors, has a practice of meeting in executive sessions without the presence of any members of the Company's management. Commencing in 2004, the independent members of the Board will meet in executive sessions at least twice a year.

Communications with the Board

Shareholders may communicate with the Board by writing to Board of Directors of Viisage Technology, Inc. c/o General Counsel, 296 Concord Road, Third Floor, Billerica, Massachusetts 01821. All such communications will be forwarded to the Chairman of the Board of Directors as promptly as practicable after receipt.

Code of Ethics

The Company has adopted a *Code of Business Ethics and Standards of Conduct* that applies to its directors, executive officers (including its principal executive, financial and accounting officers) and to all of its other employees. A copy of the *Code of Business Ethics and Standards of Conduct* will be provided to any person, without charge, upon receipt of a written request addressed to Chief Financial Officer, Viisage Technology, Inc., 296 Concord Road, Third Floor, Billerica, MA 01821 or an e-mail request addressed to investor@viisage.com.

PROPOSAL 2 AMENDMENTS TO 1996 MANAGEMENT STOCK OPTION PLAN

The Second Amended and Restated 1996 Management Stock Option Plan (the Management Plan) was adopted by the Board of Directors on June 17, 1996, and ratified by Lau in its capacity as sole shareholder of the Company prior to its initial public offering, to provide selected officers and employees with an opportunity to have an ownership interest in the Company and to attract, retain and motivate such officers and employees. The Management Plan is administered by the Compensation Committee of the Board of Directors, which currently consists of Mr. Reilly (chair), Ms. Mouchly-Weiss and Mr. Nessen. Options under the Plan may be either (a) incentive options under Section 422 of the Internal Revenue Code of 1986, as amended (the Code), or (b) options that do not qualify under Section 422 of the Code (nonqualified options). The Management Plan has been amended from time to time to increase the number of shares available for issuance under the plan. On April 6, 2004, the Board voted, subject to shareholder approval at this Meeting:

1. to amend the Management Plan to increase the number of shares reserved for issuance under the plan from 4,807,100 to 6,000,000, to make 1,192,900 additional shares available for issuance under the Management Plan; and
2. to amend the Management Plan to permit members of the Company's Board of Directors who also are officers or key employees of the Company to be granted options under the Management Plan.

As of April 1, 2004, options granted under the Management Plan to purchase a total of 3,380,706 shares of Common Stock were outstanding with exercise prices between \$.0.84 and \$12.50, and options for 497,398 shares remained available for issuance. On April 7, 2004, the closing price of our Common Stock on the Nasdaq Stock Market was \$11.19 per share. The following summary of the Management Plan does not purport to be complete and is qualified in its entirety by reference to the full text of the Management Plan, which is attached as Appendix B to this proxy statement.

Participation. Currently, officers and key employees of the Company, but not directors, are eligible to receive options under the Management Plan. The Board of Directors has voted, subject to shareholder approval at this Meeting, to amend the Management Plan to permit directors who also are officers or key employees of the Company to be eligible to receive options under the Management Plan.

Terms of Grants. The exercise price of incentive options under the Management Plan may not be less than the fair market value of the underlying shares on the date of grant, except in the case of incentive options granted to holders of 10% or more of the total combined voting power of the Company, in which case the exercise price may not be less than 110% of such fair market value. The exercise price of nonqualified options is to be determined by the Compensation Committee at the time of option issuance. Each option under the Management Plan will have a term not to exceed ten years, except in the case of incentive options granted to holders of 10% or more of the total combined voting power of the Company, with respect to which the term may not exceed five years. The Compensation Committee determines the vesting schedule with respect to any grant of options. All options are subject to adjustment in certain events. Participants are required to pay in full an amount equal to the exercise price of the options being exercised at the time of exercise. Such payment shall be in cash unless otherwise agreed by the Compensation Committee.

Under current accounting rules, option grants under the Management Plan with exercise prices equal to the fair market value of the option shares on the grant date will not result in any direct charge to the Company's reported earnings. However, the fair value of those options is required to be disclosed in the notes to the Company's financial statements, and the Company must also disclose, in footnotes to the Company's financial statements, the pro-forma impact those options would have upon the Company's reported earnings were the fair value of those options at the time of grant treated as a compensation expense. In addition, the number of outstanding options may be a factor in determining the Company's earnings per share on a fully-diluted basis.

Amendment and Termination. The Management Plan may be amended from time to time by the Compensation Committee of the Board of Directors, subject to the rights of previously issued options, except that any such amendment will require shareholder approval in certain circumstances such as repricing of previously issued options. Shares reserved for issuance under an option that is cancelled or terminated, and shares that are used in payment of option exercise prices, will be restored and made available for reissuance of additional options under the Management Plan. The existing options contain reload option features.

Transferability of Options. Generally, an option is not transferable except by will or by the laws of descent and distribution.

Federal Tax Treatment. Options granted under the Management Plan may be either incentive stock options which satisfy the requirements of Section 422 of the Code or nonstatutory options that are not intended to meet such requirements. The Federal income tax treatment for the two types of options differs as follows:

Incentive Options: No taxable income is recognized by the optionee at the time of the option grant, and no taxable income is generally recognized at the time the option is exercised. The optionee will, however, recognize taxable income in the year in which the purchased shares are sold or otherwise made the subject of a taxable disposition. For Federal tax purposes, dispositions are divided into two categories: (i) qualifying and (ii) disqualifying. A qualifying disposition occurs if the sale or other disposition is made after the optionee has held the shares for more than two (2) years after the option grant date and more than one (1) year after the exercise date. If either of these two holding periods is not satisfied, then a disqualifying disposition will result. Upon a qualifying disposition, the optionee will recognize a long-term capital gain in an amount equal to the excess of (i) the amount realized upon the sale or other disposition of the purchased shares over (ii) the exercise price paid for the shares. If there is a disqualifying disposition of the shares, then the excess of (i) the fair market value of those shares on the exercise date over (ii) the exercise price paid for the shares will be taxable as ordinary income to the optionee. Any additional gain or loss recognized upon the disposition will be recognized as a capital gain or loss by the optionee. If the optionee makes a disqualifying disposition of the purchased shares, then the Company will be entitled to an income tax deduction, for the taxable year in which such disposition occurs, equal to the excess of (i) the fair market value of such shares on the option exercise date over (ii) the exercise price paid for the shares. If the optionee makes a qualifying disposition, the Company will not be entitled to any income tax deduction.

Nonstatutory Options: Taxable income is generally not recognized by an optionee upon the grant of a nonstatutory option. The optionee will, in general, recognize ordinary income, in the year in which the option is exercised, equal to the excess of the fair market value of the purchased shares on the exercise date over the exercise price paid for the shares, and the optionee will be required to satisfy the tax withholding requirements applicable to such income. The Company will be entitled to an income tax deduction equal to the amount of ordinary income recognized by the optionee with respect to the exercised nonstatutory option. The deduction will in general be allowed for the taxable year of the Company in which such ordinary income is recognized by the optionee.

Section 162(m) of the Internal Revenue Code generally provides that public companies may not take a tax deduction for compensation in excess of \$1 million paid to their chief executive officers or any of their four other most highly compensated officers. However, some compensation is specifically exempt from the deduction limit under Section 162(m). In order for compensation under equity compensation plans, such as the Management Plan, to qualify for the exemption from the deduction limit, there must be a limit to the number of shares granted to any of the covered officers under the 1996 plan in a specified period. Accordingly, the Management Plan provides that no participant may receive awards for an aggregate of more than 1,337,000 shares in any fiscal year of the Company. Stockholder approval of this the amendment of the Management Plan will constitute stockholder approval of this limitation for Section 162(m) purposes.

Grants Under the Management Plan. The following table sets forth information as of April 1, 2004 regarding the number of outstanding options previously granted under the Management Plan to the specified individuals and groups.

<u>Name and Position</u>	<u>Number of Options</u>
Bernard C. Bailey, <i>President and Chief Executive Officer</i>	720,000
William K. Aulet <i>Senior Vice President and Chief Financial Officer</i>	200,000
Iftikhar A. Ahmad <i>Senior Vice President and General Manager Secure ID</i>	212,302
James P. Ebzery <i>Senior Vice President, Sales and Services</i>	200,000
John J. Dillon <i>Senior Vice President, Government Solutions</i>	75,000
All current executive officers as a group (5 persons)	1,407,302
All employees who were not executive officers as a group (52 persons)	1,062,090

As of April 1, 2004, no stock options had been granted, and no shares of Common Stock had been issued, on the basis of the share increase that is the subject of this Proposal 2. Further, the Company has not committed or designated any of the additional shares of Common Stock subject to this Proposal 2 for grants under the Management Plan.

The affirmative vote of at least a majority of the outstanding shares of Common Stock present in person or by proxy at the Annual Meeting and entitled to vote is required for approval of the amendment to the Management Plan. Should such stockholder approval not be obtained, then the 1,192,900 share increase to the share reserve under the Management Plan will not occur, and no additional options or stock issuances will be made on the basis of such increases. The Management Plan will, however, continue in effect, and option grants may continue to be made under the Management Plan until all the shares available for issuance under the Management Plan have been issued pursuant to such option grants.

The Board recommends a vote **FOR** the amendment to the Management Plan to increase the number of shares available for issuance thereunder from 4,807,100 to 6,000,000.

PROPOSAL 3 AMENDMENT TO 1996 DIRECTORS STOCK OPTION PLAN

The Second Amended and Restated 1996 Directors Stock Option Plan (the *Director Plan*) was adopted by the Board of Directors on June 17, 1996, and ratified by Lau in its capacity as sole shareholder of the Company prior to the Company's initial public offering, to provide directors with an opportunity to have an ownership interest in the Company and further align the non-employee directors' interests with the long-term interests of the shareholders. The Director Plan is administered by the Board of Directors. The Director Plan has been amended from time to time to increase the number of shares available for issuance under the plan. On April 6, 2004, the Board voted, subject to shareholder approval at this Meeting, to further amend the Director Plan to increase the number of shares reserved for issuance under the plan from 576,616 to 1,076,616, to make 500,000 additional shares available for issuance under the Director Plan. As of April 1, 2004, options granted under the Director Plan to purchase a total of 444,792 shares of Common Stock were outstanding with exercise prices between \$0.84 and \$12.50, and options for 55,000 shares remained available for issuance. On April 7, 2004, the closing price of our Common Stock on the Nasdaq Stock Market was \$11.19 per share. The following summary of the Director Plan does not purport to be complete and is qualified in its entirety by reference to the full text of the Director Plan, which is attached as Appendix C to this proxy statement.

Participation. Directors of the Company that are not employees of the Company or any subsidiary are eligible to receive options under the Director Plan.

Terms of Grants. The exercise price of options issued under the Director Plan will have an exercise price equal to the current fair market value of shares of Common Stock on the option grant date. Each option under the Management Plan will have a term not to exceed ten years. The Board determines the vesting schedule with respect to any grant of options. Vesting under the Director Plan ceases when an option holder ceases to serve on the Board. All options are subject to adjustment in certain events. Participants are required to pay the exercise price of the options being exercised in full at the time of exercise. Such payment shall be made in cash, by delivery of other shares of the company's Common Stock or, subject to applicable law, in a broker-assisted cashless exercise.

Option grants under the Director Plan will not result in any direct charge to the Company's reported earnings. However, the fair value of those options is required to be disclosed in the notes to the Company's financial statements, and the Company must also disclose, in footnotes to the Company's financial statements, the pro-forma impact those options would have upon the Company's reported earnings were the fair value of those options at the time of grant treated as a compensation expense. In addition, the number of outstanding options may be a factor in determining the Company's earnings per share on a fully-diluted basis.

Amendment and Termination. The Director Plan may be amended from time to time by the Board of Directors, subject to the rights of previously issued options, except that any such amendment will require shareholder approval in certain circumstances. Shares reserved for issuance under an option that is cancelled or terminated, and shares that are used in payment of option exercise prices, will be restored and made available for reissuance of additional options under the Director Plan. The Director Plan does not permit reload options.

Transferability of Options. Generally, an option is not transferable except by will or by the laws of descent and distribution.

Federal Tax Treatment. The options issued pursuant to the Director Plan are nonqualified options and are thus not intended to meet the requirements of Section 422 of the Code. The Federal tax consequences relating to the options issued under the Director Plan are the same as those relating to the nonstatutory stock options described under the Management Plan in Proposal 2.

Grants Under the Director Plan. The following table sets forth information as of April 1, 2004 regarding the number of outstanding options previously granted under the Director Plan to the specified individuals and groups.

<u>Name and Position</u>	<u>Number of Options</u>
Denis K. Berube	90,496
B.G. Beck(1)	10,000
Charles E. Levine	79,136
Harriet Mouchly-Weiss	80,497
Peter Nessen	55,000
Paul Principato	72,167
Thomas J. Reilly	90,496
All directors as a group (7 persons)	477,792

(1) Mr. Beck became a director of Viisage in February 2004.

As of April 1, 2004, no stock options had been granted, and no shares of Common Stock had been issued, on the basis of the share increase that is the subject of this Proposal 3. Further, the Company has not committed or designated any of the additional shares of Common Stock subject to this Proposal 3 for grants under the Director Plan.

The affirmative vote of at least a majority of the outstanding shares of Common Stock present in person or by proxy at the Annual Meeting and entitled to vote is required for approval of the amendment to the Director Plan. Should such stockholder approval not be obtained, then the 500,000 share increase to the share reserve under the Director Plan will not occur, and no additional options or stock issuances will be made on the basis of such increases. The Director Plan will, however, continue in effect, and option grants may continue to be made under the Director Plan until all the shares available for issuance under the Director Plan have been issued pursuant to such option grants.

The Board recommends a vote **FOR** the amendment to the Director Plan to increase the number of shares available for issuance thereunder from 576,616 to 1,076,616.

**PROPOSAL 4 AMENDMENT TO CERTIFICATE OF INCORPORATION TO
INCREASE THE NUMBER OF
AUTHORIZED SHARES OF COMMON STOCK**

Our Board of Directors has approved and is submitting to our stockholders a proposal to effect the Third Amendment to our Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 45,000,000 shares to 75,000,000 shares. The text of the Amendment is attached to this proxy statement as Appendix D.

Purpose and Effect of the Amendment

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On April 6, 2004, our Board of Directors approved a Third Amendment to our Restated Certificate of Incorporation to increase the aggregate number of shares of common stock that we are authorized to issue from 45,000,000 shares to 75,000,000 shares. If approved by our stockholders, the Amendment will become effective upon the filing of a Third Certificate of Amendment with the Delaware Secretary of State. The Amendment would increase the number of shares of common stock available for issuance, but would have no effect upon the terms of the common stock or rights of holders of the common stock. As of April 1, 2004, we had approximately 35,625,176 shares of common stock outstanding, approximately 5,514,364 shares reserved for future issuance under our stock incentive plans and 812,469 shares reserved for issuance upon exercise of warrants. Based upon the foregoing number of outstanding and reserved shares of common stock, we currently have approximately 3,049,323 shares remaining for other purposes.

Our Board of Directors believes that it is in the best interest of the Company and its stockholders to have additional shares of common stock authorized and available for issuance or reservation on an as-needed basis without the delay or expense of seeking stockholder approval (unless required by law or then existing Nasdaq listing requirements). Additional shares may be (i) sold and issued in a public or private offering that would be used to provide the Company with capital necessary to further develop its core businesses or to pursue strategic opportunities, (ii) used as currency to complete acquisitions, (iii) used for issuance in connection with our stock option plans, and (iv) used to pursue other corporate purposes that may be identified in the future by the Board of Directors.

Although the increase in the authorized number of shares of common stock will not, in and of itself, have any immediate effect on the rights of our stockholders, any future issuance of additional shares of common stock could affect our stockholders in a number of respects, including by diluting the voting power of the current holders of our common stock, and by diluting the earnings per share and book value per share of outstanding shares of our common stock at such time. In addition, the issuance of additional shares could adversely affect the market price of our common stock. Moreover, if we issue securities convertible into common stock or other securities that have rights, preferences and privileges senior to those of our common stock, the holders of our common stock may suffer significant dilution.

Potential Anti-takeover Effect

We have no present intention to use the increased authorized common stock for anti-takeover purposes, nor is the proposed Amendment in response to any effort by any person or group to accumulate our stock or to obtain control of the Company by any means. The proposed Amendment is not intended to have any anti-takeover effect and is not part of any series of anti-takeover measures contained in our charter or the By-Laws as in effect on the date hereof. However, the issuance of additional shares of common stock would increase the number of shares necessary to acquire control of the Board or to meet the voting requirements imposed by Delaware law with respect to a merger or other business combination involving us. Issuance of additional shares unrelated to any takeover attempt could also have these effects. Management has no current intent to propose anti-takeover measures in future proxy solicitations.

No Change in Business

The Amendment will effect a change in the number of authorized shares of our common stock. However, the Amendment will not result in any change in our business, assets, liabilities or net worth (other than as a result of the costs incident to the Amendment, which are immaterial). Our management, including all directors and officers, will remain the same after the Amendment.

Upon the effective date of the Amendment, the number of authorized shares of the Company's common stock will increase from 45,000,000 shares to 75,000,000 shares. Stockholders need not exchange their existing stock certificates.

The Board recommends a vote **FOR** the approval of the amendment to Viisage's Restated Certificate of Incorporation which will increase the authorized shares of common stock from 45,000,000 to 75,000,000.

**PROPOSAL 5 RATIFICATION OF SELECTION
OF INDEPENDENT PUBLIC ACCOUNTANTS**

The Board of Directors has selected the accounting firm of BDO Seidman, LLP (BDO Seidman) as the Company s independent public accountants for the year ending December 31, 2004.

Shareholder ratification of the selection of BDO Seidman is not required by the Company s By-laws or otherwise. The Board of Directors, however, is submitting the selection of BDO Seidman to the shareholders as a matter of good corporate practice. If the shareholders fail to ratify the selection, the Audit Committee and the Board of Directors will reconsider whether or not to retain such firm. Even if the selection is ratified, the Audit Committee, in their discretion, may direct the appointment of a different independent public accounting firm at any time during the year if they determine that such a change would be in the best interest of the Company and its shareholders.

BDO Seidman representatives are expected to be present at the Annual Meeting and available to respond to appropriate questions. They will have an opportunity to make a statement if they desire to do so.

During the fiscal years ended December 31, 2002 and December 31, 2003, fees for services provided by BDO Seidman were as follows:

Audit Fees

	Year Ended December 31,	
	2002	2003
Audit Fees	\$ 151,250	\$ 178,500
Audit-Related Fees	\$ 68,990	\$ 321,445
Tax Fees	\$ 13,350	\$ 12,000
All Other Fees		
Total	\$ 233,590	\$ 511,945

Audit Fees consisted of fees billed for professional services rendered by BDO Seidman for the audit of Viisage s annual financial statements for the year ended December 31, 2003, and the reviews of Viisage s financial statements included in the Company s quarterly reports on Form 10-Q during the year ended December 31, 2003, and other services normally provided in connection with statutory and regulatory filings.

Audit-Related Fees consisted of fees billed for due diligence procedures in connection with acquisitions and consultation regarding financial accounting and reporting matters. Tax Fees consisted of fees billed for tax payment planning and tax preparation services. The Audit Committee must pre-approve all audit and permitted non-audit services for which our independent auditors may be engaged. All audit and non-audit services provided by BDO Seidman in 2002 and 2003 were approved in advance by the Audit Committee, and no fees were paid in 2002 or 2003 under a *de minimis* exception that waives pre-approval for certain non-audit services.

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The Audit Committee has determined that BDO Seidman's provision of services other than for its audit and reviews of Viisage's financial statements is compatible with maintaining the independence of BDO Seidman.

The Board recommends a vote **FOR** the ratification of BDO Seidman as the Company's independent public accountants for the year ending December 31, 2004.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS,

DIRECTORS AND MANAGEMENT

The following table sets forth, as of April 1, 2004, the beneficial ownership of Common Stock by (i) each person who is known to the Company to beneficially own 5% or more of the Company's Common Stock, (ii) each director and director nominee, (iii) each executive officer of Viisage for whom information is given in the Summary Compensation Table in this Proxy Statement, and (iv) all directors and executive officers of the Company as a group. With respect to persons owning 5% or more of the Company's Common Stock, the Company has relied on documents filed with the Securities and Exchange Commission indicating holdings which are current through approximately April 1, 2004. Unless otherwise indicated in the footnotes to this table, the address of each beneficial owner is c/o of Viisage Technology, Inc., 296 Concord Road, Third Floor, Billerica, MA 01821.

Name of Beneficial Owner	Shares Beneficially Owned(1)	Percent
Beneficial Owners of 5% or more		
Joanna T. Lau(2)	6,297,005	17.6%
Lau Technologies	6,086,267	17.1%
Seligman Communications and Information Fund, Inc.(3)	1,787,378	5.0%
Directors and Executive Officers		
Denis K. Berube(4)	6,297,005	17.6%
B.G. Beck(5)	5,860,000	16.4%
Harriet Mouchly-Weiss(6)	137,691	*
Charles E. Levine(7)	144,181	*
Peter Nessen(8)	87,827	*
Paul T. Principato(9)	108,855	*
Thomas J. Reilly(10)	118,073	*
Bernard C. Bailey(11)	125,000	*
Iftikhar Ahmad(12)	177,406	*
James P. Ebzery(13)	66,666	*
William K. Aulet(14)	66,666	*
John J. Dillon(15)	25,000	*
All directors, nominees and named executive officers as a group (12 persons)(16)	13,214,370	36.1%

* Indicates holdings of less than one percent of the 35,625,176 shares issued and outstanding as of April 1, 2004.

- (1) Unless otherwise noted, and subject to applicable community property laws, each person identified possesses sole voting and investment power over the shares beneficially owned by such person.
- (2) The address of Ms. Lau and Lau Technologies is c/o Lau Technologies, 30 Monument Square, Suite 220, Concord, Massachusetts 01742. Includes 6,086,267 shares held by Lau Technologies. Ms. Lau owns approximately 56% of the outstanding capital stock of Lau Technologies. Also includes 1,000 shares owned directly by Ms. Lau, 90,496 shares issuable to Denis K. Berube, the spouse of Ms. Lau, pursuant to stock options exercisable within 60 days of April 1, 2004, and 119,242 shares owned by Mr. Berube directly. Ms. Lau disclaims beneficial ownership of the 90,496 shares issuable to Mr. Berube and the 119,242 shares owned by Mr. Berube.
- (3) The address of Seligman Communications and Information Fund, Inc. is c/o J. & W. Seligman & Co. Incorporated, 100 Park Avenue, New York, NY 10017.
- (4) Includes 6,086,267 shares held by Lau Technologies. Mr. Berube's spouse, Joanna Lau, owns approximately 56% of the outstanding capital stock of Lau Technologies. Also includes 1,000 shares owned directly by Ms. Lau, 90,496 shares issuable to Mr. Berube pursuant to stock options exercisable within 60 days of April 1, 2004, and 119,242 shares owned by Mr. Berube directly. Mr. Berube disclaims beneficial ownership of the 6,086,267 shares held by Lau Technologies and the 1,000 shares held by Ms. Lau.

- (5) Consists of 10,000 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004 and 5,850,000 shares owned directly by Mr. Beck.
- (6) Consists of 80,497 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004 and 57,194 shares owned directly by Ms. Mouchly-Weiss.
- (7) Consists of 79,136 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004 and 65,045 shares owned directly by Mr. Levine.
- (8) Consists of 55,000 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004 and 32,827 shares owned directly by Mr. Nessen.
- (9) Consists of 72,167 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004 and 36,688 shares owned directly by Mr. Principato.
- (10) Consists of 90,496 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004 and 27,577 shares owned directly by Mr. Reilly.
- (11) Consists of 125,000 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004.
- (12) Consists of 171,727 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004 and 5,679 shares owned directly by Mr. Ahmad.
- (13) Consists of 66,666 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004.
- (14) Consists of 66,666 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004.
- (15) Consists of 25,000 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004.
- (16) Consists of 932,851 shares issuable pursuant to stock options exercisable within 60 days of April 1, 2004 and 12,281,519 shares owned directly by the executive officers and directors as a group.

EXECUTIVE COMPENSATION

Summary Compensation Table

The table below sets forth summary information concerning the compensation awarded to our Chief Executive Officer and our four other most highly compensated executive officers who were serving as executive officers as of December 31, 2003. The individuals listed below are referred to in this proxy statement as our named executive officers .

Name and Principal Position	Year Ended 12/31	Annual Compensation		Securities Underlying Options(2)	All Other Compensation(3)
		Salary	Bonus(1)		
Bernard C. Bailey, President and Chief Executive Officer(4)	2003	\$ 300,000	\$ 135,000		\$ 17,721
	2002	\$ 101,538	\$ 135,000	720,000	\$ 1,350
	2001				
Iftikhar A. Ahmad, Senior Vice President of General Manager, Secure Credentials	2003	\$ 175,000	\$ 25,000		\$ 2,625
	2002	\$ 172,885	\$ 32,000	60,000	\$ 3,073
	2001	\$ 165,000	\$ 75,000	50,000	\$ 3,600
William K. Aulet, Senior Vice President and Chief Financial Officer(5)	2003	\$ 151,442	\$ 20,000	15,000	\$ 4,504
	2002				
	2001				
James P. Ebzery, Senior Vice President, Sales and Services(6)	2003	\$ 215,000	\$ 60,000		\$ 6,332
	2002	\$ 25,635		200,000	
	2001				
John J. Dillon, Senior Vice President, Government Solutions(7)	2003	\$ 161,539	\$ 67,000	75,000	
	2002				
	2001				

- (1) The Company currently maintains an Executive Incentive Compensation Plan for its executive officers and other key employees of the Company to motivate members of the Company's executive team. Each participant in the Executive Incentive Compensation Plan may receive a percentage of his or her base salary based upon the Company's and each participant's individual performance, as determined by success in meeting established goals approved by the Chief Executive Officer, for individual goals, or the Board of Directors, for Company goals. The Compensation Committee administers the plan.
- (2) Options were granted under the Management Plan.
- (3) Amounts include 2003 401(k) plan match of \$6,000 for Mr. Bailey, \$4,543 for Mr. Aulet, \$2,625 for Mr. Ahmad, and \$5,572 for Mr. Ebzery. The Company participates in the Lau 401(k) plan and pays its proportionate share of plan expenses based on the number of participants. The plan permits pre-tax contributions by participants of up to 15% of base compensation or the statutory limit. The Company may make discretionary contributions to the plan, subject to certain limits. Participants are fully vested in their contributions and vest 20% per year in employer contributions.
- (4) Mr. Bailey was hired in 2002.
- (5) Mr. Aulet was hired in 2003.
- (6) Mr. Ebzery was hired in 2002.
- (7) Mr. Dillon was hired in 2003.

Stock Options Granted During 2003

The following table sets forth information concerning individual grants of stock options made during 2003 to the Company's named executive officers.

Name	Number of Securities Underlying Options Granted(1)	% of Total Options Granted to Employees in Year	Exercise Price (\$/share)	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term (2)	
					5%	10%
William K. Aulet	200,000	19.90%	\$ 4.35	2/12/13	\$ 490,903	\$ 1,215,605
John J. Dillon	75,000	7.5%	\$ 4.08	2/21/13	\$ 192,442	\$ 487,685

- (1) Options were granted under the Management Plan. Total of options granted does not include shares purchased pursuant to the Employee Stock Purchase Plan. All options listed vest in equal installments on the first, second and third anniversaries of the grant date.
- (2) In accordance with SEC rules, we have based our calculation of the potential realizable value on the term of the option at its time of grant, and we have assumed that:

The fair market value on the date of grant appreciates at the indicated annual rate compounded annually for the entire term of the option; and

The option is exercised and sold on the last day of its term for the appreciated stock price.

These amounts are based on 5% and 10% assumed rates of appreciation and do not represent our estimate of future stock prices. Actual gains, if any, on stock option exercises will be dependent on the future performance of the Common Stock.

Year End Option Values

The following table sets forth information concerning outstanding stock options held at the end of 2003 by the Company's named executive officers.

Name	Number of Securities Underlying Unexercised Options at 12/31/03	Value of Unexercised In-the-Money Options at 12/31/03
	Exercisable/ Unexercisable	Exercisable/ Unexercisable(1)
Bernard C. Bailey	125,000/595,000	\$31,250/\$148,750
Iftikhar A. Ahmad	122,560/ 89,742	\$66,897/\$36,735
William K. Aulet	/200,000	/
James P. Ebzery	66,666/133,334	/
John J. Dillon	/ 75,000	/

- (1) Based on the difference between the exercise price of the option and \$3.60 which was the closing price of the Company's Common Stock on December 31, 2003 on the Nasdaq National Market.

Employment Agreements

In June 2002, the Company entered into a letter agreement with Bernard C. Bailey pursuant to which the Company offered Mr. Bailey the position of Chief Executive Officer of the Company, with Mr. Bailey's employment to commence on or before September 3, 2002. The agreement provides that the Company will pay Mr. Bailey an annual salary of \$300,000 and a signing bonus of \$85,000. Mr. Bailey is also eligible to receive a performance-based cash bonus. Additionally, the agreement provides that the Company will pay Mr. Bailey severance equal to twelve months' salary if the Company terminates his employment without cause, provided that the severance payments would be reduced or eliminated if Mr. Bailey begins employment elsewhere during the twelve month severance period. Pursuant to the agreement, during the time of his employment with the

Company and for a period of two years after his employment, Mr. Bailey cannot engage in any business that competes with the Company's business, and he cannot solicit any of the Company's employees. In addition, Mr. Bailey is required to maintain the confidentiality of the Company's business information.

On August 14, 2002, Mr. Bailey was issued an option to purchase 720,000 shares of Common Stock with an exercise price of \$3.35 per share, of which 125,000 options vest and become exercisable on January 1, 2003, 2004 and 2005 and the balance vest as the market capitalization of the Company reaches amounts between \$400 million and \$1 billion, provided he is employed by the Company on the vesting date. The vesting of Mr. Bailey's options will be accelerated if there is a change in control of the Company and the options fully vest if he is employed by the Company on May 14, 2012.

In October 2002, the Company entered into a letter agreement with James Ebzery pursuant to which the Company offered Mr. Ebzery the position of Senior Vice President, Sales and Marketing. In December 2002, the Company entered into similar letter agreements with each of William Aulet, pursuant to which the Company offered Mr. Aulet the position of Senior Vice President and Chief Financial Officer, and Jack Dillon, pursuant to which the Company offered Mr. Dillon the position of Senior Vice President, Government Solutions. The agreements provide that the Company will pay Mr. Ebzery, Mr. Aulet and Mr. Dillon annual base salaries of \$215,000, \$175,000 and \$200,000, respectively, subject to annual review by the Compensation Committee, and that each is eligible to receive a performance-based cash bonus.

In addition, during each of the executive's employment with the Company and for a period of two years after the termination of the executive's employment, each of the executives is restricted from engaging in any business that competes with the Company's business and from soliciting any employees of the Company. The executives also have agreed to maintain the confidentiality of the Company's business information.

The agreements further provide that Mr. Ebzery and Mr. Aulet will each receive an option under the Management Plan to purchase 200,000 shares of Common Stock with exercise prices of \$4.04 and \$4.35, respectively. Mr. Dillon will receive an option under the Management Plan to purchase 75,000 shares of Common Stock with an exercise price of \$4.08 per share. Each of the options vests in equal annual installments over three years, provided that vesting will be accelerated if there is a change in control of the Company. Additionally, the agreements provide that the Company will pay each of Mr. Ebzery, Mr. Aulet and Mr. Dillon severance equal to six months' salary if:

the Company terminates the executive's employment other than for cause; or

the executive resigns from the Company under circumstances in which the Company has failed to continue his employment in a position of Senior Vice President in the case of Mr. Ebzery or Mr. Dillon, or in a position of Vice President in the case of Mr. Aulet, has reduced the executive's compensation in bad faith or has changed the executive's job location by more than 50 miles.

Board Compensation Committee Report on Executive Compensation.

The Compensation Committee of the Company's Board of Directors (the "Committee") is responsible for establishing and managing compensation policies for the Company's executive officers and for making decisions about awards under certain of the Company's stock-based compensation plans in satisfaction of Exchange Act Rule 16b-3. Each Committee member is an outside director within the meaning of Rule 16(b) of the Exchange Act and section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"). This report outlines the Company's compensation policies for the Chief Executive Officer and executive officers other than the Chief Executive Officer (collectively, the "executive officers").

The Committee's compensation policies provide compensation opportunities that are comparable to those for similarly situated executives in comparable companies. These compensation policies are designed to reward executives based on their contributions to the Company's success with respect to shareholder value creation and

to ensure the Company's ability to attract and retain qualified executives. The principal elements of compensation employed by the Committee to meet these objectives are base salaries, cash bonus opportunities, and stock options. In making its decisions, the Committee uses the services of an outside compensation consultant as needed.

Base Salary

In determining the base salary of the executive officers, the Committee considers a range of factors it believes to be relevant, including the Company's pay levels relative to competitive norms. External comparisons are made to data drawn from a number of sources, including the publicly available disclosures of selected peer companies and national compensation surveys of technology companies of similar size and complexity. The Committee also considers the Company's achievements over the past year, the individual's contributions to the Company's success, the roles and responsibilities of each executive and the internal equity of pay relationships.

Cash Bonus Plan

The Committee manages an Executive Incentive Compensation Plan, described in the section titled "Executive Compensation" above. All executive officers are eligible to participate in this plan. Under this plan, in 2003 individual compensation awards were linked to the achievement of predetermined corporate financial goals such as operating results, backlog growth and year-end cash levels, as well as individual objectives.

Stock Options

Options granted in 2003 to executive officers under the Management Plan have an exercise price equal to the fair market value of the stock on the date of the grant, implying that no compensation can be earned under this element unless shareholder value is created. Vesting requirements are linked to an extended service requirement. In determining the magnitude of the awards, the Committee considers competitive norms, and the roles, responsibilities, and prior performance of the individual. All executive officers, including the Chief Executive Officer, are eligible to participate in this option plan.

Chief Executive Officer

The compensation of the Chief Executive Officer was determined in the same manner as that of other executive officers. The Chief Executive Officer's cash bonus level was based 50% on the achievement of the corporate financial goals referred to above and 50% on a subjective assessment of his overall performance for the year.

Deductibility of Compensation under Section 162(m)

The Committee does not expect cash compensation for any executive officer to exceed \$1 million in 2004. Accordingly, the Committee does not have a policy to ensure deductibility of such compensation under Section 162(m) of the Code. The 1996 Management Stock Option Plan

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contains an individual grant limit for purposes of ensuring deductibility of stock option compensation under Section 162(m).

Compensation for 2003 generally reflects levels required to retain executives. Following its annual review of compensation after the close of 2002, the Committee made adjustments in executive officers' salaries to reflect competitive norms.

All material recommendations of the Compensation Committee during 2003 were approved by the Board of Directors.

COMPENSATION COMMITTEE

Thomas J. Reilly, Chairman

Harriet Mouchly-Weiss

Peter Nessen

Board Audit Committee Report

The Company's Audit Committee has the responsibilities and powers set forth in its written charter which include overseeing the Company's accounting, financial reporting, data processing, regulatory, and internal control environments. The Audit Committee also selects and engages the Company's independent accountants. Management has the primary responsibility for the financial statements and the reporting process, including the systems of internal controls. The primary duties and responsibilities of the Audit Committee are to:

select and engage the Company's independent accountants;

serve as an independent and objective body to monitor the Company's financial reporting process and internal control systems;

review and approve the scope of the annual audit and non-audit services to be performed by the independent accountants and the independent accountants' audit and non-audit fees;

review and appraise the audit efforts of the Company's independent accountants;

evaluate the Company's financial reporting and compliance with laws and regulations;

oversee management's establishment and enforcement of financial policies;

recommend to the Board of Directors that the audited financial statements be included in the Annual Report on Form 10-K for filing with the Securities and Exchange Commission; and

provide an open avenue of communication among the independent accountants, financial and senior management and the Board.

The Audit Committee has:

reviewed and discussed the audited financial statements of the Company for the fiscal year ended December 31, 2003 with the Company's management and the independent accountants, including a discussion of the quality and effect of the Company's accounting principles, the reasonableness of significant judgments and the clarity of disclosures in the financial statements;

discussed the matters required by SAS 61 (Codification of Statements on Auditing Standards, AU Section 380), with the independent accountants;

met with the independent accountants, with and without management present, to discuss the results of their examinations, their evaluations of the Company's internal controls and the overall quality of the Company's financial reporting; and

considered whether the provision of services represented under the heading "All Other Fees" set forth on page 12 is compatible with maintaining BDO Seidman's independence.

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The Audit Committee also has received the written disclosures and the letter from the Company's independent accountants required by Independence Standards Board Standard No. 1 (entitled "Independence Discussions with Audit Committees"), has discussed the independence of the independent accountants and considered whether the provision of non-audit services by the independent accountants is compatible with maintaining the independence, and has satisfied itself as to the independence of the independent accountants.

Based on the review and discussions described above, the Audit Committee has recommended to the Board that the Company's audited financial statements be included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2003 for filing with the Securities and Exchange Commission. The Audit Committee also has recommended, subject to stockholder approval, the selection of BDO Seidman as our independent accountants for the fiscal year ending December 31, 2004.

AUDIT COMMITTEE

Peter Nessen, Chairman

Thomas J. Reilly

Harriet Mouchly-Weiss

STOCK PERFORMANCE GRAPH

Stock Performance Graph

The following performance graph assumes an investment of \$100 on December 31, 1998 and compares the change to December 31, 2003 in the market price of the Company's Common Stock with two broad market indexes, the Nasdaq Composite and the Russell 2000. The Company paid no dividends during the periods shown, whereas the performance of the indices is shown on a total return, dividend reinvestment basis. The graph lines merely connect the prices on the dates indicated and do not reflect fluctuations between those dates.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Prior to its incorporation in Delaware on May 23, 1996 and its November 1996 initial public offering, the Company operated as the Viisage Technology Division of Lau. On November 6, 1996, Lau transferred substantially all of the assets and liabilities of its Viisage Technology Division to Viisage in exchange for shares of Viisage Common Stock. As of April 1, 2004, Lau directly owned approximately 17.1% of the issued and outstanding Viisage Common Stock.

On January 10, 2002, Viisage acquired the assets of Lau Security Systems, a division of Lau, including all of its intellectual property, contracts and distribution channels. As a result of this transaction, certain obligations on the part of Viisage to license intellectual property to Lau were terminated. The Company assumed certain liabilities related to the acquired business and will pay Lau a royalty of 3.1% of facial recognition revenues over the next twelve and a half years, up to a maximum of \$27.5 million.

Pursuant to the asset sale described above, the Company has terminated all license agreements with Lau, except to the extent that Lau has agreed to enter into sub-licensing arrangements with the Company with respect to certain technology that Lau is holding on the Company's behalf.

On January 23, 2004, Viisage acquired all of the outstanding share capital of ZN Vision Technologies AG (ZN). Certain Viisage shareholders who were the former shareholders of ZN have the right to appoint one director as long as such shareholders hold at least an aggregate of 2,000,000 shares of Viisage common stock. These shareholders have appointed Dr. Christoph von der Malsburg as their representative on the Board of Directors. The Board has appointed Dr. Malsburg to serve as a Class III director. Therefore, he will hold office for the remainder of the term of office of Class III directors, which expires at the 2005 Annual Meeting of Shareholders, and until his successor has been elected and duly qualified, unless he is replaced by the former ZN shareholders. Dr. Malsburg is a former shareholder of ZN and, in connection with the ZN acquisition, was issued 949,325 shares of Viisage common stock in exchange for his shares of ZN.

On February 14, 2004, Viisage acquired all of the outstanding capital stock of Trans Digital Technologies Corporation (TDT). Upon the closing of this transaction, Mr. B.G. Beck, the former President and Chief Executive Officer of TDT, became the beneficial owner of more than 5% of the Company's outstanding common stock and was appointed to our Board of Directors. In connection with the acquisition, Viisage issued a promissory note payable to Mr. Beck in the principal amount of \$15,300,000. The note bears interest at a rate of 8.5% per year and is payable in equal installments of principal and interest on December 1, 2004, May 1, 2005 and December 1, 2005. The note is secured by certain assets of TDT.

Consulting Agreements

In connection with the purchase of the business of Lau Security Systems, the Company entered into consulting agreements with Denis K. Berube, Executive Vice President and Chief Operating Officer of Lau and Chairman of the Board of the Company, and Joanna Lau, President and Chief Executive Officer of Lau and the beneficial owner of more than 5% of the Company's outstanding stock. Under the consulting agreements, each of Mr. Berube and Ms. Lau will receive annual compensation of \$125,000. Each agreement terminates at the earlier of the tenth anniversary or the commencement of the consultant's full-time employment elsewhere.

In connection with the acquisition of Trans Digital Technologies Corporation (TDT), Viisage entered into a consulting agreement with B.G. Beck, the former President and Chief Executive Officer of TDT. Immediately upon the completion of the acquisition, Mr. Beck was appointed to our Board of Directors. Mr. Beck is the beneficial owner of more than 5% of the Company's outstanding stock. Under the consulting agreement, Mr. Beck receives annual compensation of \$300,000. The consulting agreement terminates on February 14, 2006.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act requires the Company's executive officers, directors and persons who own more than ten percent of a registered class of the Company's equity securities (Reporting Persons) to file reports of ownership and changes in ownership on Forms 3, 4 and 5 with the SEC and The Nasdaq National Market (Nasdaq). These Reporting Persons are required by SEC regulation to furnish the Company with copies of all Forms 3, 4 and 5 they file with the SEC and Nasdaq. The Company believes that all Reporting Persons have complied with all filing requirements applicable to them with respect to transactions during fiscal years 2002 and 2003, with the following exceptions. A Form 5 was filed by Iftikhar A. Ahmad on January 22, 2004 to report shares purchased under Viisage's Employee Stock Purchase Plan on June 30, 2002, December 31, 2002, June 30, 2003 and December 31, 2003. A late Form 3 was filed by each of James P. Ebzery and John J. Dillon on January 22, 2004 to report their initial ownership of Viisage securities as of November 1, 2002 and February 24, 2003, respectively. A Form 5 was filed by Lau Technologies on February 12, 2004 to report sales of Viisage common stock on January 31, 2003, March 31, 2003, May 31, 2003, June 30, 2003, July 31, 2003 and October 31, 2003. A Form 5 was filed by Paul T. Principato on January 22, 2004 to report a sale of Viisage common stock on December 10, 2002.

SHAREHOLDER PROPOSALS

Shareholders may submit proposals on matters appropriate for shareholder action at subsequent annual meetings of shareholders consistent with Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended. For such proposals to be considered for inclusion in the Proxy Statement and Proxy relating to the 2005 Annual Meeting of Shareholders, such proposals must be received by the Company for inclusion in the Company's Proxy Statement and proxy card relating to that meeting no later than December 16, 2004.

Pursuant to Rule 14a-4(c) of the Exchange Act, if a shareholder who intends to present a proposal at the 2005 Annual Meeting of Shareholders does not notify the Company of such proposal on or prior to March 1, 2005, then management proxies would be allowed to use their discretionary voting authority to vote on the proposal when the proposal is raised at the Annual Meeting, even though there is no discussion of the proposal in the 2005 Proxy Statement.

SOLICITATION EXPENSES

The Company will bear the cost of this solicitation. Solicitation will be made primarily by mail, but directors, officers, and employees of the Company may solicit proxies in person or by telephone or telecopy. The Company will request brokers, nominees, custodians, and fiduciaries to forward solicitation materials to obtain voting instructions from beneficial owners and will reimburse such parties for their reasonable expenses in connection therewith. In addition, the Company retains EquiServe Trust Company N.A. as its transfer agent, which assists in the distribution of proxies.

INCORPORATION BY REFERENCE

To the extent that this Proxy Statement has been specifically incorporated by reference into any filing by the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, the sections of the Proxy Statement entitled Board Compensation Committee Report on Executive Compensation, Board Audit Committee Report and Performance Graph shall not be deemed to be so incorporated, unless specifically otherwise provided in any such filing. In addition, such sections of this Proxy Statement shall not be deemed to be soliciting material.

OTHER DOCUMENTS

Upon written request by anyone who is a shareholder as of the record date, the Company will furnish, without charge, a copy of its Annual Report on Form 10-K. Such written request should be sent to the attention of the Controller, Viisage Technology, Inc., 296 Concord Road, Third Floor, Billerica, MA 01821.

OTHER BUSINESS

The Board of Directors does not know of any matters which will be brought before the Meeting other than those matters specifically set forth in the Notice of the 2004 Annual Meeting of Shareholders. However, if any other matter properly comes before the Meeting, it is intended that the persons named in the enclosed proxy card, or their substitutes acting thereunder, will vote on such matter in accordance with their best judgment.

VIISAGE TECHNOLOGY, INC.

NOMINATING AND CORPORATE GOVERNANCE COMMITTEE CHARTER

PURPOSE

The Nominating and Corporate Governance Committee (the **Committee**) is appointed by the Board of Directors (the **Board**) of Viisage Technology, Inc. (the **Company**) to:

1. assist the Board by identifying the individuals qualified to become Board members, and recommend to the Board the director nominees for the each annual meeting of shareholders;
2. develop and recommend to the Board the corporate governance guidelines (**Corporate Governance Guidelines**) applicable to Viisage;
3. assist the Board in its annual review of the Board's performance; and
4. recommend to the Board director nominees for each committee.

MEMBERSHIP

The Committee will consist of at least three directors, all of whom satisfy the definition of **independent** under the listing standards of The Nasdaq Stock Market. The members of the Committee and the Chair of the Committee shall be appointed by the Board and may be removed by the Board in its discretion.

MEETINGS

The Committee will meet at least annually, or more frequently as circumstances dictate. The Committee will meet at least once prior to the time when nominees for the Board are to be determined for inclusion in the proxy statement for the company's annual meeting of shareholders. The Committee shall maintain written minutes of its meetings, which minutes will be filed in the corporate minute book. The Committee may meet by telephone or video conference and may take action by written consent. One-third of the members of the Committee, but not fewer than two, will constitute a quorum at each meeting of the Committee. The Committee shall have the discretion to invite non-members, such as other members of the Board or advisors, to attend its meetings in a non-voting capacity.

COMMITTEE AUTHORITY AND RESPONSIBILITIES

1. The Committee will have the sole authority to retain and terminate any search firm to be used to identify director candidates and will have sole authority to approve the search firm's fees and other retention terms. The Committee will also have authority to obtain advice and assistance from internal or external legal, accounting or other advisors. Any communications between the Committee and legal counsel in the course of obtaining legal advice will be privileged communications of the Company, and the Committee will take necessary steps to preserve the privileged nature of those communications.
2. The Committee will assess the need for new directors of the Company on an ongoing basis, including identifying any specific needs in terms of industry or professional background, or independence standards, for nominees. The Committee will identify possible nominees who meet specified objectives in terms of the composition of the Board, taking into account such factors as geographic, occupational, gender, race and age diversity. A description of the Committee's process for identifying and evaluating director nominees (including candidates recommended by shareholders) is attached hereto as Exhibit A. In evaluating candidates for nomination, the Committee will consider, at a minimum, the factors listed on Exhibit B hereto.

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3. As part of its director selection process, the Committee considers candidates from many sources, including nominees proposed by shareholders of the Company provided that the procedures set out in the Company's By-Laws are followed. Shareholder nominations should be accompanied by appropriate biographical background information about the candidate to permit the Governance Committee to make an informed evaluation of the candidate's qualifications. Shareholders wishing to nominate a director candidate may do so by sending the candidate's name, biographical information and qualifications to the Chair of the Nominating and Corporate Governance Committee care of Viisage Technology, Inc., 30 Porter Road, Littleton, MA 01460.
4. The Committee will recommend to the Board the director nominees for each annual meeting of shareholders and the director to serve as Chairperson of the Board. The Committee will also recommend to the Board director nominees and the Chairperson for each committee of the Board.
5. The Committee will receive comments from all directors and report annually to the Board with an assessment of the Board's performance, to be discussed with the full Board following the end of each fiscal year. The committee will lead the evaluation of Board members by examining such factors as experience, business judgment, integrity, time and commitment, shareholdings, teamwork and independence.
6. The Committee will oversee the evaluation of the Company's management for the purpose of ensuring that such evaluation occurs and is reasonable.
7. The Committee will review and reassess the adequacy of the Company's Corporate Governance Guidelines and recommend any proposed changes to the Board for approval. The Committee will perform the duties and functions set forth in the Corporate Governance Guidelines.
8. The Committee may form and delegate authority to subcommittees when appropriate.
9. The Committee will make regular reports to the Board.
10. The Committee will review and reassess the adequacy of this Charter on a periodic basis and recommend any proposed changes to the Board for approval.
11. The Committee will annually review its own performance.

VIISAGE TECHNOLOGY, INC.

Board of Directors Nomination Process

I. New Board Candidates

In the event that the Chairman, the Nominating and Corporate Governance Committee (the Committee), or other member of the Board of Directors identifies a need to add a new Board member or to fill a vacancy on the Board, the Committee will identify and evaluate prospective candidates, and recommend to the Board its candidate(s) for Board membership. After seeking input from other Board members, the Chair of the Committee will compile a list of potential candidates. If the Committee deems appropriate, it may also engage a professional search firm.

Members of the Committee shall interview the prospective candidate(s). The Committee shall consider the candidate with respect to the Criteria for Nomination to the Board and discuss the candidate's qualifications. The Committee shall approve and recommend to the Board of Directors the final candidate(s) for Board membership. If approved by the Board of Directors, a member of the Committee, acting on behalf of the full Board of Directors, will typically extend the formal invitation to the candidate to become a Director.

II. Incumbent Directors

For each incumbent director, the Committee will review the director's overall service to the Company during his or her term, including the number of meetings attended, level of participation, and quality of performance during his or her term. The Committee will also consider the director's compliance with the Criteria for Nomination to the Board. Finally, the Committee will consider the overall composition and size of the Board of Directors. Based on these and other appropriate considerations, the Committee will determine whether to recommend to the Board of Directors that the incumbent director be nominated for re-election.

III. Shareholder Nominations of Directors

The Committee will consider director candidates recommended by shareholders provided that the procedures set forth in the Company's By-Laws are followed. Shareholder nominations should be accompanied by appropriate biographical background information about the candidate to permit the Committee to make an informed evaluation of the candidate's qualifications. The Committee does not intend to alter the manner in which it evaluates candidates or the Criteria for Nomination to the Board, based on whether or not the candidate was recommended by a shareholder.

VIISAGE TECHNOLOGY, INC.

Criteria for Nomination to the Board of Directors

The Nominating and Corporate Governance Committee will consider, at a minimum, the following factors in recommending to the Board of Directors potential new directors, or the continued service of incumbent directors:

1. The candidate's demonstrated character and integrity.
2. The candidate's relevant expertise and experience, including leadership qualities and experience, high-level managerial experience in a relatively complex organization or experience dealing with complex problems.
3. The candidate's ability to provide advice and practical guidance based on his or her experience and expertise.
4. Whether the candidate meets the criteria for independence as established by the Securities and Exchange Commission and the listing standards of the Nasdaq Stock Market. The Board of Directors must be comprised of at least a majority of independent directors.
5. Whether the candidate would be considered an audit committee financial expert or financially literate according to the criteria established by the Securities and Exchange Commission and the listing standards of The Nasdaq National Market.
6. The candidate's ability to exercise sound and independent business judgment and commitment to shareholder value.
7. The candidate's ability to devote sufficient time to Board activities and towards the fulfillment of his or her responsibilities to the Company. A candidate's service on other boards of public companies must not interfere with his or her ability to effectively serve on the Board.
8. Whether the candidate assists in achieving a mix of Board members that represents a diversity of background and professional experience, including with respect to ethnic background, age and gender.

The Nominating and Corporate Governance Committee does not assign specific weights to, and a potential or incumbent director will not necessarily satisfy all of, the foregoing criteria.

VIISAGE TECHNOLOGY, INC.

SECOND AMENDED AND RESTATED

1996 MANAGEMENT STOCK OPTION PLAN

Section 1 Purpose

The Purpose of this Second Amended and Restated 1996 Management Stock Option Plan (this Plan) is to advance the interest of Viisage Technology, Inc. (the Company), a Delaware corporation, by providing an opportunity to selected officers and employees of the Company to purchase common stock of the Company. By encouraging such stock ownership, the Company and its parent seek to attract, retain and motivate officers and employees. It is intended that this purpose will be effected by issuance of nonqualified stock options (nonqualified options) and incentive stock options intended to qualify under Section 422 of the Internal Revenue Code of 1986, as amended (the Code) (incentive options).

Section 2 Effective Date

The Plan shall be effective as of May 8, 2001, the date as of which it was adopted by the stockholders of the Company (the Effective Date). On July 21, 1997, the Board voted to amend the Plan, subject to shareholder approval, to authorize an additional 701,000 shares under the Plan to increase the number of shares available under the Plan to 2,057,100 shares. On January 26, 2000, the Board voted to further amend the Plan, subject to shareholder approval, to authorize an additional 750,000 shares under the Plan to increase the number of shares available under the Plan to 2,807,100 shares. On March 20, 2001, the Board voted to further amend the Plan, subject to shareholder approval, to authorize an additional 1,000,000 shares under the Plan to increase the number of shares available under the Plan to 3,807,100 shares.

Section 3 Stock Subject to the Plan

Options issued under this Plan shall be exercisable for the Company's common stock. The number of shares that may be issued under this Plan shall not exceed in the aggregate three million eight hundred seven thousand one hundred (3,807,100) shares of the common stock, \$.001 par value, of the Company (the Shares), subject to adjustment as provided in Sections 9 and 10 below. Any Shares subject to an option which for any reason expires or is terminated as to such Shares may again be the subject of an option under this Plan. In addition, any Shares purchased by an optionee upon exercise of an option under this Plan that are subsequently repurchased by the Company pursuant to the terms of such option, and Shares tendered as payment for Shares upon exercise of an option under this Plan, may again be the subject of an option under the Plan. The Shares delivered upon exercise of options under this Plan may, in whole or in part, be either authorized but unissued Shares or issued Shares reacquired by the Company.

Section 4 Administration

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This Plan shall be administered by a committee of two or more non-employee members of the Board of Directors of the Company appointed by the Board (the Committee), each of whom meets any applicable requirements under Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act), or any successor provision, as applicable to the Company at the time (Rule 16b-3). Subject to the provisions of the Plan, the Committee shall have full power to construe and interpret the Plan and to establish, amend and rescind rules and regulations for its administration. Any decisions made with respect thereto shall be final and binding on the Company, the optionee and all other persons. No member of the Committee shall be liable for any action or determination made in good faith with respect to the Plan.

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Section 5 Eligible Participants

Incentive options may be issued to such management employees of the Company as are selected by the Committee. Nonqualified options may be issued to such officers or management employees of the Company as are selected by the Committee. Options under this Plan may not be issued to members of the Board of Directors of the Company. No employee may be granted options to acquire, in the aggregate, more than 1,337,000 Shares under the Plan (subject to adjustment as provided in Sections 9 and 10 below) during any fiscal year of the Company. If any option granted under the Plan shall expire or terminate for any reason without having been exercised in full or shall cease for any reason to be exercisable in whole or in part or shall be repurchased by the Company, the Shares subject to such option shall be included in the determination of the aggregate number of Shares deemed to have been granted to such employee under the Plan.

Section 6 Duration of the Plan

This Plan shall remain in effect indefinitely, unless terminated earlier pursuant to Paragraph 14 hereof, provided no incentive options may be issued after the tenth anniversary of the Effective Date. Options that are issued on or before the date of this Plan's termination shall remain exercisable in accordance with their respective terms after the termination of the Plan.

Section 7 Restriction on Incentive Options

Incentive options (but not nonqualified options) issued under this Plan shall be subject to the following restrictions:

(a) **Limitation on Number of Shares.** To the extent that the aggregate fair market value, determined as of the date the incentive option is issued, of the Shares with respect to which incentive options are exercisable for the first time by an employee during any calendar year exceeds \$100,000 (the "\$100,000 limitation"), the portion of such option which is exercisable in excess of such \$100,000 limitation shall be treated as a nonqualified option. In the event that an employee is eligible to participate in any other incentive stock option plan of the Company intended to comply with the provisions of Section 422 of the Code, the \$100,000 limitation shall apply to the aggregate number of Shares for which incentive stock options may be issued under all such plans.

(b) **10% Stockholder.** If any employee to whom an incentive option is issued pursuant to the provisions of the Plan is on the date of issuance the owner of stock (as determined under Section 424 (d) of the Code) possessing more than 10% of the total combined voting power of all classes of stock of the Company or any of its subsidiaries, then the following special provisions shall be applicable to the incentive option issued to such individual:

(i) The option price per share subject to such incentive option shall not be less than 110% of the fair market value of one share on the date of issuance; and

(ii) The incentive option shall not have a term in excess of five (5) years from the date of issuance.

Section 8 Terms and Conditions of Options

Options issued under this Plan shall be evidenced by written instruments in such form not inconsistent with this Plan as the Committee shall approve from time to time, which instruments shall evidence the following terms and conditions, and such other terms and conditions (which need not be the same in different options) not inconsistent with the Plan as the Committee may approve from time to time:

(a) Price. Subject to the conditions on incentive options in paragraph 7(b), if applicable, the purchase price per share of stock payable upon the exercise of each incentive option issued hereunder shall be not less than one hundred percent of the fair market value of the stock on the day the option is issued. The purchase price per Share of stock payable upon exercise of each nonqualified option issued hereunder shall be determined by the

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Committee. Fair market value shall be determined in accordance with procedures to be established in good faith by the Committee and, with respect to incentive options, conforming to regulations issued by the Internal Revenue Service with regard to incentive stock options.

(b) Number of Shares. Each option agreement shall specify the number of Shares to which it pertains.

(c) Exercise of Options. Subject to the conditions on incentive options in subparagraph (b)(ii) of Paragraph 7, if applicable, each option shall be exercisable for the full amount or for any part thereof and at such intervals or in such installments, with acceleration based on such events, as the Committee may determine at the time it issues such option, provided that no incentive option shall be exercisable with respect to any Shares later than ten (10) years after the date of theize: 1pt;">

Common Shares Available for Common Shares Future Issuance to Be Issued Weighted-Average Under Equity upon Exercise of Exercise Price of Compensation Plans Outstanding Options, Outstanding Options, (Excluding Securities Warrants and Rights Warrants and Rights Reflected in Column (a))Plan Category (a) (b) (c)

Equity compensation plans approved by Inter-Tel shareholders

3,580,508(1) \$16.18 1,211,807(2)

Equity compensation plans not approved by Inter-Tel shareholders

275,480(3) \$18.62 152,076

Totals:

3,855,988 \$16.36 1,363,883

- (1) Includes options to purchase shares outstanding under the plans approved by Inter-Tel shareholders. Of these shares, options to purchase 100,800 shares were outstanding from the Inter-Tel 1994 Long-Term Incentive Plan, options to purchase 3,337,208 shares were outstanding from the Inter-Tel 1997 Long-Term Incentive Plan and options to purchase 142,500 shares were outstanding from the 1990 Inter-Tel Director Option Plan.
- (2) Includes shares available for future issuance under the Inter-Tel 1994 Long-Term Incentive Plan, the Inter-Tel 1997 Long-Term Incentive Plan, the 1990 Inter-Tel Director Option Plan and the Inter-Tel 1997 Employee Stock Purchase Plan; excludes securities reflected in column (a). Of these shares, 33,676 shares were available under the 1994 Long-Term Incentive Plan, 708,372 shares were available under the Inter-Tel 1997 Long-Term Incentive Plan, 72,500 shares were available under the 1990 Inter-Tel Director Option Plan and 397,259 shares were available under the Inter-Tel 1997 Employee Stock Purchase Plan. Under the Inter-Tel 1997 Long-Term Incentive Plan, the amount of shares authorized for issuance increases annually by the lesser of (a) 2.5% of the outstanding shares on that date, (b) 750,000 shares (subject to appropriate adjustments for stock splits, dividends, subdivisions, combinations, recapitalizations and like transactions) or (c) a lesser amount as determined by the Inter-Tel Board of Directors.
- (3) As of December 31, 2005, individual options to purchase a total of 275,480 shares had been assumed or issued in connection with acquisition transactions by Inter-Tel, at a weighted average exercise price of \$18.62 per share. These options were issued under the Inter-Tel Acquisition Stock Option Plan, which has not been approved by Inter-Tel shareholders.

Table of Contents**SECURITY OWNERSHIP OF MANAGEMENT**

The following table and footnotes thereto set forth the beneficial ownership of Common Stock of the Company as of the Record Date, by (a) each director and nominee for director of the Company who owned shares as of such date, (b) each of the Named Executive Officers (defined below), (c) all directors and executive officers of the Company as a group and (d) each person known by the Company to be the beneficial owner of more than 5% of the outstanding shares of Common Stock:

Shares of Common Stock Beneficially Owned

Name	Owned Excluding Stock Options	Right to Acquire(2)	Total Number of Shares(1)	Percent of Total(3)
J. Robert Anderson	20,000	35,000	55,000	*
Alexander Cappello		7,500	7,500	*
Jerry W. Chapman	4,069	35,000	39,069(4)	*
Gary D. Edens	19,792	35,000	54,792	*
Agnieszka Winkler		7,500	7,500	*
Norman Stout	18,861	380,333	399,194(5)	1.5
Craig W. Rauchle	5,898	355,190	361,088	1.3
Jeffrey T. Ford	63,672	134,000	197,672(6)	*
Kurt R. Kneip	25,078	41,500	66,578(7)	*
Steven G. Mihaylo P.O. Box 19790, Reno, NV 89511	5,179,498		5,179,498	18.9
All directors and executive officers as a group (12 persons)	5,336,868	1,031,024	6,367,892	23.2
Other Beneficial Owners:				
Dr. Anil K. Puri				*
Kenneth L. Urish				*
Entities Affiliated with Barclays(8) 45 Fremont Street, San Francisco, CA 94105	2,340,549		2,340,549(8)	8.5
Dalton, Greiner, Hartmen, Maher & Co LLC 565 Fifth Ave., Suite 2101, New York, NY 10017	1,356,607		1,356,607	4.9

* Less than 1%.

- (1) Determined in accordance with Rule 13d-3 under the Securities Exchange Act of 1934, as amended. Under this rule, a person is deemed to be the beneficial owner of securities that can be acquired by such person within 60 days from the Record Date upon the exercise of options. Each beneficial owner's percentage ownership is determined by assuming that all options held by such person (but not those held by any other person) that are exercisable within 60 days from the Record Date have been exercised. All persons named in the table have sole voting and investment power with respect to all shares issuable pursuant to stock options. Unless otherwise noted in subsequent footnotes to this table, the Company believes that all persons named in the table have sole voting and investment power with respect to all shares of Common Stock beneficially owned by them.

- (2) Shares that can be acquired through stock options vested through March 22, 2006, or within 60 days of that date.
- (3) Determined by dividing total number of shares by the sum of the total consolidated outstanding shares on the Record Date of 26,386,651 plus 1,031,024 shares that can be acquired through stock options as identified in item (2) above.

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- (4) With respect to 4,069 of these shares, Mr. Chapman shares voting and investment power with his spouse.
- (5) With respect to 18,861 of these shares, Mr. Stout shares voting and investment power with his spouse.
- (6) With respect to 62,417 of these shares, Mr. Ford shares voting and investment power with his spouse.
- (7) With respect to 20,000 of these shares, Mr. Kneip shares voting and investment power with his spouse.
- (8) Based solely upon information contained in a Schedule 13G filed January 31, 2006. Of the total 2,340,549 shares owned, 1,821,669 shares were reported by Barclays Global Investors, NA and 518,880 shares were reported by Barclays Global Fund Advisors. Of these shares, the number of shares to which Barclays has sole power to vote or direct the vote totaled 2,084,456 shares, and sole power to dispose or to direct the disposition of totaled 2,340,549 shares.

DIRECTOR COMPENSATION

On July 22, 2005, Inter-Tel's board of directors elected Alexander Cappello as the Chairman of the Board of Directors of Inter-Tel effective July 23, 2005. Inter-Tel also revised its director compensation on this same date to provide a quarterly stipend the new non-employee Chairman of the Board. On November 11, 2005, Inter-Tel again revised its director compensation. We did not pay Mr. Mihaylo, who was also an officer of the Company, additional compensation for his service as a director. During 2005, compensation for each non-employee director included the following:

Description	1-1-05 to 7-22-05	7-23-05 to 10-4-05	After 10-4-05
Each regularly scheduled Board of Directors meeting attended	\$1,500	\$1,500	\$2,000
Quarterly stipend for non-chairman committee members	6,000	6,000	6,000
Quarterly stipend for compensation committee chairman	6,500	6,500	6,500
Quarterly stipend for governance and nominating committee chairman	6,500	6,500	6,500
Quarterly stipend for non-employee chairman of the board of directors	n/a	10,500	10,500
Quarterly stipend for audit committee chairman	10,500	10,500	10,500
Each compensation committee meeting attended	1,500	1,500	1,500
Each governance and nominating committee meeting attended	1,500	1,500	1,500
Each audit committee meeting attended	2,000	2,000	2,000
Each meeting of a special committee of the Board or a subcommittee thereof	1,500	1,500	2,000
Each special meeting of the Board or committee of the Board, including unanimous written consents in lieu of board meetings	1,500	1,500	2,000
Expenses of attending Board and Committee meetings	As incurred	As incurred	As incurred

The Company also allows each director to elect to participate in the health benefit plans each year. Directors are offered participation in the same plans offered to employees, subject to payment by each electing director at employee participant rates, plus all applicable co-pays and/or deductibles

Participation
offered in Company
plans

Participation
offered in Company
plans

Participation
offered in Company
plans

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Description	1-1-05 to 7-22-05	7-23-05 to 10-4-05	After 10-4-05
Director continuing education expenses	50% of eligible tuition plus expenses	50% of eligible tuition plus expenses	50% of eligible tuition plus expenses
Annual stock option grants to purchase shares of Common Stock, pursuant to the Company's Director Stock Option Plan (as amended), at the market price five(5) business days after the date of the annual Board meeting	7,500	7,500	7,500

(1) Selected board members used the corporate aircraft during 2005 only to attend the Company's board meetings. The following fees were paid to non-employee directors for board services during the fiscal year ended December 31, 2005 (such fees exclude expense reimbursements, other benefits, and the value of stock options granted during 2005):

Director		Total 2005 Fees
Alexander Cappello	Chairman of the Board and member of the Audit Committee and Corporate Governance and Nominating Committee	\$74,000
J. Robert Anderson	Board member, Chairman of the Compensation Committee and member of the Audit Committee	\$86,500
Jerry W. Chapman	Board member, Chairman of the Audit Committee and member of Corporate Governance and Nominating Committee	\$95,000
Gary D. Edens	Board member, Chairman of the Corporate Governance and Nominating Committee and member of the Audit Committee	\$82,000
Dr. Roland Haden	Former Board member, member of the Audit Committee and Compensation Committee (resigned effective November 1, 2005)	\$58,000
Agnieszka Winkler	Board member, member of the Compensation Committee and Corporate Governance and Nominating Committee	\$67,500

Table of Contents**EXECUTIVE COMPENSATION**

The following Summary Compensation Table sets forth the compensation earned for services rendered to the Company during the fiscal years 2005, 2004 and 2003 by the Chief Executive Officer and the four other most highly compensated executive officers of the Company who were serving as executive officers of the Company at the end of 2005 and whose aggregate salary and bonus in fiscal 2005 exceeded \$100,000 (the *Named Executive Officers*).

SUMMARY COMPENSATION TABLE

Name and Position	Year	Salary (\$)	Bonus \$(2)	Long-Term Compensation Awards; Securities Underlying Options (#)	All Other Compensation \$(3)
(a)	(b)	(c)	(d)	(g)	(i)
Steven G. Mihaylo(1)(4)(5) Chief Executive Officer	2005	350,000			6,000
	2004	315,000			6,000
	2003	315,000	46,707		6,032
Norman Stout(1)(4)(5) Exec. Vice President, Chief Administrative Officer and Chief Strategy Officer	2005	335,000		70,000	16,247
	2004	315,000			18,729
	2003	315,000	46,707	100,000	15,998
Craig W. Rauchle(4)(5) President and Chief Operating Officer	2005	335,000		70,000	47,201
	2004	315,000			16,574
	2003	315,000	46,707	100,000	50,610
Jeffrey T. Ford(4)(5) Sr. Vice President and Chief Technology Officer	2005	281,000	14,261	15,000	6,291
	2004	263,000	107,659		11,905
	2003	263,000	88,894	10,000	5,030
Kurt R. Kneip(5) Sr. Vice President and Chief Financial Officer	2005	201,000			6,029
	2004	188,000			5,857
	2003	188,000	14,726	7,500	5,030

- (1) Mr. Mihaylo resigned as Chief Executive Officer on February 22, 2006 and resigned from the Company's Board of Directors on March 6, 2006. Pursuant to the Settlement Agreement, Mr. Mihaylo was re-appointed to the Board of Directors on May 1, 2006. Norman Stout was named as Chief Executive Officer and as a member of the Board of Directors on February 22, 2006.
- (2) The Compensation Committee set earnings per share performance levels for the consolidated Company, upon which incentives were placed for each of the Named Executive Officers. Cash bonus awards, based upon meeting or exceeding such performance levels and limited to a percentage of base salary, were set for each executive officer. The maximum bonuses ranged from 60 percent to 125 percent as a percentage of base salary, as noted in the table below. For each of the officers except for Jeff Ford, the bonus to be earned was dependent entirely on meeting established earnings per share goals. Mr. Ford's 2005 bonus was determined one-third on meeting the earnings per share goal and two-thirds on meeting divisional targets. The bonuses are earned on a sliding scale, with minimum targets that must be met to earn any bonus and maximum targets that must be achieved to earn the highest potential bonus. The bonus payout increases ratably for achievements between the minimum and maximum targets. For 2005, bonus goals based on earnings per share calculations excluded the impact of

in-process research and development charges incurred in connection with acquisitions. In addition, although the Committee was authorized to use its discretion to revise the calculated bonus amounts upwards or downwards based on any information the Committee deems appropriate, no adjustments were made for 2005. The specific earnings per share and divisional targets have not been included in this description in order to maintain the confidentiality of the Company's confidential or commercial business information. Column (d) above reflects net bonuses achieved for these performance targets.

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	2005 Salary (#)	2005 Maximum Bonus Opportunity (%)	2005 Maximum Bonus Opportunity (\$)	2005 Bonus Achieved
Steven G. Mihaylo	350,000	125%	437,500	
Norman Stout	335,000	100%	335,000	
Craig W. Rauchle	335,000	100%	335,000	
Jeffrey T. Ford	281,000	100%	281,000	14,261
Kurt R. Kneip	201,000	60%	120,600	

(3) All Other Compensation included in column (i) above for 2005 includes the following:

Name	Auto Allowance	401K Match	Club Dues	Other (see below)	Total
2005					
Steven G. Mihaylo	6,000				6,000
Norman Stout	6,000	6,291	3,956		16,247
Craig W. Rauchle	6,000	5,263	28,000	7,938	47,201
Jeffrey T. Ford		6,291			6,291
Kurt R. Kneip		6,029			6,029
2004					
Steven G. Mihaylo	6,000				6,000
Norman Stout	6,000	5,905	6,824		18,729
Craig W. Rauchle	6,000	5,465	5,109		16,574
Jeffrey T. Ford		5,905			5,905
Kurt R. Kneip		5,857			5,857
2003					
Steven G. Mihaylo	6,032				6,032
Norman Stout	6,000	5,030	4,968		15,998
Craig W. Rauchle	6,000	5,030	4,195	35,385	50,610
Jeffrey T. Ford		5,030			5,030
Kurt R. Kneip		5,030			5,030

Other: During 2005, \$7,938 was included in Mr. Rauchle's income in connection with travel costs incurred by him and his guest for attendance at company-sponsored business trips. In addition, during 2003, Mr. Rauchle received \$35,385 in other compensation related to reimbursement of health and welfare benefits for a family member. No compensation is present under omitted columns (e), (f) and (h).

(4) Fringe benefits include use of IP telephones or complete Inter-Tel telephone systems in the home. No amounts have been included in the above tables for such use.

(5) Messrs. Mihaylo, Rauchle, Stout, Ford and Kneip had access to the company aircraft principally for business use. No amounts have been included in the above tables for such use based on the de minimis incremental costs to the Company.

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The following table below sets forth information concerning stock options held or acquired by each of the Named Executive Officers during the year ended December 31, 2005:

**AGGREGATED OPTION EXERCISES IN 2005 AND DECEMBER 31,
2005 OPTION VALUES**

Name (a)	Shares Acquired on Exercise (#) (b)	Value Realized (\$)(1) (c)	Number of Unexercised Options at December 31, 2005 (#)		Value of In-the-Money Options at December 31, 2005 \$(2)	
			Exercisable/ Unexercisable (d)	Exercisable/ Unexercisable (i)		
Steven G. Mihaylo			/	/		
Norman Stout	200,000	3,354,465	262,600/134,400		1,219,766/1,079,367	
Craig W. Rauchle	225,000	4,283,000	317,600/134,400		3,000,568/1,079,367	
Jeffrey T. Ford			119,000/14,000		1,027,785/116,875	
Kurt R. Kneip	20,000	366,685	36,000/8,500		359,685/69,155	

- (1) Based upon the market price of the purchased shares on the exercise date less the option exercise price paid for such shares.
- (2) Based upon the market price of \$19.57 per share, which was the closing selling price per share of Common Stock on the Nasdaq National Market on the last day of the Company's 2005 fiscal year, less the option exercise price payable per share.

OPTION GRANTS IN LAST FISCAL YEAR

Name	Number of Securities Underlying Options Granted	Percent of Total Options Granted To Employees in Fiscal Year(1)	Exercise Price(\$/Sh)	Expiration Date(2)	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Terms(3)	
					5% (\$)	10% (\$)
Norman Stout	70,000	9.9%	\$ 19.13	5/3/2015	\$ 842,153	\$ 2,134,181
Craig W. Rauchle	70,000	9.9%	\$ 19.13	5/3/2015	\$ 842,153	\$ 2,134,181
Jeffrey T. Ford	15,000	2.1%	\$ 19.13	5/3/2015	\$ 180,461	\$ 457,324

Increase in market value of the Company's Common Stock for all shareholders at assumed annual rates of stock price appreciation (as used in the table above) from \$19.57 per share, over the ten- year period, based on 26.3 million shares outstanding on December 31, 2005	5% (to \$31.88/sh) \$323.2 million	10% (to \$50.76/sh) \$819.2 million
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- (1) The Company granted options to purchase 707,300 shares of Common Stock to employees and directors in fiscal 2005 pursuant to the Company's 1997 Long Term Incentive Plan and Director Stock Option Plan, in each case as amended. The above listed executive officer option grants vest 1/3 per annum on the anniversary of the grant date over 3 years. All Director Stock Option Plan grants vest six months from the date of grant. The exercise price for each option to purchase Common Stock equals the fair market value of the Common Stock on the date of such grant.
- (2) The term of each option is ten years. Options may terminate before their expiration upon the termination of the optionee's status as an employee or consultant, or upon the death of the optionee.
- (3) Potential realizable value assumes that the stock price increases from the date of grant until the end of the option term (10 years) at the annual rate specified (5% and 10%). Annual compounding results in total appreciation of 62.9% (at 5% per year) and 159.4% (at 10% per year). The assumed annual rates of appreciation are mandated by the rules of the Securities and Exchange Commission and do not represent

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the Company's estimate or projection of future stock price growth. Actual gains, if any, on stock option exercises are dependent upon the Company's future financial performance, overall market conditions and the option holders continued employment or consultancy through the vesting period.

Certain Relationships and Related Party Transactions

In February 2004, our Board of Directors approved two forms of Key Employee Change of Control Severance Agreements (*Change of Control Agreements*), entered into between the Company and each of our executive officers and one other key employee, as set forth in the table below. We entered into Change of Control Agreements with the following executive officers and key employee in March 2004:

Change of Control Severance Agreements

Tier 1(a)	Tier 2(b)
Steven G. Mihaylo	Jeffrey T. Ford
Norman Stout	John L. Gardner
Craig W. Rauchle	Kurt R. Kneip

- (a) Refer to Exhibit 10.63 to our Annual Report on Form 10-K filed March 12, 2004 for a copy of the sample Tier 1 Agreement.
- (b) Refer to Exhibit 10.64 to our Annual Report on Form 10-K filed March 12, 2004 for a copy of the sample Tier 2 Agreement.

As noted, Steven G. Mihaylo resigned as Chief Executive Officer of the Company on February 22, 2006. Accordingly, the Key Employee Change of Control Severance Agreement between Mr. Mihaylo and the Company terminated as of such date, with Mr. Mihaylo receiving no benefits pursuant to the terms of the agreement.

Inter-Tel Integrated Systems, Inc., a wholly-owned subsidiary of the Company, employs Carter Chapman as one of its Directors of Channel Sales. Carter Chapman is the son of Jerry Chapman, one of the Company's directors. In fiscal 2005, Carter Chapman's base salary and incentive-based sales commissions paid by the Company totaled \$95,899, and he was granted a stock option to acquire 1,250 shares of Inter-Tel Common Stock at the fair market value on the date of grant in May 2005.

Compliance With Section 16(a) of the Exchange Act

Section 16(a) of the Securities and Exchange Act of 1934 requires the Company's directors and executive officers, and persons who own more than ten percent of a registered class of the Company's equity securities, to file with the Securities and Exchange Commission initial reports of ownership and reports of changes in ownership of Common Stock and other equity securities of the Company. Officers, directors and greater than ten percent shareholders are required by SEC regulations to furnish the Company with copies of all Section 16(a) forms they file.

To the Company's knowledge, based on review of the copies of such reports furnished to the Company and written representations that no other reports were required, during the year ended December 31, 2005, all Section 16(a) filing requirements applicable to its officers, directors and ten percent shareholders were complied with, except as follows: On May 3, 2005, stock options were granted pursuant to the terms of the Director Stock Option Plan to each of the independent directors. The stock options for Agnieszka Winkler were not reported on Form 4 within two business days because Company representatives were unable to obtain a power of attorney to complete the filings because Ms. Winkler was out of the country. For the same reason, the Company was also unable to file Ms. Winkler's Form 3 on a timely basis.

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OTHER MATTERS

The Board of Directors is not aware of any matters that will be presented for consideration at the Annual Meeting other than those described in this Proxy Statement. If any other matters properly come before the Annual Meeting, the persons named on the accompanying Proxy will have the authority to vote on those matters in accordance with their own judgment.

By Order of the Board of Directors

Kurt R. Kneip,
Secretary

May 10, 2006

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EXHIBIT A

**INTER-TEL, INCORPORATED
AUDIT COMMITTEE CHARTER, AS AMENDED
FEBRUARY 17, 2003**

Organization

This Audit Committee Charter (the *Charter*) governs the operations of the Audit Committee (the *Committee*) of Inter-Tel, Incorporated (*Inter-Tel* or the *Corporation*). The charter will be reviewed and reassessed by the Committee annually, and proposed changes, if any, will be recommended to the Board for approval. The Committee shall be appointed by the Board and shall comprise at least three directors, each of whom shall be qualified to serve on the Committee pursuant to the following requirements (as well as any additional criteria required by the Securities and Exchange Commission (the *SEC*) or NASDAQ:

Each member will be an independent director, as defined in (i) NASDAQ Rules and (ii) the rules of the SEC.

Each member will be able to read and understand fundamental financial statements, in accordance with the NASDAQ National Market Audit Committee requirements; and

At least one member of the Committee will qualify as a financial expert, in accordance with the rules of the SEC. The Chairman of the Committee (the *Chairman*) shall be designated by the Board, provided, however, that if the Board does not so designate a Chairman, the members of the Committee, by majority vote, may designate the Chairman.

Statement of Purpose

The Committee's purpose is to:

To take such actions as are necessary to monitor: (i) the integrity of the Corporation's financial reporting, (ii) the Corporation's compliance with legal and regulatory requirements, (iii) the internal and independent auditor's qualifications, independence and performance, and (iv) the Corporation's internal accounting and financial controls;

Outline to the Board improvements made, or to be made, in internal accounting controls;

Appoint, determine funding for, and oversee the independent auditors;

Prepare the report that the rules of the SEC require be included in the Corporation's annual proxy statement;

Provide the Corporation's Board with the results of its monitoring and recommendations derived therefrom; and

Provide to the Board such additional information and materials as it may deem necessary to make the Board aware of significant financial matters that require the attention of the Board.

It is the responsibility of the Committee to maintain free and open communication between the Committee, independent auditors, the internal auditors, Board of Directors and Corporation Management. In discharging its oversight role, the Committee is empowered to investigate any matter brought to its attention with full access to all books, records, facilities and personnel of the Corporation and, further, it has the power to retain outside counsel, or other experts, for this purpose.

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Responsibilities and Processes

The primary responsibility of the Committee is to oversee the Corporation's financial reporting process on behalf of the Board and report the results of its activities to the Board. Management is responsible for preparing the Corporation's financial statements. The Committee, in carrying out its responsibilities, believes its policies and procedures should remain flexible in order to best react to changing conditions and circumstances.

The Committee shall have the following authority and responsibilities. Such authority and responsibilities are set forth as a guide with the understanding that the Committee or the Board may amend or supplement them from time to time as appropriate.

Review and approve the Corporation's independent auditors' annual engagement letter, including the proposed fees contained therein;

Pre-approve audit and non-audit services provided to the Corporation by the independent auditors (or subsequently approving non-audit services in those circumstances where a subsequent approval is necessary and permissible). In this regard, (x) the Committee shall have the sole authority to approve the hiring and firing of the independent auditors, all audit engagement fees and terms and all non-audit engagements, as may be permissible, with the independent auditors and (y) the Committee may elect to form and delegate authority to subcommittees consisting of one or more members when appropriate, including the authority to grant pre-approvals of audit and permitted non-audit services, provided that decisions of such subcommittee to grant pre-approvals shall be presented to the full Committee at its next scheduled meeting;

Review the performance of the Corporation's independent auditors and make recommendations to the Board regarding the replacement or termination of the independent auditors when circumstances warrant;

Oversee the independence of the Corporation's independent auditors by, among other things:
requiring the independent auditors to deliver to the Committee on a periodic basis a formal written statement delineating all relationships between the independent auditors and the Corporation consistent with Independent Standards Board Standard No. 1;

actively engaging in a dialogue with the independent auditors with respect to any disclosed relationships or services that may impact the objectivity and independence of the independent auditors and recommending that the Board take appropriate action in to satisfy itself of the auditors' independence; and

Reviewing reports submitted to the audit committee by the independent auditors in accordance with the applicable SEC requirements.

Instruct the Corporation's independent auditors that they are ultimately accountable to the Committee and the Board, and that the Committee and the Board are responsible for the selection, evaluation and termination of the Corporation's independent auditors (including resolution of disagreements between management and the auditor regarding financial reporting);

Discuss with the Corporation's independent auditors the financial statements and audit findings, including any significant adjustments, management judgments and accounting estimates, significant new accounting policies and disagreements with management and any other matters described in SAS No. 61, as may be modified or supplemented;

Review and discuss the results of the year-end audit of the Corporation, including any comments or recommendations of the Corporation's independent auditors, and the audited financial statements and related MD&A to be included in the Corporation's Annual Report on Form 10-K;

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Review with management and the independent auditors the Corporation's interim financial statements and the related MD&A included in Quarterly Reports on Form 10-Q, including the results of the independent auditor's reviews of the quarterly financial statements;

Direct the Corporation's independent auditors to review before filing with the SEC the Corporation's interim financial statements included in Quarterly Reports on Form 10-Q, using professional standards and procedures for conducting such reviews;

Review with management and the independent auditors weaknesses in internal controls and any significant suggestions for improvements provided to management by the independent auditors;

Review before release the unaudited quarterly operating results in the Corporation's quarterly earnings release, including the use of pro-forma or adjusting non-GAAP information, as well as financial information and earnings guidance provided to analysts, rating agencies or similar external audiences;

Meet at least quarterly with the senior internal auditing executive and the independent auditor in separate executive sessions;

Request from the Corporation that appropriate funding be provided, as determined by the Committee, for payment of compensation to the independent auditor for the purpose of rendering or issuing an audit report and to any advisor employed by the Committee;

Provide a report in the Corporation's proxy statement;

Unless submitted to another comparable independent body of the Board, as and to the extent required under applicable federal securities laws and related rules and regulations, and/or the NASDAQ Marketplace Rules, related party transactions shall be submitted to the Committee for review and the Committee shall approve or disapprove such related party transactions;

Obtain from the Corporation's independent auditors any information pursuant to Section 10A of the Securities Exchange Act of 1934;

Establish procedures for receiving, retaining and treating complaints received by the Corporation regarding accounting, internal accounting controls or auditing matters and procedures for the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters;

Report regularly to the Board on its activities, as appropriate.

The Committee, as necessary or appropriate, shall also:

In regards to Financial Statement and Disclosure Matters:

Review with management and the independent auditor the effect of regulatory and accounting initiatives as well as off-balance sheet structures on the Corporation's financial statements;

Receive periodic reports from the Corporation's independent auditors and management of the Corporation regarding the review, selection, application and disclosure of Corporation's significant accounting policies;

Review with management and the Corporation's independent auditors such accounting policies (and changes therein) of the Corporation, including any financial reporting issues which could have a material impact on the Corporation's financial statements, as are deemed appropriate for review by the Committee prior to any interim or year-end filings with the SEC or other regulatory body;

Review the adequacy and effectiveness of the Corporation's accounting, disclosure and internal control policies and procedures through inquiry, discussion and periodic meetings with the Corporation's independent auditors and management of the Corporation and to review before release the disclosure regarding such system of internal controls required under SEC rules to be contained in the Corporation's periodic filings and the attestations or reports of the independent auditors relating to such disclosure;

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Review with management the Corporation's administrative, operational and accounting internal controls, and advise the Board as to any concerns regarding whether the Corporation is operating in accordance with its prescribed policies, procedures and codes of conduct;

In regards to Oversight of the Company's Relationship with the Independent Auditor:

Review the independent auditors' most recent internal and external quality control review (if applicable);

Review and accept, if appropriate, the annual audit plan of the Corporation's independent auditors, including the scope of audit activities, and monitor such plan's progress and results during the year;

Review the experience and qualifications of the senior members of the independent auditor team and the quality control procedures of the independent auditor;

Review with management the guidelines/practices for the Corporation's hiring of employees of the independent auditor who were engaged on the Corporation's account;

In regards to Compliance Oversight Responsibilities:

Oversee compliance with the requirements of the SEC for disclosure of auditor's services and audit committee members, member qualifications and activities;

Review with management and the independent auditor any correspondence with regulators or governmental agencies or published reports which raise material issues regarding the Corporation's financial statements or accounting policies;

Meet with the general counsel and outside counsel when appropriate, to review legal and regulatory matters, including any matters that may have a material impact on the financial statements of the Corporation;

Review the Corporation's program to monitor compliance with the Corporation's Code of Conduct or similar ethics code (including policies related to conflicts of interest), and meet periodically with the Corporation's Compliance Officer to discuss compliance with the Code of Conduct, including the review of reports and disclosures of insider and affiliated party transactions;

Review, in conjunction with counsel, any legal matters that could have a significant impact on the Corporation's financial statements;

Provide oversight and review at least annually of the Corporation's risk management policies, including its investment policies; and

and, in General:

Perform such additional activities, and consider such other matters, within the scope of its responsibilities, as the Committee or the Board deems necessary or appropriate.

While the Committee has the duties and responsibilities set forth in this charter, the Committee is not responsible for planning or conducting the audit or for determining whether the Corporation's financial statements are complete and accurate and are in accordance with generally accepted accounting principles. Similarly, it is not the responsibility of the Committee to ensure that the Corporation complies with all laws and regulations and its Code of Conduct.

Members of the Committee shall receive such fees, if any, for their service as Committee members as may be determined by the Board in its sole discretion. Such fees may include retainers or per meeting fees. Fees may be paid in such form of consideration as is determined by the Board. Members of the Committee may not receive any compensation from the Corporation except the fees that they receive for service as a member of the Board or any committee thereof.

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MEETINGS

The Committee will meet as often as it determines, but not less frequently than once quarterly. The Committee, in its discretion, will ask members of management or others to attend its meetings (or portions thereof) and to provide pertinent information as necessary. The Committee will meet separately with the Chief Executive Officer and separately with the Chief Financial Officer of the Corporation at such times as it deems appropriate in order to review the financial affairs of the Corporation. The Committee will meet periodically in separate executive session with the independent auditors as well as any internal auditors of the Corporation at such times as it deems appropriate in order to review the financial controls of the Corporation and to otherwise fulfill the responsibilities of the Committee under this charter. The Committee may also meet with the Corporation's investment bankers or financial analysts who follow the Corporation.

MINUTES

The Committee will maintain written minutes of its meetings, which minutes will be filed with the minutes of the meetings of the Board.

/s/Jerry Chapman

Jerry Chapman,
Audit Committee Chair

/s/J. Robert Anderson

J. Robert Anderson,
Audit Committee Member

/s/Gary D. Edens

Gary D. Edens,
Audit Committee Member

/s/Dr. C. Roland Haden

Dr. C. Roland Haden,
Audit Committee Member

February 17, 2003

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ANNEX A

**REINCORPORATION AGREEMENT
AGREEMENT AND PLAN OF MERGER AND REINCORPORATION
BETWEEN**

**INTER-TEL, (DELAWARE) INCORPORATED, A DELAWARE CORPORATION, AND
INTER-TEL, INCORPORATED, AN ARIZONA CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER AND REINCORPORATION, dated as of May , 2006, (the *Agreement*) is made by and between Inter-Tel (Delaware), Incorporated, a Delaware corporation (*Inter-Tel Delaware*) and Inter-Tel, Incorporated, an Arizona corporation (*Inter-Tel Arizona*). Inter-Tel Delaware and Inter-Tel Arizona are sometimes referred to herein as the Constituent Corporations.

R E C I T A L S

A. Inter-Tel Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 100,000,000 shares, which are designated Common Stock, with no par value. As of the date of this Agreement, 1,000 Shares of Inter-Tel Delaware Common Stock are issued and outstanding.

B. Inter-Tel Arizona is a corporation duly organized and existing under the laws of the State of Arizona and has an authorized capital of 100,000,000 shares of Common Stock. As of the date of this Agreement, [] shares of Common Stock are issued and outstanding.

C. The Board of Directors of Inter-Tel Arizona has determined that, for the purpose of effecting the reincorporation of Inter-Tel Arizona in the State of Delaware, it is advisable and in the best interests of Inter-Tel Arizona and its shareholders that Inter-Tel Arizona merge with and into Inter-Tel Delaware upon the terms and conditions herein provided.

D. The Board of Directors of Inter-Tel Arizona has further determined that it is in the best interests of Inter-Tel Arizona and its shareholders to approve this Agreement and the transactions contemplated herein and has directed the undersigned officers of Inter-Tel Arizona to submit this Agreement to its shareholder for adoption and approval. The Board of Directors of Inter-Tel Arizona has directed the undersigned officers of Inter-Tel Arizona, upon the approval of this Agreement by the shareholders of Inter-Tel Arizona, to execute and deliver this Agreement.

E. The Board of Directors of Inter-Tel Delaware has approved this Agreement and the transactions contemplated herein and has directed the undersigned officers of Inter-Tel Delaware that it be submitted to a vote of its sole stockholder, Inter-Tel Arizona, for adoption and approval. The Board of Directors of Inter-Tel Delaware has directed the undersigned officers of Inter-Tel Delaware, upon the approval of this Agreement by the shareholders of Inter-Tel Arizona, to execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Inter-Tel Delaware and Inter-Tel Arizona hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

I. MERGER

1.1 *Merger*. In accordance with the provisions of this Agreement, the Delaware General Corporation Law (the *DGCL*) and the Arizona Business Corporation Act (the *ABCA*), Inter-Tel Arizona shall be merged with and into Inter-Tel Delaware (the *Merger*), the separate existence of Inter-Tel Arizona (the *Non-Surviving Corporation*) shall cease and Inter-Tel Delaware shall be the surviving corporation (sometimes referred to herein as the *Surviving Corporation*), and the name of the Surviving Corporation shall be Inter-Tel, Incorporated.

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1.2 *Filing and Effectiveness.* The Merger shall become effective when the following actions shall have been completed:

(a) This Agreement and the Merger shall have been adopted and approved by the stockholders of each Constituent Corporation in accordance with the requirements of the DGCL and the ABCA;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;

(c) An executed Agreement and Plan of Merger meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and; and

(d) An executed Articles of Merger, in the form of Exhibit A attached hereto, meeting the requirements of Section 10-1105 of the ABCA, shall have been filed with the Arizona Corporation Commission and the Surviving Corporation and the Non-Surviving Corporation hereby stipulate that they will cause to be performed all necessary acts therein and elsewhere to effectuate the Merger.

The date and time when the Merger shall become effective, pursuant to the provisions of (i) Section 103 of the DGCL and (ii) Section 10-123 of the ABCA, is herein called the *Effective Date of the Merger*.

1.3 *Effect of the Merger.* Upon the Effective Date of the Merger, the separate existence of Inter-Tel Arizona shall cease and Inter-Tel Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by Inter-Tel Arizona's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Inter-Tel Arizona in the manner more fully set forth in Section 259 of the DGCL, (iv) shall continue to be subject to all of the debts, liabilities and obligations of Inter-Tel Arizona as constituted immediately prior to the Effective Date of the Merger and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Inter-Tel Arizona in the same manner as if Inter-Tel Delaware had itself incurred them, all as more fully provided under the applicable provisions of the DGCL and the ABCA.

II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 *Certificate of Incorporation.* The Certificate of Incorporation of Inter-Tel Delaware as in effect on the Effective Date of the Merger in the jurisdiction of its organization will be the Certificate of Incorporation of the Surviving Corporation and said Certificate of Incorporation shall continue in full force and effect until amended and changed in the manner prescribed by the provisions of the DGCL.

2.2 *Bylaws.* The Bylaws of Inter-Tel Delaware on the Effective Date of the Merger in the jurisdiction of its organization will be the Bylaws of the Surviving Corporation and will continue in full force and effect until changed, altered, or amended as therein provided and in the manner prescribed by the provisions of the DGCL.

2.3 *Directors and Officers.* The directors and officers of Inter-Tel Arizona on the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

III. MANNER OF CONVERSION OF STOCK

3.1 *Inter-Tel Arizona Common Shares.* Upon the Effective Date of the Merger, each share of Inter-Tel Arizona Common Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and non-assessable share of Common Stock, no par value, of the Surviving Corporation.

Table of Contents3.2 Inter-Tel Arizona Options, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of Inter-Tel Arizona under, and continue, the option plans and all other employee benefit plans of Inter-Tel Arizona and certain stock option agreements by and between certain employees of Inter-Tel Arizona and Inter-Tel Arizona. Each outstanding and unexercised option, other right to purchase, restricted stock unit or security convertible into, Inter-Tel Arizona Common Stock (a **Right**) shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase, a restricted stock unit or a security convertible into the Surviving Corporation's Common Stock on the basis of one share of the Surviving Corporation's Common Stock, as the case may be, for each one share of Inter-Tel Arizona Common Stock, as the case may be, issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such Inter-Tel Arizona Right at the Effective Date of the Merger.

(b) A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, stock purchase rights and convertible securities equal to the number of shares of Inter-Tel Arizona Common Stock so reserved immediately prior to the Effective Date of the Merger.

3.3 Inter-Tel Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, no par value, of Inter-Tel Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Inter-Tel Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.4 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Inter-Tel Arizona Common Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the **Exchange Agent**), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Inter-Tel Arizona Common Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock into which such shares of Inter-Tel Arizona Common Stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Inter-Tel Arizona so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of the Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise be in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

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IV. GENERAL

4.1 Covenants of Inter-Tel Delaware. Inter-Tel Delaware covenants and agrees that it will:

(a) Qualify to do business as a foreign corporation in the State of Arizona by filing an application of authority with the Arizona Corporations Commission as required under the provisions of Sections 10-1503 of the ABCA;

(b) File any and all documents with the Arizona Department of Revenue, necessary for the assumption by Inter-Tel Delaware of all of the tax liabilities of Inter-Tel Arizona; and

(c) Take such other actions as may be required by the ABCA.

4.2 Further Assurances. From time to time, as and when required by Inter-Tel Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Inter-Tel Arizona such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Inter-Tel Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Inter-Tel Arizona and otherwise to carry out the purposes of this Agreement, and the officers and directors of Inter-Tel Delaware are fully authorized in the name and on behalf of Inter-Tel Arizona or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 Shareholder and Stockholder Approval. This Agreement shall be submitted to a vote of the shareholders of Inter-Tel Arizona and the sole stockholder of Inter-Tel Delaware in accordance with the laws of the State of Arizona and the State of Delaware, respectively. In the event that this Agreement shall be not approved by the requisite vote of holders of a majority of Inter-Tel Arizona's Common Stock outstanding and entitled to vote at Inter-Tel Arizona's 2006 annual meeting or any adjournment thereof, this Agreement shall thereupon be terminated without further action of the parties hereto.

4.4 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Inter-Tel Arizona or of Inter-Tel Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of Inter-Tel Arizona or by the stockholders of Inter-Tel Delaware, or by both.

4.5 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement (or certificate in lieu thereof) at any time before the Effective Date of the Merger, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (i) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (ii) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger or (iii) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of any Constituent Corporation.

4.6 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801 and Corporation Trust Center is the registered agent of the Surviving Corporation at such address.

4.7 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1615 S. 52nd Street, Tempe, AZ 85281, and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

4.8 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the ABCA.

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IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Board of Directors of Inter-Tel Delaware and Inter-Tel Arizona is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

INTER-TEL (DELAWARE), INCORPORATED
a Delaware corporation

By:

Norman Stout,
Chief Executive Officer

INTER-TEL, INCORPORATED
a Arizona corporation

By:

Norman Stout,
Chief Executive Officer

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ANNEX B

**CERTIFICATE OF INCORPORATION OF
INTER-TEL (DELAWARE), INCORPORATED**

Article I

The name of the corporation is Inter-Tel (Delaware), Incorporated (the *Corporation*).

Article II

A. The registered agent and the address of the registered office in the State of Delaware are:

Corporation Trust Company 1209 Orange Street Wilmington, Delaware 19801 County of New Castle

B. 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 *DGCL*).

Article III

The Corporation shall be authorized to issue one class of stock to be designated Common Stock. The total number of shares of Common Stock that the Corporation shall have authority to issue is 100,000,000. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the then outstanding shares of Common Stock.

A. Voting Rights. Except as otherwise required by law or this Restated Certificate of Incorporation, each holder of Common Stock shall have one vote in respect of each share of stock held by such holder of record on the books of the corporation for the election of directors and on all matters submitted to a vote of stockholders of the corporation.

B. Dividends. The holders of shares of Common Stock shall be entitled to receive, when and if declared by the Board of Directors (the *Board*), out of the assets of the corporation which are by law available therefor, dividends payable either in cash, in property or in shares of capital stock.

C. Dissolution, Liquidation or Winding Up. In the event of any dissolution, liquidation or winding up of the affairs of the corporation, holders of Common Stock shall be entitled, unless otherwise provided by law, to receive all of the remaining assets of the corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

D. No Pre-Emptive Rights. No holders of shares of the Common Stock of the Corporation shall have any preferential or preemptive rights to subscribe for, purchase or receive any shares of the Corporation, or any options or warrants for such shares, or any rights to subscribe for, purchase or receive any securities convertible into or exchangeable for such shares, which may at any time be issued, sold or offered for sale by the Corporation.

Article IV

A. Number of Directors. The authorized number of directors of the corporation shall be determined from time to time by resolution adopted by the affirmative vote of the majority of the entire Board at any regular or special meeting of the Board, within any limits prescribed in the By-laws of the Corporation.

B. Vacancies and Removal. Subject to the provisions hereof, newly created directorships resulting from any increase in the authorized number of directors, any vacancies on the Board resulting from death,

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resignation, disqualification, removal, or other cause, may be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class, if any, of directors in which the new directorship was created or in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified or until his or her earlier resignation, removal from office, death or incapacity. Subject to the provisions of this Certificate of Incorporation, no decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

C. Cumulative Voting. At the request of any stockholder in an election of members of the Board, each holder of stock shall be entitled to as many votes as shall equal the number of votes which (except for this Section C) such holder would be entitled to cast for the election of directors with respect to such holder's shares of stock multiplied by the number of directors to be elected by such holder. Such holder may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them as such holder may see fit.

Article V

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board is expressly authorized to adopt, amend or repeal the By-laws of the Corporation by vote of at least a majority of the members of the Board.

B. Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the By-laws of the Corporation may provide or as may be designated from time to time by the Board.

Article VI

A. Exculpation. To the fullest extent permitted by the DGCL, as the same exists or as may hereafter be amended, 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. If the Delaware Corporation Law hereafter is amended to further eliminate or limit the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended DGCL. Any repeal or modification of this paragraph by the stockholders of the Corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

B. Indemnification.

1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (hereinafter a *proceeding*), by reason of the fact that he or she is or was a director or officer of the Corporation or, while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an *indemnitee*), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, except as may be prohibited by applicable law, 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, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in

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connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in Section B.3 of this Article VI with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

2. **Right to Advancement of Expenses.** The right to indemnification conferred in Section B.1 shall include the right to be paid by the Corporation the expenses incurred in defending any proceeding for which such right to indemnification is applicable in advance of its final disposition (hereinafter an *advancement of expenses*); provided, however, that, if the DGCL 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.

3. **Right of Indemnitee to Bring Suit.** The rights to indemnification and to the advancement of expenses conferred in Sections B.1 and B.2 shall be contract rights. If a claim under Section B.1 or Section B.2 is not paid in full by the Corporation within sixty (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 twenty (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 an 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) 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 any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its Board, independent legal counsel, or its 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 DGCL, nor an actual determination by the Corporation (including its Board, independent legal counsel or its 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.

4. **Non-Exclusivity of Rights.** The rights to indemnification and to the advancement of expenses conferred in this Section B shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, the Corporation's certificate of incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

5. **Insurance.** The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or 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 DGCL.

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6. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification, and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Section with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

7. Amendment. Neither any amendment nor repeal of this Article VI, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VI, shall eliminate or reduce the effect of this Article VI in respect of any matter occurring, or action or proceeding accruing or arising or that, but for this Article VI, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

Article VII

Except as otherwise provided in this Certificate of Incorporation, the Corporation reserves the right to amend or repeal any provision, rescind or amend in any respect any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.

* * *

I, the undersigned, as the incorporator of the Company, have signed this Certificate of Incorporation on May [31], 2006.

Norman Stout,
Chief Executive Officer

Attest:
By

Kurt R. Kneip,
Secretary

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ANNEX C

**BY-LAWS OF INTER-TEL (DELAWARE), INCORPORATED
(a Delaware corporation)**

Article I. Offices

1.1 Principal Office. The Board of Directors shall fix the location of the principal executive office of the Corporation at any place within or outside the State of Delaware.

1.2 Additional Offices. The Board of Directors (the **Board**) may at any time establish branch or subordinate offices at any place or places.

Article II. Meeting of Stockholders

2.1 Place of Meeting. Meetings of stockholders may be held at such place, either within or without Delaware, as determined by the Board. The Board may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Delaware law. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication: (i) participate in a meeting of stockholders; and (ii) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

2.2 Annual Meeting. Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the Board and stated in the notice of the meeting. At such annual meetings, the stockholders shall elect directors and transact such other business as may properly be brought before the meetings.

2.3 Special Meetings. Special meetings of the stockholders may be called for any purpose or purposes, unless otherwise prescribed by statute or by the Restated Certificate of Incorporation, by the Board of Directors and shall be called by the President or Secretary at the request in writing of stockholders owning at least ten percent (10%) in amount of the entire capital stock of the Corporation issued and outstanding and entitled to vote except that a special meeting for the purpose of considering any action to directly or indirectly facilitate a **business combination** as defined in Section 10-2701.6 of the Arizona Corporations Law, including any action to change or otherwise affect the composition of the board of directors for that purpose, may only be called at the request in writing of stockholders owning at least twenty-five percent (25%) in amount of the entire capital stock of the Corporation. Such request shall state the purpose or purposes of the proposed meeting and, if submitted by holder of less than twenty-five percent (25%) in amount of the entire capital stock of the Corporation, shall be accompanied by a declaration under penalty of perjury that the meeting is not being held for the purpose of considering any action to directly or indirectly facilitate a **business combination** , including any action to change or otherwise affect the composition of the board of directors for that purpose. Upon request in writing that a special meeting of stockholders be called, directed to the Chairman of the Board of Directors, the President, the Chief Executive Officer, the Vice President or the Secretary, the person forthwith shall cause notice to be given to the stockholders entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, such time not to be less

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than ten (10), nor more than sixty (60), days after receipt of the request. Such notice shall state the purpose or purposes of the proposed meeting.

2.4 Notice of Meetings. Written notice of stockholders' meetings, stating the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote at such meeting not less than ten (10), nor more than sixty (60), days prior to the meeting.

When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the place, if any, date and time thereof and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, date and time of the adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

2.5 Business Matter of a Special Meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

2.6 List of Stockholders. The officer in charge of the stock ledger of the Corporation or the transfer agent 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: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall 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. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.7 Organization and Conduct of Business. The Chairman of the Board or, in his or her absence, the Chief Executive Officer of the Corporation or, in their absence, such person as the Board may have designated or, in the absence of such a person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as Chairman of the meeting. In the absence of the Secretary of the Corporation, the Secretary of the meeting shall be such person as the Chairman appoints.

The Chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her in order.

2.8 Quorum and Adjournments. Except where otherwise provided by law or in the Restated Certificate of Incorporation or these By-laws, the holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented in proxy, shall constitute a quorum at all meetings of the stockholders. The stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting. At such adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

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2.9 Voting Rights. Except as provided in the next following sentence and except as may be provided in the Restated Certificate of Incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder. In the election of directors, each such stockholder complying with the following paragraph and entitled to vote at any election of directors may cumulate such stockholder's 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 the stockholder's shares are normally entitled, or distribute the stockholder's votes on the same principle among as many candidates as the stockholder thinks fit.

In the election of directors, no stockholder shall be entitled to cumulate votes in favor of any candidate or candidates unless such candidate's or candidates' names have been placed in nomination prior to the voting and one stockholder has given notice at the meeting prior to the voting of that stockholder's intention to cumulate the stockholder's votes. If any one stockholder has given such notice, such fact shall be announced to all stockholders and proxies present, who may then cumulate their votes for candidates in nomination.

In any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them, up to the number of directors to be elected by such shares, are elected. Votes against a director and votes withheld shall have no legal effect.

Voting may be by voice or ballot, provided that any election of directors must be by ballot upon the demand of any stockholder made at the meeting and before the voting begins.

2.10 Majority Vote. 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 Restated Certificate of Incorporation or of these By-laws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

2.11 Record Date for Stockholder Notice and Voting.

(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 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 or fewer than ten 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 any meeting of stockholders or any adjournment thereof 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) 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 record 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 by applicable law, 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 at its principal executive office. If no record date has been fixed by the Board of Directors and prior action by the Board of Director is required by applicable law, the Certificate of Incorporation, or these Bylaws, 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 date 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 capital stock, or for the purpose of any other
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lawful action, except as may otherwise be provided in these Bylaws, the Board of Directors may fix a record date. Such record date shall not precede the date upon which the resolution fixing such record date is adopted, and shall not be more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

2.12 *Advance Notice of Stockholder Business.* To be properly brought before an annual meeting, any business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (c) otherwise properly brought before the meeting by a shareholder (i) who is a shareholder of record on the date of the giving of the notice provided for in this Section 2.12 and on the record date for the determination of shareholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 2.12.

For such business to be considered properly brought before the meeting by a shareholder such shareholder must, in addition to any other applicable requirements, have given timely written notice of demand to the Chief Executive Officer or Secretary of the Corporation in proper written form.

To be timely, such shareholder's notice must be delivered to or mailed and received by the Chief Executive Officer or Secretary of the Corporation at the principal executive offices of the Corporation not less than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting; provided, however, that in the event the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the shareholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the meeting was mailed or such public disclosure made, whichever occurs first; provided further, that in the event this Section 2.12 becomes effective less than one hundred (100) days prior to the anniversary date of the immediately preceding annual meeting of shareholders, notice by the shareholder would also be timely if so received not later than the close of business on the tenth (10th) day following the day on which this Section 2.12 became effective.

To be in proper written form, a shareholder's notice to the Secretary shall set forth:

a) the name and record address of the shareholder who intends to propose the business and the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such shareholder;

b) a representation that the shareholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to introduce the business specified in the notice;

c) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting; and

d) any material interest of the shareholder in such business.

No business shall be conducted at the annual meeting of shareholders except business brought before the annual meeting in accordance with the procedures set forth in this Section; provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.12 shall be deemed to preclude discussion by any shareholder of any such business. The Chairman of the meeting may refuse to acknowledge the proposal of any business not made in compliance with the foregoing procedure.

2.13 *Advance Notice of Director Nominations.* Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation. To be properly brought before an annual meeting nominations for the election of director must be (a) specified in the Corporation's notice of meeting (or any supplement thereto), (b) made by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) made by any shareholder (i) who is a shareholder of record on the date of the giving of the notice provided for in this Section 2.13 and on the record date for the

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determination of shareholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 2.13.

In addition to any other applicable requirements, for a nomination to be made by a shareholder, such shareholder must have given timely written notice of demand to the Chief Executive Officer or Secretary of the Corporation in proper written form.

To be timely, a shareholder's notice to the Chief Executive Officer or Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting; provided further, that in the event this Section 2.13 becomes effective less than one hundred (100) days prior to the anniversary date of the immediately preceding annual meeting of shareholders, notice by the shareholder would also be timely if so received not later than the close of business on the tenth (10th) day following the day on which this Section 2.13 became effective.

To be in proper written form, a shareholder's notice to the Secretary must set forth:

a) as to each person whom the shareholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person over at least the last five years, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person, (iv) a statement as to the person's citizenship, and (v) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the *Exchange Act*), and the rules and regulations promulgated thereunder; and

b) as to the shareholder giving the notice (i) the name and record address of such shareholder, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such shareholder, (iii) a description of all arrangements or understandings between such shareholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such shareholder, (iv) a representation that such shareholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (v) any other information relating to such shareholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee who consents to being named as a nominee and to serve as a director if elected.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.13. If the Chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

2.14 *Proxies*. Every person entitled to vote for directors or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the Secretary of the Corporation. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, electronic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (a) revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the Corporation stating that the proxy is revoked or by a subsequent proxy executed by the maker of the proxy, or by that person's attendance and vote at the meeting; or (b) written notice of the death or incapacity of the maker of that proxy is received by the

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Corporation before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven months from the date of the proxy, unless otherwise provided in the proxy.

2.15 *Inspectors of Election.* Before any meeting of stockholders, the Board may appoint any person other than nominees for office to act as inspectors of election at the meeting or its adjournment. If no inspectors of election are so appointed, the Chairman of the meeting may, and on the request of any stockholder or a stockholder's proxy shall, appoint inspectors of election at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more stockholders or proxies, the holders of a majority of shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the Chairman of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy or to act in place of such inspector.

2.16 *Action Without Meeting by Written Consent.* All actions required to be taken at any annual or special meeting 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 all shares of outstanding voting stock and shall be delivered to the Corporation by delivery to its registered office, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings or stockholders are recorded.

Article III. *Directors*

3.1 *Number; Qualifications; Election.* The authorized number of directors shall initially be eleven (11), such number to be changed from time to time by resolution of the Board, subject to Section 4 of Article VII of the Corporation's Restated Certificate of Incorporation.

Directors need not be stockholders. A person will not qualify for initial election or appointment as a director if such person's 70th birthday occurs on or has occurred before the date of such election or appointment. A person who is a director is qualified for re-election after his or her 70th birthday, but will not qualify for re-election if their 75th birthday occurs on or has occurred before the date of such election or appointment. A person who has qualified by age for his or her most recent election as a director may serve throughout the term for which such person was elected, notwithstanding the occurrence of his or her 75th birthday between the date of such election and the end of such term.

Directors shall be elected at the annual meeting or at any special meeting of the stockholders, except as provided in Section 3.2 hereof, and each director so elected shall hold office until the expiration of the term for which elected, or until his successor is elected and qualified, or until his earlier resignation or removal. All elections of directors shall be by written ballot, unless otherwise provided in the certificate of incorporation; if authorized by the Board, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

3.2 *Resignation and Vacancies.* A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation or removal of any director, or if the authorized number of directors be increased. Vacancies may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, unless otherwise provided in the Restated Certificate of Incorporation. The stockholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors. If the Board accepts the resignation of a director tendered to take effect at a future time, the Board shall have power to elect a successor to take office when the resignation is to become effective. If there are no directors in office, then an election of directors may be held in the manner provided by statute. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, the Corporation's Restated Certificate of Incorporation or these By-laws, may exercise the powers of the full Board of Directors until the vacancy is filled.

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3.3 *Removal of Directors.* Unless otherwise restricted by statute, or by the Restated Certificate of Incorporation or these By-laws, any director or the entire Board may be removed, with or without cause, by the holders of at least a majority of the shares entitled to vote at an election of directors provided, however, unless the entire Board is removed, an individual director shall not be removed without cause if the votes cast against removal would be sufficient to elect such director if voted then cumulatively at an election at which the same total number of votes were cast. No reduction of the authorized number of directors shall have the effect of removing any director before his term of office expires.

3.4 *Powers.* Subject to the provisions of the Delaware General Corporation Law and the Corporation's Restated Certificate of Incorporation, the business 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 which are not by statute or by the Restated Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the stockholders.

Without prejudice to these general powers, the directors shall have the power to:

(a) Select and remove all officers, agents, and employees of the Corporation; prescribe any powers and duties for them that are consistent with law, with the Restated Certificate of Incorporation, and with these By-laws and fix their compensation;

(b) Confer upon any office the power to appoint, remove and suspend subordinate officers, employees and agents;

(c) Change the principal executive office or the principal business office in the State of California, or any other state, from one location to another; cause the Corporation to be qualified to do business in any other state, territory, dependency or country, and conduct business within or without the State of California; and designate any place within or without the State of California for the holding of any stockholders meeting, or meetings, including annual meetings;

(d) Adopt, make, and use a corporate seal; prescribe the forms of certificates of stock; and alter the form of the seal and certificates;

(e) Authorize the issuance of shares of stock of the Corporation on any lawful terms;

(f) Borrow money and incur indebtedness on behalf of the Corporation, and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecation and other evidences of debt and securities;

(g) Declare dividends from time to time in accordance with law;

(h) Adopt from time to time such stock option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and

(i) Adopt from time to time policies not inconsistent with these By-laws for the management of the Corporation's business and affairs.

3.5 *Place of Meetings.* The Board may hold meetings, both regular and special, either within or without the State of Delaware.

3.6 *Annual Meetings.* The annual meeting of the Board shall be held immediately following the annual meeting of stockholders, and no notice of such meeting shall be necessary to the Board, provided a quorum shall be present. The annual meetings shall be for the purposes of organization, for an election of officers, and for the transaction of other business.

3.7 Regular Meetings. Regular meetings of the Board may be held without notice at such time and place as may be determined from time to time by the Board.

3.8 Special Meetings. Special meetings of the Board may be called by the Chairman of the Board or the Chief Executive Officer and shall be called by the Chairman of the Board, the Chief Executive Officer, or

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the Secretary upon the written request of a majority of the Board Notice shall be given to each Director in any one of the following manners:

(a) if delivered in person or by telephone, such notice shall be delivered at least twenty-four (24) hours prior to the time the meeting is to be held. Such notice may be communicated either to the director or to a person at the home or business of the director when the person delivering the notice has reason to believe such person will promptly communicate it to the director. Such notice shall be considered delivered when the person noticing the meeting believes in good faith that the notified person has heard and acknowledged the notice;

(b) if delivered by telegram, such notice shall be delivered to a common carrier, charges prepaid, for transmission to the director at least twenty-four (24) hours prior to the time the meeting is to be held. Delivery to a common carrier shall be due and legal notice to such director;

(c) if delivered by overnight courier service, including without limitation such services as Express Mail and Federal Express, such notice shall be delivered to such courier service, charges prepaid, for delivery to the director no later than one day prior to the day upon which the meeting is to be held. Delivery to a courier service shall be due and legal notice to such director;

(d) if delivered by facsimile transmission, such notice shall be either delivered to a common carrier, charges prepaid, for transmission to the director or transmitted by or under the direction of the person giving notice to the director at least twenty-four (24) hours prior to the time the meeting is to be held. Delivery to a common carrier or transmission of a facsimile shall be due and legal notice to such director;

(e) if delivered by first-class mail, such notice shall be deposited in the United States mail, postage prepaid, at least four (4) days prior to the date of the meeting to be held. Deposit in the U.S. mail shall be due and legal notice to such director.

(f) if delivered by electronic mail (e-mail) transmission, such notice shall be transmitted by or under the direction of the person giving notice to the directors at least twenty-four (24) hours prior to the time the meeting is to be held. Transmission of an e-mail shall be legal notice to such director.

If the notice is given in the (a) manner and the communication is not with the director or if the notice is given in the (b), (d), or (f) manner and the receipt of the notice is not confirmed by the director by phone, voicemail, e-mail, fax or telegram, then to constitute proper notice, the notice must also be timely given in another of the (a), (b), (d), or (f) manners. The notice need not specify the business to be conducted or the place of the meeting if the meeting is to be held at the principal office of the Corporation.

The notice need not specify the business to be conducted or the place of the meeting if the meeting is to be held at the principal office of the Corporation.

3.9 Quorum and Adjournments. At all meetings of the Board, a majority of the directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may otherwise be specifically provided by law or by the Restated Certificate of Incorporation. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved of by at least a majority of the required quorum for that meeting. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place are fixed at the meeting being adjourned, except that if the meeting is adjourned for more than twenty-four (24) hours such notice shall be given prior to the adjourned meeting to the directors who were not present at the time of the adjournment.

3.10 Action Without Meeting. Unless otherwise restricted by the Restated Certificate of Incorporation or these By-laws, any action required or permitted to be taken at any meeting of the Board 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.

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3.11 Telephone Meetings. Unless otherwise restricted by the Restated Certificate of Incorporation or these By-laws, any member of the Board or of any committee may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.12 Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or provides a waiver by electronic transmission or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, either prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals or any waiver by electronic transmission shall be filed with the corporate records or made a part of the minutes of the meeting.

3.13 Fees and Compensation of Directors. Unless otherwise restricted by the Restated Certificate of Incorporation or these By-laws, the Board shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board, and may be paid a fixed sum for attendance at each meeting of the Board 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; provided, that, no person who concurrently serves as a member of the Board and also serves as an officer of the Corporation shall receive additional compensation from the Corporation, other than the reimbursement of expenses, for service on the Board of Directors of the Corporation. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Article IV. Committees of Directors

4.1 Selection. The Board may, by resolution passed by a majority of the entire 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 or disqualification of a member of a committee other than a designee of Cypress (in its capacity as a stockholder of the Corporation), the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

4.2 Power. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority 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; but no such committee shall have the power or authority in reference to amending the Restated 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 as provided in section 151(a) of the General Corporation Law of Delaware, 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 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 dissolution, removing or indemnifying directors or amending the By-laws of the Corporation; and, unless the resolution or the Restated 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 or names as may be determined from time to time by resolution adopted by the Board.

4.3 Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

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Article V. Officers

5.1 Officers Designated. The officers of the Corporation shall be chosen by the Board and shall be a Chief Executive Officer, a President, a Secretary and a Chief Financial Officer. The Board may also choose a Chairman of the Board, Chief Operating Officer, one or more Vice Presidents and one or more assistant Secretaries. Any number of offices may be held by the same person, unless the Restated Certificate of Incorporation or these By-laws otherwise provide.

5.2 Appointment of Officers. Subject to Section 4 of Article VII of the Restated Certificate of Incorporation of the Corporation, the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 or 5.5 hereof, shall be appointed by the Board, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

5.3 Subordinate Officers. The Board or any duly authorized committee may appoint, and may empower the Chief Executive Officer to appoint, such other officers and agents 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 or duly authorized committee may from time to time determine.

5.4 Removal and Resignation of Officers. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board or authorized committee, at any regular or special meeting of the Board or such committee, or, except in case of an officer chosen by the Board or authorized committee, by any officer upon whom such power of removal may be conferred by the Board or authorized committee.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these By-laws for regular appointment to that office.

5.6 Compensation. The salaries of all officers of the Corporation shall be fixed from time to time by the Board, and no officer shall be prevented from receiving a salary because he is also a director of the Corporation.

5.7 The Chairman of the Board. If the Board of Directors appoints a Chairman of the Board, such Chairman shall, when present, preside at all meetings of the stockholders and the Board. The Chairman shall perform such duties and possess such powers as are customarily vested in the office of the Chairman of the Board or as may be vested in the Chairman by the Board of Directors.

5.8 The Chief Executive Officer. Subject to such supervisory powers, if any, as may be given by the Board to the Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the stockholders and in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board, shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. He or she 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 to some other officer or agent of the Corporation.

5.9 The President. The President shall, in the event there be no Chief Executive Officer or in the absence of the Chief Executive Officer or in the event of his or her disability or refusal to act, perform the duties of the Chief Executive Officer, and when so acting, shall have the powers of and subject to all the restrictions upon the Chief Executive Officer. The President shall perform such other duties and have such

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other powers as may from time to time be prescribed for such person by the Board, the Chairman of the Board, the Chief Executive Officer or these By-laws.

5.10 The Vice President. The Vice President (or in the event there be more than one, the Vice Presidents in the order designated by the directors, or in the absence of any designation, in the order of their election), shall, in the absence of the President or in the event of his disability or refusal to act, perform the duties of the President, and when so acting, shall have the powers of and be subject to all the restrictions upon the President. The Vice President(s) shall perform such other duties and have such other powers as may from time to time be prescribed for them by the Board, the Chief Executive Officer, the President, the Chairman of the Board or these By-laws.

5.11 The Secretary. The Secretary shall attend all meetings of the Board and the stockholders and record all votes and the proceedings of the meetings in a book to be kept for that purpose, and shall perform like duties for the standing committees, when required. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and special meetings of the Board, and shall perform such other duties as may from time to time be prescribed by the Board, the Chairman of the Board, the Chief Executive Officer or the President, under whose supervision he or she shall act. The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature. The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board, a share register, or a duplicate share register, showing the names of all stockholders 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.

5.12 The Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order designated by the Board (or in the absence of any designation, in the order of their election) shall, in the absence of the Secretary, or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as may from time to time be prescribed by the Board.

5.13 The Chief Financial Officer. The Chief Financial Officer 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. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer and the Board, at its regular meetings, or when the Board so requires, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Corporation.

5.14 Representation of Shares of Other Corporations. The Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or the Secretary or Assistant Secretary of this Corporation, or any other person authorized by the Board of Directors or the Chief Executive Officer, is 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 the Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

Article VI. Indemnification of Directors, Officers, Employees and Other Agents

6.1 Indemnification of Directors and Officers. The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually

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and reasonably incurred in connection with any action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.1, a director or officer of the Corporation includes any person (a) who is or was a director or officer of the Corporation, (b) who, while serving as a director or officer of the Corporation, 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, or (c) who was a director or officer of a corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

6.2 Indemnification of Others. The Corporation shall have the power, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.2, an employee or agent of the Corporation (other than a director or officer) includes any person (a) who is or was an employee or agent of the Corporation, (b) who is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

6.3 Payment of Expenses in Advance. Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 hereof, or for which indemnification is permitted pursuant to Section 6.2 hereof, following authorization thereof by the Board of Directors, shall be paid by the Corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount, if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Article 6.

6.4 Indemnity Not Exclusive. The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the Restated Certificate of Incorporation.

6.5 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 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 the General Corporation Law of Delaware.

6.6 Conflicts. No indemnification or advance shall be made under this Article 6, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the Restated Certificate of Incorporation, these By-laws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Article VII. Stock Certificates

7.1 Certificates for Shares. The shares of the Corporation shall be represented by certificates or shall be uncertificated. Certificates shall be signed by, or be in the name of the Corporation by, the Chairman of the

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Board, the Chief Executive Officer or the President or a Vice President and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation.

Within a reasonable time after the issuance or transfer of uncertified stock, the Corporation shall send to the registered owner thereof a written notice containing the information required by the General Corporation Law of the State of Delaware or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof, and the qualifications, limitations or restrictions of such preferences and/or rights.

7.2 Signatures on Certificates. Any or all of the signatures on a 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.

7.3 Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate of 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, to cancel the old certificate and record the transaction upon its books. Upon receipt of proper transfer instructions from the registered owner of 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.

7.4 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a percent registered on its books as the owner of shares, 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 Delaware.

7.5 Lost, Stolen or Destroyed Certificates. The Board may direct that a new certificate or certificates be issued to replace any certificate or certificates theretofore 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 the issue of a new certificate or certificates, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of the lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall require, and/or to give the Corporation a bond in such sum 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, stolen or destroyed.

Article VIII. Notices

8.1 Notice. Whenever, under the provisions of the statutes or of the Restated Certificate of Incorporation or of these By-laws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his or her address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram, telephone or electronic transmission.

8.2 Waiver. Whenever any notice is required to be given under the provisions of the statutes or of the Restated Certificate of Incorporation or of these By-laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

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Article IX. General Provisions

9.1 Dividends. Dividends upon the capital stock of the Corporation, subject to any restrictions contained in the General Corporation Laws of Delaware or the provisions of the Restated Certificate of Incorporation, if any, may be declared by the Board at any regular or special meeting. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of the Restated Certificate of Incorporation.

9.2 Dividend Reserve. 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 for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

9.3 Checks. 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 may from time to time designate.

9.4 Corporate Seal. The Board may provide a suitable seal, containing the name of the Corporation, which seal shall be in charge of the Secretary. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

9.5 Execution of Corporate Contracts and Instruments. The Board, except as otherwise provided in these By-laws, may authorize any officer or officers, or 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 or ratified by the Board or within the agency power of an officer, 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 for any amount.

9.6 Books and Records. The Corporation shall keep at its principal executive office the original or a copy of these by-laws as amended to date, which by-laws shall be open to inspection by the stockholders at all reasonable times during office hours. The secretary shall, upon the written request of any stockholder, furnish to that stockholder a copy of these by-laws as amended to date.

Article X. Amendments

In addition to the right of the stockholders of the Corporation to make, alter, amend, change, add to or repeal the By-laws of the Corporation, the Board of Directors is expressly authorized to adopt, amend or repeal the By-laws of the Corporation by vote of at least a majority of the members of the Board of Directors.

CERTIFICATE OF SECRETARY

I, the undersigned, hereby certify:

1. That I am the duly elected, acting and qualified Secretary of Inter-Tel (Delaware), Incorporated, a Delaware corporation; and

2. That the foregoing By-laws, comprising 17 pages (excluding this Certificate), constitute the By-laws of such corporation as duly adopted by action of the Board of Directors of such corporation pursuant to written consent dated _____, 2006.

IN WITNESS WHEREOF, I have hereunto subscribed my name as of this _____ day of _____, 2006.

Kurt R. Kneip
Secretary

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ANNEX D

BUSINESS COMBINATION PROVISION

ARTICLE []

(a) The corporation shall not engage in any business combination with any interested [shareholder/stockholder] following the time that such [shareholder/stockholder] became an interested [shareholder/stockholder], unless at or subsequent to such time the business combination is approved by the board of directors and authorized at an annual or special meeting of [shareholder/stockholder]s, and not by written consent, by the affirmative vote of at least a majority of the outstanding voting stock which is not owned by the interested [shareholder/stockholder].

(b) As used in this article only, the term:

(1) ***Affiliate*** means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(2) ***Associate***, when used to indicate a relationship with any person, means: (i) Any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(3) ***Business combination***, when used in reference to any corporation and any interested [shareholder/stockholder] of such corporation, means:

(i) Any merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with (A) the interested [shareholder/stockholder], or (B) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested [shareholder/stockholder] and as a result of such merger or consolidation subsection (a) of this section is not applicable to the surviving entity;

(ii) Any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a [shareholder/stockholder] of such corporation, to or with the interested [shareholder/stockholder], whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation;

(iii) Any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested [shareholder/stockholder], except: (A) Pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of such corporation or any such subsidiary which securities were outstanding prior to the time that the interested [shareholder/stockholder] became such; (B) pursuant to a merger under [§10-1103(G) of the Arizona Revised Statutes][§251(g) of the Delaware General Corporation Law]; (C) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of such corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of such corporation subsequent to the time the interested [shareholder/stockholder] became such; (D) pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of said stock; or (E) any issuance or transfer of stock by the corporation; provided however, that in no case under items (C)-(E) of this subparagraph shall there be an increase in the

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interested [shareholder/stockholder] s proportionate share of the stock of any class or series of the corporation or of the voting stock of the corporation;

(iv) Any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the corporation or of any such subsidiary which is owned by the interested [shareholder/stockholder], except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested [shareholder/stockholder]; or

(v) Any receipt by the interested [shareholder/stockholder] of the benefit, directly or indirectly (except proportionately as a [shareholder/stockholder] of such corporation), of any loans, advances, guarantees, pledges or other financial benefits (other than those expressly permitted in subparagraphs (i)-(iv) of this paragraph) provided by or through the corporation or any direct or indirect majority-owned subsidiary.

(4) **Control**, including the terms **controlling**, **controlled by** and **under common control with**, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary; Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(5) **Interested [shareholder/stockholder]** means any person (other than the corporation and any direct or indirect majority-owned subsidiary of the corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the corporation, or (ii) is an affiliate or associate of the corporation and is the owner of 15% or more of the outstanding voting stock of the corporation, and the affiliates and associates of such person; provided, however, that the term interested [shareholder/stockholder] shall not include any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of action taken solely by the corporation; provided that such person shall be an interested [shareholder/stockholder] if thereafter such person acquires additional shares of voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested [shareholder/stockholder], the voting stock of the corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of paragraph (9) of this subsection but shall not include any other unissued stock of such corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(6) **Person** means any individual, corporation, partnership, unincorporated association or other entity.

(7) **Stock** means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(8) **Voting stock** means, with respect to any corporation, stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock shall refer to such percentage of the votes of such voting stock.

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(9) **Owner**, including the terms *own* and *owned*, when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

(i) Beneficially owns such stock, directly or indirectly; or

(ii) Has (A) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (B) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

(iii) Has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (B) of subparagraph (ii) of this paragraph), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

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**INTER-TEL, INCORPORATED ANNUAL MEETING OF SHAREHOLDERS
Tuesday, May 31, 2006, 8:00 A.M.
Tempe, Arizona**

This proxy is solicited by the Board of Directors for use at the Annual Meeting on May 31, 2006.

The shares of stock you hold in your account or in a dividend reinvestment account will be voted as you specify on the reverse side. **If no choice is specified, the proxy will be voted FOR Items 1 through 5.**

By signing the proxy, you revoke all prior proxies and appoint Norman Stout, Jeffrey T. Ford and Kurt R. Kneip, and each of them, with full power of substitution, to vote your shares on the matters shown on the reverse side and any other matters which may come before the Annual Meeting and all adjournments or postponements thereof.

THIS PROXY WHEN PROPERLY EXECUTED WILL BE VOTED AS DIRECTED OR, IF NO DIRECTION IS GIVEN, WILL BE VOTED FOR EACH OF PROPOSALS 1 THROUGH 5.

(CONTINUED AND TO BE SIGNED ON REVERSE SIDE)

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INTER-TEL INCORPORATED

YOUR VOTE IS IMPORTANT. PLEASE SIGN, DATE AND RETURN THE WHITE PROXY CARD TODAY IN THE POSTAGE-PAID ENVELOPE PROVIDED.

The Board of Directors Recommends a Vote FOR Items 1 through 5.

1. Election of directors:

01	Norman Stout	04	Jerry W. Chapman	07	Robert Rodin	10	Anil K. Puri
02	Alexander Cappello	05	Gary D. Edens	08	Agnieszka Winkler	11	Kenneth L. Urish
03	J. Robert Anderson	06	Steven E. Karol	09	Steven G. Mihaylo		

Vote FOR all nominees (except as marked)
 Vote WITHHELD from all nominees

(Instructions: To withhold authority to vote for any indicated nominee, write the number(s) of the nominee(s) on the line provided to the right.)

2. To approve the reincorporation of the Company into Delaware

For Against Abstain

3. To approve a special resolution authorizing the Company's Board of Directors to effect an amendment to the Company's charter documents requiring the approval of a majority of disinterested shareholders to effect certain business combination transactions involving interested parties;

For Against Abstain

4. To consider and ratify the appointment of Ernst & Young LLP as the Company's independent auditors.

For Against Abstain

5. To adjourn the meeting for the purpose of soliciting additional shareholder votes.

For Against Abstain

The Company will transact such other business as may properly come before the meeting or any adjournment thereof.

Date: _____, 2006

Signature

Signature

Title(s)

Please sign exactly as your name(s) appear hereon. If held in joint tenancy, all persons must sign. Trustees, administrators, etc., should include title and authority. Corporations should provide full name of corporation and title of authorized officer signing the proxy.