

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2013

or

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

For the transition period from ____ to ____

Commission File Number 333-184948

Heatwurx, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

45-1539785
(IRS Employer
Identification No.)

6041 South Syracuse Way, Suite 315
Greenwood Village, CO 80111
(Address of principal executive offices and Zip Code)

(303) 532-1641
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES NO

The registrant has 7,990,956 shares of common stock outstanding as of August 6, 2013.

HEATWURX, INC.
(A Development Stage Company)
FORM 10-Q
For the Quarter Ended June 30, 2013

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

HEATWURX, INC.
(A Development Stage Company)
BALANCE SHEETS

	June 30, 2013 (unaudited)	December 31, 2012
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 629,804	\$ 1,027,475
Accounts receivable	61,154	30,451
Prepaid expenses and other current assets	48,460	50,368
Inventory	198,372	48,749
Total current assets	937,790	1,157,043
EQUIPMENT, net of depreciation	297,433	316,357
INTANGIBLE ASSETS, net of amortization	2,232,144	2,410,715
TOTAL ASSETS	\$ 3,467,367	\$ 3,884,115
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	\$ 233,281	\$ 73,172
Accrued liabilities	111,279	112,482
Interest payable	2,630	2,630
Income taxes payable	50	150
Loan payable	27,579	27,218
Current portion of senior secured notes payable	990,087	-
Current portion of senior subordinated note payable	1,000,000	500,000
Total current liabilities	2,364,906	715,652
LONG-TERM LIABILITIES:		
Loan payable	92,278	106,158
Senior subordinated note payable	-	500,000
Total long-term liabilities	92,278	606,158
TOTAL LIABILITIES	\$ 2,457,184	\$ 1,321,810
COMMITMENTS AND CONTINGENCIES (NOTE 8)		
STOCKHOLDERS' EQUITY:		
Series A Preferred Stock, \$0.0001 par value, 43,000 and 600,000 issued and outstanding at June 30, 2013 and December 31, 2012, respectively; liquidation preference of \$42,171 at June 30, 2013 and \$568,490 as of December 31, 2012	\$ 4	\$ 60
Series B Preferred Stock, \$0.0001 par value, 698,603 and 1,500,000 shares issued and outstanding at June 30, 2013 and December 31, 2012, respectively; liquidation preference of \$1,586,460 at June 30, 2013 and \$3,286,685 as of December 31, 2012	70	150
Series C Preferred Stock, \$0.0001 par value, 331,000 and 760,000 shares issued and outstanding at June 30, 2013 and December 31, 2012, respectively; liquidation preference of \$709,591 at June 30, 2013 and \$1,569,172 as of December 31, 2012	33	76
Series D Preferred Stock, \$0.0001 par value, no shares issued and outstanding at June 30, 2013 and December 31, 2012	-	-
Common stock, \$0.0001 par value, 20,000,000 shares authorized; 7,029,397 and 1,900,000 shares issued and outstanding at June 30, 2013 and December 31, 2012, respectively.	703	190
Additional paid-in capital	6,041,995	5,992,636
Accumulated deficit during development stage	(5,032,622)	(3,430,807)
Total stockholders' equity	\$ 1,010,183	\$ 2,562,305
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 3,467,367	\$ 3,884,115

The accompanying notes are an integral part of these unaudited financial statements.

HEATWURX, INC.
(A Development Stage Company)
STATEMENTS OF OPERATIONS
(UNAUDITED)

	Three Months Ended June 30,		Six Months Ended June 30,		For the period from March 29, 2011 (date of inception) Through June 30, 2013
	2013	2012	2013	2012	2013
REVENUE:					
Equipment sales	\$ 96,000	\$ 97,022	\$ 115,200	\$ 111,636	\$ 305,345
Other revenue	1,280	-	1,280	-	18,814
Total revenues	97,280	97,022	116,480	111,636	324,159
COST OF GOODS SOLD	61,525	53,828	73,650	66,233	206,905
GROSS PROFIT	35,755	43,194	42,830	45,403	117,254
EXPENSES:					
Selling, general and administrative	665,605	300,318	1,402,171	690,378	3,897,737
Research and development	63,360	148,042	134,986	292,140	756,794
Total expenses	728,965	448,360	1,537,157	982,518	4,654,531
LOSS FROM OPERATIONS	(693,210)	(405,166)	(1,494,327)	(937,115)	(4,537,277)
OTHER INCOME AND EXPENSE:					
Interest income	393	-	1,034	791	5,865
Interest expense	(33,754)	(69,863)	(49,643)	(119,342)	(392,878)
Total other income and expense	(33,361)	(69,863)	(48,609)	(118,551)	(387,013)
LOSS BEFORE INCOME TAXES	(726,571)	(475,029)	(1,542,936)	(1,055,666)	(4,924,290)
Income taxes	-	(50)	-	(50)	(281)
NET LOSS	\$ (726,571)	\$ (475,079)	\$ (1,542,936)	\$ (1,055,716)	\$ (4,924,571)
Preferred Stock Cumulative Dividend	41,787	69,617	83,112	139,234	243,183
Net loss available to common stockholders	\$ (768,358)	\$ (544,696)	\$ (1,626,048)	\$ (1,194,950)	\$ (5,167,754)
Net loss per common share basic and diluted	\$ (0.34)	\$ (0.31)	\$ (0.79)	\$ (0.63)	\$ (2.36)
Weighted average shares outstanding used in calculating net loss per common share	2,233,414	1,750,000	2,067,628	1,894,231	2,193,678

The accompanying notes are an integral part of these unaudited financial statements.

HEATWURX, INC.
(A Development Stage Company)
STATEMENT OF CASH FLOWS
(UNAUDITED)

	Six Months Ended June 30,		For the period from March 29, 2011 (date of inception) through June 30, 2013
	2013	2012	
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net loss	\$ (1,542,936)	\$ (1,055,716)	\$ (4,924,571)
Adjustments to reconcile net loss to cash flows used in operating activities:			
Depreciation	26,256	775	45,963
Amortization	178,571	-	267,856
Bad debt expense	-	3,500	3,500
Non-cash expenses exchanged for services	-	-	1,694
Stock-based compensation	49,693	355,247	718,805
Changes in current assets and liabilities:			
Increase in receivables	(30,203)	(29,199)	(64,154)
Increase (decrease) in prepaid and other current assets	1,408	-	(48,960)
Increase in inventory	(149,623)	(62,474)	(198,372)
Increase (decrease) in income taxes payable	(100)	50	50
Increase in accounts payable	160,109	198,976	233,281
Increase (decrease) in accrued liabilities	(60,082)	1,076	3,228
(Decrease) increase in interest payable	-	(658)	2,630
Cash used in operating activities	(1,366,907)	(588,423)	(3,959,050)
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchases of property and equipment	(7,332)	(75,689)	(345,090)
Acquisition of business	-	-	(2,500,000)
Cash used in investing activities	(7,332)	(75,689)	(2,845,090)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of senior secured notes payable	990,087	-	2,490,087
Proceeds from issuance of senior subordinated note payable	-	-	1,000,000
Proceeds from issuance of common shares	-	-	4,000
Proceeds from exercise of options	-	-	300,000
Proceeds from issuance of Series A preferred shares	-	-	500,000
Proceeds from issuance of Series B preferred shares	-	-	3,000,000
Proceeds from issuance of Series C preferred shares	-	-	1,520,000
Loan proceeds from equipment loan payable	-	-	142,290
Loan repayment of equipment loan payable	(13,519)	-	(22,433)
Repayment of senior secured notes payable	-	-	(1,500,000)
Cash provided by financing activities	\$ 976,568	-	7,433,944
NET CHANGE IN CASH AND CASH EQUIVALENTS	(397,671)	(664,112)	629,804
CASH AND CASH EQUIVALENTS, beginning of period	1,027,475	2,794,937	-
CASH AND CASH EQUIVALENTS, end of period	\$ 629,804	\$ 2,130,825	\$ 629,804
Cash paid for interest	\$ 49,643	\$ 119,342	\$ 392,878
Cash paid for income taxes	\$ 100	\$ -	\$ 300
Dividend payable in accrued expenses	\$ 47,591	\$ -	\$ 47,591

The accompanying notes are an integral part of these unaudited financial statements.

HEATWURX, INC.
(A Development Stage Company)
NOTES TO FINANCIAL STATEMENTS (UNAUDITED)

11. PRINCIPAL BUSINESS ACTIVITIES:

Organization and Business - Heatwurx, Inc., a Delaware corporation ("Heatwurx," or the "Company"), is a development stage, asphalt repair equipment and technology company. Heatwurx was incorporated on March 29, 2011 as Heatwurxaq, Inc. and subsequently changed its name to Heatwurx, Inc. on April 15, 2011. (Note 4)

Development Stage - From the date of incorporation, the Company has been in the development stage and therefore is classified as a development stage company.

2. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Basis of Presentation - These unaudited interim financial statements and related notes are presented in accordance with the accounting principles generally accepted in the United States ("U.S. GAAP"). Accordingly, they do not include all disclosures required in the annual financial statements by U.S. GAAP. In the opinion of management, the accompanying unaudited interim financial statements contain all adjustments considered necessary to present fairly in all material respects the financial position as of June 30, 2013.

These financial statements should be read in conjunction with the audited financial statements and accompanying notes for the year ended December 31, 2012, and have been prepared on a consistent basis with the accounting policies described in Note 2 - Summary of Significant Accounting Policies of the Notes to Financial Statements included in our registration statement on Form S-1/A for the year ended December 31, 2012. Our accounting policies did not change in the second quarter or first half of 2013. Operating results for the three months and six months ended June 30, 2013 are not necessarily indicative of the results that may be expected for the year ending December 31, 2013 or any future period.

The Company's financial statements are prepared using U.S. GAAP applicable to a going concern which contemplates the realization of assets and liquidation of liabilities in the normal course of business.

The Company also faces certain risks and uncertainties which are present in many emerging companies regarding product development, future profitability, ability to obtain future capital, protection of patents and property rights, competition, rapid technological change, government regulations, recruiting and retaining key personnel, and third party manufacturing organizations.

To date we have relied exclusively on private placements with a small group of investors to finance our business and operations. We have had little revenue since our inception. For the first half of 2013, the Company incurred a net loss of \$1,542,936 a working capital deficit of \$1,427,116 and utilized \$1,366,907 in cash flows from operating activities. The Company had cash on hand of approximately \$630,000 as of June 30, 2013. Successful completion of the Company's development program and its transition to profitable operations is dependent upon obtaining additional financing adequate to fulfill its development and commercialization activities, and achieve a level of revenues adequate to support the Company's cost structure. Many of the Company's objectives to establish profitable business operations rely upon the occurrence of events outside its control; there is no assurance that the Company will be successful in accomplishing these objectives. We cannot assure that additional debt or equity or other funding will be available to us on acceptable terms, if at all. If we fail to obtain additional funding when needed, we would be forced to scale back, or terminate our operations, or seek to merge with or be acquired by another company.

The Company has incurred operating losses, accumulated deficit and negative cash flows from operations since inception. As of June 30, 2013, the Company had an accumulated deficit of approximately \$5,033,000. The Company had a working capital deficit of approximately \$1,427,000 as of June 30, 2013 and notes payable of \$2,000,000 due within the next 12 months. The issues described above raise substantial doubt about the Company's ability to continue as a going concern. Management of the Company intends to address these issues by raising additional capital through a through a private placement of equity or debt securities. If we successfully complete these transactions, we believe the proceeds we will receive from them will be sufficient to fund our operations, including our expected capital expenditures, through at least the next twelve months.

Management anticipates that the Company will require additional funds to continue operations. As of June 30, 2013, we had approximately \$630,000 cash on hand and were spending approximately \$250,000 per month, of which only a minor amount was satisfied by gross proceeds from operations. Hence, the amount of cash on hand is not adequate to meet our operating expenses over the next twelve months. In May 2013, we raised \$1,000,000 pursuant to the terms of a Senior Loan Agreement and the issuance of Senior Secured Promissory Notes. In connection with these loans, we paid each investor an origination fee of 1.5%, for a total of \$15,000. These promissory notes mature on September 15, 2013, and bear interest at 12% per annum. Interest is payable monthly commencing on the first day of the month following the issuance date of the notes. The loans are secured by all of our assets, except for certain equipment we have previously financed. Mr. Giles has agreed to subordinate to these lenders his security interest in our assets granted under the Subordinated Security Agreement dated April 15, 2011, between us and Mr. Giles entered into in connection with the senior subordinated note issued to him in the amount of \$1,000,000. In regards to the notes payable, we have an obligation to make principal payments of \$1,000,000 on September 15, 2013 for our senior secured promissory notes and a series of principal payments totaling \$1,000,000 on our current senior subordinated note payable beginning in October 2013 through April 2014. We anticipate the need to secure funding of up to approximately \$4,500,000 over the next twelve months to meet our cash flow requirements and repay our secured debt.

The accompanying unaudited financial statements do not include any adjustments to reflect the possible future effects on the recoverability of assets or the amounts and classification of liabilities that might result should the Company be unable to continue as a going concern.

Recent Accounting Pronouncements - From time to time, the Financial Accounting Standards Board ("FASB") or other standard setting bodies issue new accounting pronouncements. Updates to the FASB Accounting Standards Codification are communicated through issuance of an Accounting Standards Update ("ASU"). Unless otherwise discussed, we believe that the impact of recently issued guidance, whether adopted or to be adopted in the future, is not expected to be material to our financial statements upon adoption.

3. PROPERTY AND EQUIPMENT:

A summary of the cost of property and equipment, by component, and the related accumulated depreciation is as follows:

	June 30, 2013	December 31, 2012
	(unaudited)	
Computer equipment & software	\$ 20,561	\$ 14,285
Demo equipment	322,488	321,432
	343,049	335,717
Accumulated depreciation	(45,616)	(19,360)
	\$ 297,433	\$ 316,357

Depreciation expense was \$13,223 and \$26,256 for the three and six months ended June 30, 2013 and \$715 and \$775 for the three and six months ended June 30, 2012.

4. ACQUISITION:

On April 15, 2011, the Company entered into an Asset Purchase Agreement with an individual who is a founder and a current stockholder. Pursuant to the agreement, the Company purchased the related business and activities of the design, manufacture and distribution of asphalt repair machinery under the Heatwurx brand. The total purchase price was \$2,500,000. The purchase price was paid in a \$1,500,000 cash payment and the issuance of a senior subordinated note to the seller in the amount of \$1,000,000. (Note 5)

The business essentially consisted of the investment in research and development of the technology, the patents applied for as a result of the research and development activities and certain business relationships that were in process, but not finalized as of the acquisition date. Collectively, these investments constitute the in-process research and development we refer to as the "asphalt preservation and repair solution." The Company capitalized \$2,500,000 of in-process research and development related to this asphalt preservation and repair solution. As of October 1, 2012, in-process research and development is now classified as developed technology and amortized over its estimated useful life of 7 years. The estimated fair value of the in-process research and development was determined using the income approach. Under the income approach, the expected future cash flows from the asset are estimated and discounted to its net present value at an appropriate risk-adjusted rate of return.

In conjunction with the Asset Purchase Agreement, the Company granted 200,000 performance stock options to a founder of the Company with an exercise price of \$0.40 per share and a term of 7 years. Following the effectiveness of the 7 for 1 stock split that was completed in October 2011, the 200,000 performance stock options were exchanged for 1,400,000 performance stock options with an exercise price of \$0.057 per share.

The performance stock options will vest in full on the occurrence of any the following: (1) The Company achieves total revenue in the twelve month period ended April 2013 of \$24,750,000 determined in accordance with U.S. GAAP; (2) the Company achieves total revenue in the twelve month period ended April 2014 of \$49,500,000; or (3) the Company achieves total revenue in the twelve month period ended April 2015 of \$99,000,000. If the performance stock options do not vest per the aforementioned vesting schedule, the performance stock options will immediately terminate and expire.

The performance stock options are being accounted for as contingent consideration and were recognized at its estimated fair value at the acquisition date in the amount of \$0. In order for the options to vest, as described above, the Company must achieve certain revenue targets within three years from December 31, 2012. In order to determine the fair value of the options granted, the Company prepared a forecast of the probability that the targets would be achieved, with a focus on the 2013 revenue given the uncertainty of forecasting revenue for years 2014 and 2015 given the Company's development stage. The Company prepared three scenarios only one of which resulted in the options vesting. The Company's forecasts indicated a 95% probability that the options would not vest and therefore would have no value. Although the third scenario did result in the options vesting, as the probability was only 5%, the value associated with this scenario was immaterial.

5. NOTES PAYABLE:

Senior Secured Notes Payable - The Company issued senior secured promissory notes totaling \$1,000,000 on May 22, 2013. The notes bear interest at a rate of 12% per annum and is payable monthly on the first day of each month. The notes are secured by all of our assets, except for certain equipment we have previously financed. The entire principal balance and all accrued interest is due September 15, 2013. Mr. Gus Blass III, a member of our board of directors and a stockholder, holds \$125,000 of this debt in an individual capacity and \$125,000 through an entity in which he is a managing member.

Senior Subordinated Note Payable - The Company issued a senior subordinated note payable in the amount of \$1,000,000 on April 15, 2011 to Richard Giles, a founder, stockholder and former director of the Company. The note bears interest at a rate of 6% per annum and matures on April 15, 2014. The holder of the senior subordinated note has agreed to subordinate to the lenders of the senior secured notes his security interest in our assets granted under the Subordinated Security Agreement dated April 15, 2011. As of June 30, 2013, the note is subject to mandatory principal payments as follows:

<u>Date of Payment</u>	<u>Amount of Payment</u>
October 15, 2013	\$ 250,000
December 15, 2013	250,000
February 15, 2014	250,000
April 15, 2014	250,000
Total principal payments	\$ 1,000,000

Interest on the senior subordinated note payable totaling \$2,630 was outstanding at June 30, 2013.

Loan Payable - In September 2012, the Company financed the purchase of equipment used for transport and demonstration of our equipment. The note, in the original amount of \$142,290, bears interest at a rate of 2.6% per annum and matures on September 4, 2017.

As of June 30, 2013, the note is subject to mandatory principal payments as follows:

<u>Year ending December 31,</u>	<u>Payments</u>
2013	\$ 20,481
2014	27,944
2015	28,689
2016	29,454
2017	20,071
Total principal payments	\$ 126,639

6. STOCKHOLDERS' EQUITY

Common Stock - The Company has authorized 20,000,000 common shares with a \$0.0001 par value. As of June 30, 2013 there were 7,029,397 common shares outstanding.

Preferred Stock - The Company has authorized 4,500,000 shares of Preferred Stock with a \$0.0001 par value, of which 600,000 shares were designated as Series A Preferred Stock, 1,500,000 shares were designated as Series B Preferred Stock, 760,000 shares were designated as Series C Preferred stock, and 1,500,000 were designated as Series D Preferred Stock.

Series A Preferred Stock - As of June 30, 2013 there were 43,000 shares of Series A Preferred Stock outstanding.

During the three months ended June 30, 2013; 557,000 Series A preferred shares were converted to common shares at a ratio of 7:1. The Series A Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Series A Preferred Stock accrue dividends at the rate per annum of \$0.066664. The conversion of Series A preferred shares to common shares resulted in a release of \$72,015 in accumulated dividends during the three months ended June 30, 2013. At June 30, 2013 Series A Preferred Stock had dividends accumulated of \$6,338. No dividends have been declared, therefore there are no amounts accrued on the balance sheet.

The holders of the Series A Preferred Stock have conversion rights equivalent to such number of fully paid and non-assessable shares of common stock as is determined by dividing the Series A original issue price of \$0.8333 by the then applicable conversion price. The conversion ratio is subject to customary anti-dilution adjustments, including in the event that the Company issues equity securities at a price equivalent to or less than the conversion price in effect immediately prior to such issue.

The holders of Series A Preferred Stock have a liquidation preference over the holders of the Company's common stock equivalent to the purchase price per share of the Series A Preferred Stock plus any accrued and unpaid dividends, whether or not declared, on the Series A Preferred Stock. A liquidation would be deemed to occur upon the happening of customary events, including transfer of all or substantially all of the Company's common stock or assets or a merger, or consolidation. The Company believes that such liquidation events are within its control and therefore has classified the Series A Preferred Stock in stockholders' equity.

The holders of Series A Preferred Stock vote together as a single class with the holders of the Company's common stock on all action to be taken by the Company's stockholders. Each share of Series A Preferred Stock entitles the holder to the number of votes equal to the number of shares of common stock into which the shares of the Series A Preferred Stock are convertible into as of the record date for determining stockholders entitled to vote on such matter.

In connection with the issuance of Series A Preferred Stock, the Company entered into an Investors' Rights Agreement (the "Rights Agreement"). The Rights Agreement provides that holders of at least 40% of the Series A Preferred Stock, including common stock into which the Series A Preferred Stock has been converted, may demand and cause the Company to register a Form S-1 or Form S-3, if eligible, on their behalf for the shares of common stock issued, issuable or that may be issuable upon conversion of the Series A Preferred Stock (the "Registrable Securities"). Whenever required under this agreement to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective.

Series B Preferred Stock - As of June 30, 2013 there were 698,603 shares of Series B Preferred Stock outstanding.

During the three months ended June 30, 2013; 801,397 Series B preferred shares were converted to common shares. The Series B Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Series B Preferred Stock accrue dividends at the rate per annum of \$0.16 per share. The conversion of Series B preferred shares to common shares resulted in a release of \$156,609 in accumulated dividends during the three months ended June 30, 2013. At June 30, 2013, Series B Preferred Stock had dividends accumulated of \$189,254. No dividends have been declared, therefore there are no amounts accrued on the balance sheet.

The holders of the Series B Preferred Stock have conversion rights equivalent to such number of fully paid and non-assessable shares of common stock as is determined by dividing the Series B original issue price of \$2.00 by the then applicable conversion price. The conversion ratio is subject to customary anti-dilution adjustments, including in the event that the Company issues equity securities at a price equivalent to or less than the conversion price in effect immediately prior to such issue.

The holders of Series B Preferred Stock have a liquidation preference over the holders of the Company's common stock equivalent to the purchase price per share of the Series B Preferred Stock plus any accrued and unpaid dividends, whether or not declared, on the Series B Preferred Stock. A liquidation would be deemed to occur upon the happening of customary events, including transfer of all or substantially all of the Company's common stock or assets or a merger, or consolidation. The Company believes that such liquidation events are within its control and therefore the Company has classified the Series B Preferred Stock in stockholders' equity.

The holders of Series B Preferred Stock vote together as a single class with the holders of the Company's common stock on all action to be taken by the Company's stockholders. Each share of Series B Preferred Stock entitles the holder to the number of votes equal to the number of shares of common stock into which the shares of the Series B Preferred Stock are convertible into as of the record date for determining stockholders entitled to vote on such matter.

In connection with the issuance of Series B Preferred Stock, the Company entered into an Investors' Rights Agreement with the same terms and conditions as the Rights Agreement for the Series A Preferred Stock described above.

Series C Preferred Stock - As of June 30, 2013 there were 331,000 shares of Series C Preferred Stock outstanding.

During the three months ended June 30, 2013; 429,000 Series C preferred shares were converted to common shares. The Series C Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Series C Preferred Stock accrue dividends at the rate per annum of \$0.16 per share. Dividends of \$60,461 were paid upon the conversion of Series C preferred shares to common shares. At June 30, 2013, Series C Preferred Stock had dividends accumulated of \$47,591. As dividends are accrued and payable quarterly on the Series C Preferred Stock, the Company has accrued \$47,591 for dividends payable in accrued expenses as of June 30, 2013.

The holders of the Series C Preferred Stock have conversion rights equivalent to such number of fully paid and non-assessable shares of common stock as is determined by dividing the Series C original issue price of \$2.00 by the then applicable conversion price. The conversion ratio is subject to customary anti-dilution adjustments, including in the event that the Company issues equity securities at a price equivalent to or less than the conversion price in effect immediately prior to such issue.

The holders of Series C Preferred Stock have a liquidation preference over the holders of the Company's common stock equivalent to the purchase price per share of the Series C Preferred Stock plus any accrued and unpaid dividends, whether or not declared, on the Series C Preferred Stock. A liquidation would be deemed to occur upon the happening of customary events, including transfer of all or substantially all of the Company's common stock or assets or a merger, or consolidation. The Company believes that such liquidation events are within its control and therefore the Company has classified the Series C Preferred Stock in stockholders' equity.

The holders of Series C Preferred Stock vote together as a single class with the holders of the Company's common stock on all action to be taken by the Company's stockholders. Each share of Series C Preferred Stock entitles the holder to the number of votes equal to the number of shares of common stock into which the shares of the Series C Preferred Stock are convertible into as of the record date for determining stockholders entitled to vote on such matter.

In connection with the issuance of Series C Preferred Stock, the Company entered into an Investors' Rights Agreement with the same terms and conditions as the Rights Agreement for the Series A Preferred Stock described above.

Series D Preferred Stock - As of June 30, 2013 there were no shares of Series D Preferred Stock outstanding.

On June 21, 2013, the Company offered 1,500,000 units at \$3.00 per unit for potential total proceeds of \$4,500,000. Each unit consists of one share of Series D Preferred Stock and one-half common stock purchase warrant, with each whole warrant exercisable at \$3.00 per share. The Series D Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Series D Preferred Stock accrue dividends at the rate of 8%, payable on a quarterly basis.

The holders of the Series D Preferred Stock have conversion rights equivalent to such number of fully paid and non-assessable shares of common stock as is determined by dividing the Series D original issue price of \$3.00 by the then applicable conversion price. The conversion ratio is subject to customary anti-dilution adjustments, including in the event that the Company issues equity securities at a price equivalent to or less than the conversion price in effect immediately prior to such issue.

The holders of Series D Preferred Stock have a liquidation preference over the holders of the Company's common stock equivalent to the purchase price per share of the Series D Preferred Stock plus any accrued and unpaid dividends, whether or not declared, on the Series D Preferred Stock. A liquidation would be deemed to occur upon the happening of customary events, including transfer of all or substantially all of the Company's common stock or assets or a merger, or consolidation. The Company believes that such liquidation events are within its control and therefore the Company has classified the Series D Preferred Stock in stockholders' equity.

The holders of Series D Preferred Stock vote together as a single class with the holders of the Company's common stock on all action to be taken by the Company's stockholders. Each share of Series D Preferred Stock entitles the holder to the number of votes equal to the number of shares of common stock into which the shares of the Series D Preferred Stock are convertible into as of the record date for determining stockholders entitled to vote on such matter.

Each unit will include one-half warrant. Each full warrant grants the right to purchase a share of our common stock. The Warrants will be exercisable by the holders at any time on or after the issuance date of the Warrants and through and including July 31, 2014.

Treasury Stock Transaction

Effective January 26, 2012 two of our founders, including our former Chief Executive Officer, Mr. Larry Griffin, severed their ties with the Company upon execution of a settlement agreement with us. At the time of their departure from the Company, each of them returned 525,000 shares of common stock to the Company for cancellation to assist the Company and provide for a better capitalization to all the investors, and sold their remaining shares to other private individuals with no proceeds going to the Company. The settlement agreement did not provide for payment by us or the founders.

Stock Options

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Life (Years)
Balance, December 31, 2011	300,000	\$ 2.00	
Granted	872,000	\$ 2.00	
Exercised	(150,000)	\$ 2.00	
Cancelled	-	\$ -	
Balance, December 31, 2012	1,022,000	\$ 2.00	4.30
Granted	10,000	\$ 3.00	
Exercised	-	\$ -	
Cancelled	-	\$ -	
Balance, June 30, 2013	1,032,000	\$ 2.01	3.72
Exercisable, December 31, 2012	710,000	\$ 2.00	
Exercisable, June 30, 2013	732,000	\$ 2.00	

On June 20, 2013, the Board of Directors approved the grant of 10,000 options to the Company's Secretary, in accordance with the terms of the 2011 Equity Incentive Plan, as amended. The Options vest immediately and have an exercise price of \$3.00 per share, with an expiration date of five years from the grant date.

The fair value of each stock option granted was estimated on the date of grant using the Black Scholes option pricing model with the following assumptions:

	June 30, 2013
Risk-free interest rate range	0.62% - 0.91%
Expected life	5.0 years
Vesting Period	0 - 4 Years
Expected volatility	39%
Expected dividend	-
Fair value range of options at grant date	\$0.675- \$0.705

The Company recorded stock-based compensation expense of \$30,371 and \$49,693 during the three and six months ended June 30, 2013, respectively. The Company recorded stock-based compensation expense of \$73,368 and \$355,247 during the three and six months ended June 30, 2012, respectively.

As of June 30, 2013 there was \$142,782 of unrecognized compensation expense related to the issuance of the stock options.

Performance Stock Options

There were no performance Stock options granted during the three and six months ended June 30, 2013.

	Number of Options	Weighted Average Exercise Price
Balance, December 31, 2011	1,400,000	\$ 0.06
Granted	40,000	\$ 2.00
Exercised	-	\$ -
Cancelled	-	\$ -
Balance, June 30, 2013 and December 31, 2012	1,440,000	\$ 0.11
Exercisable, June 30, 2013 and December 31, 2012	40,000	\$ 2.00

See Note 4 for further discussion of the performance options.

7. NET LOSS PER COMMON SHARE:

The Company computes loss per share of common stock using the two-class method required for participating securities. Our participating securities include all series of our convertible preferred stock. Undistributed earnings allocated to these participating securities are added to net loss in determining net loss attributable to common stockholders. Basic and Diluted loss per share are computed by dividing net loss attributable to common stockholder by the weighted-average number of shares of common stock outstanding.

Outstanding options were not included in the computation of diluted loss per share because the options' exercise price was greater than the average market price of the common shares and, therefore, the effect would be anti-dilutive.

The calculation of the numerator and denominator for basic and diluted net loss per common share is as follows:

	For the three months ended		For the six months ended		For the period
	June 30,		June 30,		from March 29,
	2013	2012	2013	2012	2011 (date of inception) through June 30, 2013
Net Loss	\$ (726,571)	\$ (475,079)	\$ (1,542,936)	\$ (1,055,716)	\$ (4,924,571)
Basic and diluted:					
Preferred stock cumulative dividend - Series A	715	9,945	1,421	19,890	6,338
Preferred stock cumulative dividend - Series B	27,868	59,672	55,429	119,344	189,254
Preferred stock cumulative dividend - Series C	13,204	-	26,262	-	47,591
Net income available to preferred stockholders	41,787	69,617	83,112	139,234	243,183
Net loss attributable to common stockholders	(768,358)	(544,696)	(1,626,048)	(1,194,950)	(5,167,754)

8. COMMITMENTS AND CONTINGENCIES:

Lease Commitments - On July 18, 2012, the Company entered into a thirteen month lease for office space for our corporate headquarters located in Greenwood Village, Colorado. Under the terms of the lease agreement, the Company leased approximately 2,244 square feet of general office space. The lease term commenced on July 23, 2012 and continues through August 31, 2013.

Total rent expense for the three and six months ended June 30, 2013 was \$8,819 and \$17,639, respectively. Rent expense for the three and six months ended June 30, 2012 was \$4,248 and \$6,732, respectively.

The Company's remaining commitment under its current lease term for 2013 is approximately \$5,000.

Purchase Commitments - As of June 30, 2013, the Company has a commitment to its manufacturer to purchase equipment totaling approximately \$194,000.

9. RELATED PARTY TRANSACTIONS:

During the three and six months ended June 30, 2013, the Company paid consulting fees of \$47,400 and \$94,800, respectively to Richard Giles, a founder, stockholder and former director of the Company. During the three and six months ended June 30, 2012 the Company paid consulting fees of \$37,700 and \$75,400, respectively to Richard Giles. There were no other payments to related parties during the three months ended June 30, 2012. During the six months ended June 30, 2012 the company also paid consulting fees of \$12,500 to Larry Griffin, a founder, and former executive officer of the Company.

10. SUBSEQUENT EVENTS:

On June 21, 2013, the Company offered 1,500,000 units at \$3.00 per unit for potential total proceeds of \$4,500,000. As of August 6, 2013 we have issued 317,830 shares, and warrants to purchase 158,915 shares of common stock for total gross proceeds of \$953,490 discussed further in Note 6 Stockholders' Equity.

On July 25, 2013, the Company signed an extension of 6 months for the lease of the corporate headquarters office space, extending the lease term to February 28, 2014. The new six month lease commitment is approximately \$19,000.

On July 15, 2013 the company paid approximately \$61,000 to the manufacturer for equipment disclosed in Note 8 Commitments and Contingencies. The Company's current commitment to its manufacturer is \$133,000.

As of August 6, 2013; 43,000 Series A preferred shares, 461,559 Series B preferred shares and 199,000 Series C preferred shares were converted into a total of 961,559 common shares subsequent to June 30, 2013. Dividends of \$23,466 were paid upon the conversion of Series C preferred shares to common shares subsequent to the June 30, 2013 reporting date. As of August 6, 2013 there were 7,990,956 common shares outstanding.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATION

The following discussion and analysis should be read in conjunction with the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section and audited consolidated financial statements and related notes thereto included in our S-1 Registration Statement, as amended, and with the unaudited condensed consolidated financial statements and related notes thereto presented in this Quarterly Report on Form 10-Q.

Forward-Looking Statements

The statements contained in this report that are not historical facts are forward-looking statements that represent management's beliefs and assumptions based on currently available information. Forward-looking statements include the information concerning our possible or assumed future results of operations, business strategies, need for financing, competitive position, potential growth opportunities, potential operating performance improvements, ability to retain and recruit personnel, the effects of competition and the effects of future legislation or regulations. Forward-looking statements include all statements that are not historical facts and can be identified by the use of forward-looking terminology such as the words "believes," "intends," "may," "should," "anticipates," "expects," "could," "plans," or comparable terminology or by discussions of strategy or trends. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we cannot give any assurances that these expectations will prove to be correct. Such statements by their nature involve risks and uncertainties that could significantly affect expected results, and actual future results could differ materially from those described in such forward-looking statements.

Factors that may cause actual results to differ materially from current expectations include, but are not limited to:

- risks associated with the asphalt repair industry, including competition, increases in wages, labor relations, energy and fuel costs, actual and threatened pandemics, actual and threatened terrorist attacks, and downturns in domestic and international economic and market conditions;
- risks associated with the asphalt repair industry, including changes in laws or regulations, increases in taxes, rising insurance premiums, costs of compliance with environmental laws and other governmental regulations;
- the availability and terms of financing and capital and the general volatility of securities markets;
- changes in the competitive environment in the asphalt repair industry;
- risks related to natural disasters;
- litigation; and
- other risk factors discussed in the S-1 Registration Statement, as amended, filed by the Company with the Securities and Exchange Commission.

Should one or more of these risks materialize (or the consequences of such a development worsen), or should the underlying assumptions prove incorrect, actual results could differ materially from those expected. We disclaim any intention or obligation to update publicly or revise such statements whether as a result of new information, future events or otherwise.

Overview and Basis of Presentation

Heatwurx, Inc. was incorporated under the laws of the State of Delaware on March 29, 2011 as Heatwurxaq, Inc. and subsequently changed its name to Heatwurx, Inc. on April 15, 2011. We have not yet commercialized our products and we are therefore classified as a development stage enterprise.

We are an asphalt preservation and repair equipment company. Our innovative, and eco-friendly hot-in-place recycling process corrects surface distresses within the top 3 inches of existing pavement by heating the surface material to a temperature between 350° and 400° Fahrenheit with our electrically powered infrared heating equipment, mechanically loosening the heated material with our processor/tiller attachment that is optimized for producing a seamless repair, and mixing in additional recycled asphalt pavement and a binder (asphalt-cement), and then compacting repaired area with a vibrating roller or compactor. We consider our equipment to be eco-friendly as the Heatwurx process reuses and rejuvenates distressed asphalt, uses recycled asphalt pavement for filler material, eliminates travel to and from asphalt batch plants, and extends the life of the roadway. We believe our equipment, technology and processes provide savings over other processes that can be more labor and equipment intensive.

Section 107 of the JOBS Act provides that an “emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. In other words, an “emerging growth company” can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to “opt out” of such extended transition period, and as a result, we will comply with new or revised standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies. Section 107 of the JOBS Act provides that our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

Results of operations

The following discussion of the financial condition and results of operations should be read in conjunction with the financial statements included herewith. This discussion should not be construed to imply that results discussed herein will necessarily continue into the future, or that any conclusion reached herein will necessarily be indicative of actual operating results in the future.

Six months ended June 30, 2013 compared to the six months ended June 30, 2012

Our results of operations include the activity of the successor for the six months ended June 30, 2013 and 2012 and the period from March 29, 2011 (date of inception) through June 30, 2013. For the six months ended June 30, 2013, our net loss was \$1,542,936, compared to a net loss of \$1,055,716. Further description of these losses is provided below.

Revenue

Revenue increased to approximately \$116,000 for the six months ended June 30, 2013 from approximately \$112,000 for the six months ended June 30, 2012.

Given we are still in a start-up stage, sales of our equipment have not been material to date. Accordingly, for accounting purposes we consider ourselves to be a development stage company.

Cost of goods sold

Cost of goods sold increased to approximately \$74,000 for the six months ended June 30, 2013 from approximately \$66,000 for the six months ended June 30, 2012.

Selling, general and administrative

Selling, general and administrative expenses increased to approximately \$1,402,000 for the six months ended June 30, 2013 from approximately \$690,000 for the six months ended June 30, 2012. The increase in selling, general and administrative expenses is principally due to increased employee expenses related to the hiring of company employees of approximately \$183,000, increased costs of approximately \$247,000 in advertising and promotion activities related to business development, increased costs (including legal fees, accounting fees and other items) of approximately \$78,000, and an increase in depreciation and amortization of approximately \$204,000.

Research and Development

Research and development decreased to approximately \$135,000 for the six months ended June 30, 2013 from approximately \$292,000 for the six months ended June 30, 2012. The principal reason for the decrease is due to fewer legal and other intellectual property consulting fees related to certain patent applications on technology and processes that may be patentable.

For the three months ended June 30, 2013 compared to the three months ended June 30, 2012

For the quarter ended June 30, 2013, our net loss was \$726,571, compared to a net loss of \$475,079. Further description of these losses is provided below.

Revenue

Revenue remained consistent at approximately \$97,000 for the three months ended June 30, 2013 and 2012.

Cost of goods sold

Cost of goods sold increased to approximately \$62,000 for the three months ended June 30, 2013 from approximately \$54,000 for the three months ended June 30, 2012.

Selling, general and administrative

Selling, general and administrative expenses increased to approximately \$666,000 for the three months ended June 30, 2013 from approximately \$300,000 for the three months ended June 30, 2012. The increase in selling, general and administrative expenses is principally due to increased employee expenses related to the hiring of company employees of approximately \$179,000, increased costs of approximately \$103,000 in advertising and promotion activities related to business development, an increase in depreciation and amortization of approximately \$102,000; offset by decreased costs (including legal fees, accounting fees and IPO related items) of approximately \$19,000.

Research and Development

Research and development decreased to approximately \$63,000 for the three months ended June 30, 2013 from approximately \$148,000 for the three months ended June 30, 2012. The principal reason for the decrease is due to fewer legal and other intellectual property consulting fees related to certain patent applications on technology and processes that may be patentable.

Liquidity and capital resources

To date we have relied exclusively on private placements with a small group of investors to finance our business and operations. We have had little revenue since our inception. For the first half of 2013, the Company incurred a net loss of \$1,542,936 a working capital deficit of \$1,427,116 and utilized \$1,366,907 in cash flows from operating activities. The Company had cash on hand of approximately \$630,000 as of June 30, 2013. Successful completion of the Company's development program and its transition to profitable operations is dependent upon obtaining additional financing adequate to fulfill its development and commercialization activities, and achieve a level of revenues adequate to support the Company's cost structure. Many of the Company's objectives to establish profitable business operations rely upon the occurrence of events outside its control; there is no assurance that the Company will be successful in accomplishing these objectives. We cannot assure that additional debt or equity or other funding will be available to us on acceptable terms, if at all. If we fail to obtain additional funding when needed, we would be forced to scale back, or terminate our operations, or seek to merge with or be acquired by another company.

The Company has incurred operating losses, accumulated deficit and negative cash flows from operations since inception. As of June 30, 2013, the Company had an accumulated deficit of approximately \$5,033,000. The Company had a working capital deficit of approximately \$1,427,000 as of June 30, 2013 and notes payable of \$2,000,000 due within the next 12 months. The issues described above raise substantial doubt about the Company's ability to continue as a going concern. Management of the Company intends to address these issues by raising additional capital through a private placement of equity or debt securities. If we successfully complete these transactions, we believe the proceeds we will receive from them will be sufficient to fund our operations, including our expected capital expenditures, through at least the next twelve months.

Management anticipates that the Company will require additional funds to continue operations. As of June 30, 2013, we had approximately \$630,000 cash on hand and were spending approximately \$250,000 per month, of which only a minor amount was satisfied by gross proceeds from operations. Hence, the amount of cash on hand is not adequate to meet our operating expenses over the next twelve months. In May 2013, we raised \$1,000,000 pursuant to the terms of a Senior Loan Agreement and the issuance of Senior Secured Promissory Notes. In connection with these loans, we paid each investor an origination fee of 1.5%, for a total of \$15,000. These promissory notes mature on September 15, 2013, and bear interest at 12% per annum. Interest is payable monthly commencing on the first day of the month following the issuance date of the notes. The loans are secured by all of our assets, except for certain equipment we have previously financed. Mr. Giles has agreed to subordinate to these lenders his security interest in our assets granted under the Subordinated Security Agreement dated April 15, 2011, between us and Mr. Giles entered into in connection with the senior subordinated note issued to him in the amount of \$1,000,000. In regards to the notes payable, we have an obligation to make principal payments of \$1,000,000 on September 15, 2013 for our senior secured promissory notes and a series of principal payments totaling \$1,000,000 on our current senior subordinated note payable beginning in October 2013 through April 2014. We anticipate the need to secure funding of up to approximately \$4,500,000 over the next twelve months to meet our cash flow requirements and repay our secured debt.

On June 21, 2013, the Company offered 1,500,000 units at \$3.00 per unit for potential total proceeds of \$4,500,000. Each unit consists of one share of Series D Preferred Stock and one-half warrant, with each whole warrant exercisable at \$3.00 per share. The Series D Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Series D Preferred Stock accrue dividends at the rate of 8%, payable on a quarterly basis. As of August 6, 2013 we have issued 317,830 shares, and warrants to purchase 158,915 shares of common stock for total gross proceeds of \$953,490.

The issues described above raise substantial doubt about the Company's ability to continue as a going concern. We believe if the Series D Preferred stock offering is successful the proceeds we will receive will be sufficient to fund our operations, including our expected capital expenditures, through the next twelve months. Without these additional funds, we may be required to reduce operations, curtail any future growth opportunities, or cease operations all together.

Off-Balance Sheet arrangements

None

Recent accounting pronouncements

There were no new accounting pronouncements issued during the six months ended June 30, 2013 that had a material impact or are anticipated to have a material impact on our financial position, cash flows or operating results.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As a smaller reporting company, we have elected not to provide the information for this item.

ITEM 4. CONTROLS AND PROCEDURES

Our principal executive officer, Stephen Garland, and our principal financial and accounting officer, Allen Dodge, have concluded, based on their evaluation, as of the end of the period covered by this report, that our disclosure controls and procedures (as defined in Rule 15d-15(e) under the Exchange Act) are (1) effective to ensure that material information required to be disclosed by us in reports filed or submitted by us under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, and (2) designed to ensure that material information required to be disclosed by us in such reports is accumulated, organized and communicated to our management, including our principal executive officer and principal financial officer, as appropriated, to allow timely decisions regarding required disclosure.

There were no changes in our internal control over financial reporting (as defined in Exchange Act Rule 13a - 15(f)) during the quarter ended June 30, 2013 that have materially affected, or are reasonably likely to materially affect our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1A. RISK FACTORS

See "Risk Factors" as disclosed in the S-1 Registration Statement, as amended, as filed with the Securities and Exchange Commission on May 23, 2013.

ITEM 6. EXHIBITS

SEC Ref. No.	Title of Document
3.1	Certificate of Incorporation, as amended
31.1	Rule 15d-14(a) Certification by Principal Executive Officer
31.2	Rule 15d-14(a) Certification by Principal Financial Officer
32.1	Section 1350 Certification of Principal Executive Officer
32.2	Section 1350 Certification of Principal Financial Officer

SIGNATURES

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

HEATWURX, INC.

Dated: August 8, 2013

By: /s/ Stephen Garland
Stephen Garland, Chief Executive Officer
(Principal Executive Officer)

Dated: August 8, 2013

By: /s/ Allen Dodge
Allen Dodge, Chief Financial Officer
(Principal Accounting Officer)

Exhibit 3.1

**THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION, AS AMENDED
OF
HEATWURX, INC.**

Stephen Garland hereby certifies that:

ONE: The date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was March 29, 2011 under the name Heartwurxaq, Inc.

TWO: He is the duly elected and acting Chief Executive Officer of Heatwurx, Inc., a Delaware corporation.

THREE: The Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I: NAME

The name of this corporation is Heatwurx, Inc. (the "Corporation").

ARTICLE II: REGISTERED OFFICE AND AGENT

The address of the corporation's registered office in the State of Delaware is 160 Greentree Drive, Suite 101, City of Dover, County of Kent, Delaware 19904. The name of the corporation's registered agent at such address is National Registered Agents, Inc.

ARTICLE III: PURPOSE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "General Corporation Law").

ARTICLE IV: AUTHORIZED SHARES

The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 20,000,000 shares of Common Stock, \$0.0001 par value per share ("Common Stock"), and (ii) 4,500,000 shares of Preferred Stock, \$0.0001 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.
2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings), and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.
3. Dividends. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.
4. Liquidation. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 3 of Division (B) of this Article Fourth.
5. Redemption. The Common Stock is not redeemable.

B. PREFERRED STOCK

The Preferred Stock authorized by this Certificate of Incorporation shall be issued in series. The first series shall be designated as "Series A Preferred Stock," and shall consist of Six Hundred Thousand (600,000) shares. The second series shall be designated as "Series B Preferred Stock, and shall consist of One Million Five Hundred Thousand (1,500,000) shares. The third series shall be designated as "Series C Preferred Stock, and shall consist of Seven Hundred Sixty Thousand (760,000) shares. The Corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock.

The rights, preferences, privileges and restrictions granted to or imposed upon the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock are as follows:

1. **Dividends.** From and after the date of the issuance of any shares of Series A Preferred Stock, dividends at the rate per annum of \$0.066664 and \$0.16 per share shall accrue on such shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, respectively (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to either the Series A Preferred Stock or the Series B Preferred Stock) (the “**Accruing Dividends**”). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided however, that except as set forth in the following sentence of this Section 1 or in Subsections 2.1 and 2.4.2(b), such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. From and after the date of the issuance of any shares of Series C Preferred Stock, dividends shall be payable quarterly at the rate per annum of \$0.16 per share to the holders of Series C Preferred Stock on the last day of each fiscal quarter (the “**Series C Dividend**”). The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than the Series C Dividend and dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, respectively, in an amount at least equal to the greater of (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Series A Original Issue Price

(as defined below) or Series B Original Issue Price (as defined below), as the case may be; provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series A Preferred Stock or the Series B Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest dividend payable to the Series A Preferred Stock or the Series B Preferred Stock, respectively.

2. The “**Series A Original Issue Price**” shall mean \$0.8333 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. The “**Series B Original Issue Price**” is \$2.00, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock. The “**Series C Original Issue Price**” is \$2.00, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock.
3. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.
 - 3.1 **Payments to Holders of Preferred Stock.** In the event of any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, or Deemed Liquidation Event (as defined in Subsection 3.4 below), holders of each share of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation’s capital stock, pari passu, whether such assets are capital, surplus or earnings, an amount per outstanding share equal to the Series A Original Issue Price, Series B Original Issue Price, and Series C Original Issue Price, as the case may be, plus, (i) with respect to the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock, any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the “**Series A Liquidation Amount**” and the “**Series B Liquidation Amount**,” respectively), (ii) with respect the Series C Preferred Stock, any Series C Dividends accrued but unpaid thereon, together with any other dividends declared but unpaid thereon (the “**Series C Liquidation Amount**”), before any sums shall be paid or any assets distributed among the holders of shares of Common Stock or shares ranking junior on liquidation to the Series A Preferred Stock, the Series B Preferred Stock, or the Series C Preferred Stock. If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of the Series A Preferred Stock, Series B Preferred Stock, and the Series C Preferred Stock of the amount thus distributable, then the entire assets of the

Corporation available for such distribution shall be distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, and the Series C Preferred Stock on a pro rata basis.

3.2 Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed on a pro rata basis among the holders of shares of Common Stock and shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock (determined on the basis of the number of whole shares of Common Stock into which the shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock are convertible) based on the number of shares held by each such holder.

3.3 Deemed Liquidation Events.

3.3.1 Definition. Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of at least a majority of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred, each voting as a separate class, elect otherwise by written notice sent to the Corporation at least fifteen (15) days prior to the effective date of any such event:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving

or resulting corporation (provided that, for the purpose of this Subsection 3.3.1, all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or

- (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.
- (c) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 3.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3.1 and 3.2.

3.3.2 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license or other disposition shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

- 4. Voting. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common

Stock into which the shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, as the case may be, held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall vote together with the holders of Common Stock as a single class.

5. Optional Conversion. The holders of the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock shall have conversion rights as follows (the “**Conversion Rights**”):

5.1 Right to Convert.

5.1.1 Conversion Ratio. Each share of Series A Preferred Stock, each share of Series B Preferred Stock, and each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Series A Original Issue Price, the Series B Original Issue Price, or the Series C Original Issue Price, as the case may be, by the then applicable Conversion Price, defined and determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The current Conversion Price for the Series A Preferred Stock is \$.119047 per share. The initial conversion price per share for Series B Preferred Stock shall be the Series B Original Issue Price. The initial conversion price per share for Series C Preferred Stock shall be the Series C Original Issue Price. Such Conversion Prices shall be adjusted as hereinafter provided. As of the date hereof, each holder of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock will receive seven shares, one share, and one share of Common Stock, respectively, upon conversion of their shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, as the case may be.

5.1.2 Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of such amounts distributable on such event to the holders of Series A Preferred Stock, Series B Preferred Stock, and/or the Series C Preferred Stock.

- 5.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon the conversion of any share or shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as

determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

5.3 Mechanics of Conversion.

5.3.1 Notice of Conversion. In order for a holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock to voluntarily convert shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Series A Preferred Stock, the Series B Preferred Stock, or the Series C Preferred Stock, as the case may be (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 5.2 in lieu of any

fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, converted.

5.3.2 Reservation of Shares. The Corporation shall at all times when the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Conversion Price.

5.3.3 Effect of Conversion. All shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 5.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock so converted shall be returned to the authorized but unissued shares of Preferred Stock but may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock, as the case may be, accordingly.

5.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

5.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock pursuant to this Section 5. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

5.4 Adjustments to Conversion Price for Diluting Issues.

5.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

- (a) “**Option**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.
- (b) “**Original Issue Date**” shall mean the date on which the first share of the Series A Preferred Stock, Series B Preferred Stock, and/or the Series C Preferred Stock, as the case may be, was issued.
- (c) “**Convertible Securities**” shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.
- (d) “**Additional Shares of Common Stock**” shall mean all shares of Common Stock issued (or, pursuant to Subsection 5.4.3 below, deemed to be issued) by the Corporation after the Series C Original Issue Date, other than the following shares of Common Stock, and shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (collectively “**Exempted Securities**”):

- (i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock;
- (ii) shares of Common Stock issued upon conversion of the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock;
- (iii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 5.5, 5.6, 5.7 or 5.8;
- (iv) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation;
- (v) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;
- (vi) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, brokers, or to real property lessors, pursuant to a debt financing, equipment leasing, real property leasing transaction or similar transaction, the principal purpose of which is other than the raising of capital through the sale of equity securities of the Corporation and the terms of which are approved by the Board of Directors of the Corporation;
- (vii) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors of the Corporation;

- (viii) shares of Common Stock, Options or Convertible Securities issued to third parties in conjunction with services rendered, asset acquisitions, licenses of technology or strategic partnerships, the principal purpose of which is other than the raising of capital through the sale of equity securities of the Corporation and the terms of which are approved by the affirmative vote of the Board of Directors of the Corporation; or
- (ix) shares of Common Stock issued or issuable in a Qualified IPO (as defined in Subsection 6.1);

5.4.2 No Adjustment of Conversion Price on Agreement of Preferred Stock Holders. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

5.4.3 Deemed Issue of Additional Shares of Common Stock.

- (a) If the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefore, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.
- (b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Subsection 5.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar

provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have been obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

- (c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Subsection 5.4.4 (either because the consideration per share (determined pursuant to Subsection 5.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series C Original Issue Date), are revised after the Series C Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 5.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

- (d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Subsection 5.4.4, the Conversion Price shall be readjusted to such Conversion Price as would have been obtained had such Option or Convertible Security (or portion thereof) never been issued.
- (e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Subsection 5.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 5.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Subsection 5.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

5.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series C Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 5.4.3), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issue, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

- (a) “CP2” shall mean the Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;
- (b) “CP1” shall mean the Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;
- (c) “A” shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);
- (d) “B” shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP1); and
- (e) “C” shall mean the number of such Additional Shares of Common Stock issued in such transaction.

5.4.5 Determination of Consideration. For purposes of this Subsection 5.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

- (a) Cash and Property: Such consideration shall:
 - (i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
 - (ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and
 - (iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 5.4.3, relating to Options and Convertible Securities, shall be determined by dividing

- (i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by
- (ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

5.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Subsection 5.4.4, and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

5.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issue Date effect a subdivision of the outstanding Common Stock, the Conversion Price for the Series A Preferred Stock in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such

increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series B Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price for the Series B Preferred Stock in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series C Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price for the Series C Preferred Stock in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

5.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

5.6.1 the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

5.6.2 the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of the Series A Preferred Stock, Series B Preferred Stock, and/or the Series C Preferred Stock, as the case may be, simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares

of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock, as the case may be, had been converted into Common Stock on the date of such event.

- 5.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series C Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, had been converted into Common Stock on the date of such event.
- 5.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 3.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 5.4, 5.6 or 5.7), then, following any such reorganization, recapitalization, reclassification, consolidation, or merger each share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, immediately prior to such reorganization, recapitalization, reclassification, consolidation, or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 5 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the respective Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be.

5.9 Written Notice as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price for the outstanding shares of Preferred Stock pursuant to this Section 5, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock a written notice setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a written notice setting forth (a) the respective Conversion Price then in effect, and (b) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be.

5.10 Notice of Record Date. In the event:

- (a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or
- (b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or
- (c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation, then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, and Series C

Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

6. Mandatory Conversion.

6.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$5,000,000 of gross proceeds to the Corporation (a “**Qualified IPO**”), (b) the payment in full of (i) the Senior Secured Notes of the Corporation in the initial principal amount of \$1,500,000 and (ii) the Senior Subordinated Notes of the Corporation in the initial principal amount of \$1,000,000, (c) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Series A Preferred Stock, (d) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Series B Preferred Stock, or (e) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Series C Preferred Stock. All outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) such shares may not be reissued by the Corporation upon the occurrence of (a), (b), or (c) above. All outstanding shares of Series B Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) such shares may not be reissued by the Corporation upon the occurrence of (a) or (d) above. All outstanding shares of Series C Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) such shares may not be reissued by the Corporation upon the occurrence of (a) or (e) above. The time of such closing or payment in full of such notes or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the “**Mandatory Conversion Time.**”

6.2 Procedural Requirements. All holders of record of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, pursuant to this Section 6. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. All rights with respect to the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock converted pursuant to Section

6.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time, except only the rights of the holders thereof to receive the items provided for in the next sentence of this Subsection 6.2. As soon as practicable after the Mandatory Conversion Time for Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection 5.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion, and any Accruing Dividends accrued but unpaid on the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, converted, whether or not declared, as well as any declared but unpaid dividends thereon, at the election of the Corporation, shall be paid in either cash or additional whole shares of Common Stock (with cash in lieu of fractional shares) valued at the per share price for shares of Common Stock offered to the public in the Qualified IPO, or any combination of the foregoing; provided, that if the Mandatory Conversion does not occur in connection with a Qualified IPO and the Common Stock is not actively traded on a public market, then the amount to be paid shall be determined based on the fair market value of shares of Common Stock as determined reasonably and in good faith by the Board of Directors. Such converted Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock Series B Preferred Stock, or Series C Preferred Stock, as the case may be, accordingly.

7. Redemption. The Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock are not redeemable.
8. Acquired Shares. Any shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, that are acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, following redemption.
9. Waiver. Any of the rights, powers, preferences and other terms specific to the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, set forth herein may be waived on behalf of all holders of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, by the affirmative written consent or vote of the holders of a majority of the shares of Series A Preferred Stock, Series B Preferred Stock, or

Series C Preferred Stock, as the case may be, then outstanding, voting as a separate class. All other rights, powers, preferences and other terms set forth herein may be waived on behalf of all holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares of Common Stock represented by the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock as if all shares of such class or series had been converted into Common Stock.

10. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

ARTICLE V: ADDITIONAL PROVISIONS

- A. **BYLAWS**. Subject to any additional vote required by the Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.
- B. **NUMBER OF DIRECTORS**. Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.
- C. **ELECTION OF DIRECTORS BY WRITTEN BALLOT**. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.
- D. **MEETINGS OF STOCKHOLDERS**. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.
- E. **LIABILITY OF DIRECTORS**. To the fullest extent permitted by law, 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 General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article V.E by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

F. INDEMNIFICATION. The following indemnification provisions shall apply to the persons enumerated below.

1. Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an “**Indemnified Person**”) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while 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, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article V.F, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.
2. Prepayment of Expenses of Directors and Officers. The Corporation shall pay the expenses (including attorneys’ fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article Tenth or otherwise.
3. Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this Article V.F is not paid in full within thirty (30) days after a written claim therefore by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have

the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

4. Indemnification of Employees and Agents. The Corporation may (but is not required to) indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent 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, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorney's fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board of Directors.
5. Advancement of Expenses of Employees and Agents. The Corporation may (but is not required to) pay the expenses (including attorney's fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.
6. Non-Exclusivity of Rights. The rights conferred on any person by this Article V.F shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, the Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.
7. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.
8. Insurance. The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article V.E; and (b) to indemnify or insure directors, officers and employees against liability in instances in which

they may not otherwise be indemnified by the Corporation under the provisions of this Article V.F.

9. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article V.F shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

Any amendment, repeal or modification of the foregoing provisions of this Article V.F shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

- G. **SERIES OF PREFERRED STOCK.** Shares of preferred stock may be issued in one or more series, from time to time, with each such series to consist of such number of shares and to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the board of directors of the corporation, and the board of directors is hereby expressly vested with the authority, to the full extent now or hereafter provided by law, to adopt any such resolution or resolutions.

* * * *

FOUR: This Third Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Corporation.

FIVE: This Third Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law. This Third Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law by the stockholders of the Company.

IN WITNESS WHEREOF, this Third Amended and Restated Certificate of Incorporation has been subscribed this 18th day of July, 2012 by the undersigned who affirms that the statements made herein are true and correct.

/s/ Stephen Garland

Stephen Garland, Chief Executive Officer

Certification

I, Stephen Garland, certify that:

1. I have reviewed this Form 10-Q quarterly report of Heatwurx, Inc. for the quarter ended June 30, 2013;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2013

/s/ Stephen Garland

Stephen Garland, Chief Executive Officer
(Principal Executive Officer)

Certification

I, Allen Dodge, certify that:

1. I have reviewed this Form 10-Q quarterly report of Heatwurx, Inc. for the quarter ended June 30, 2013;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2013

/s/ Allen Dodge

Allen Dodge, Chief Financial Officer
(Principal Financial Officer)

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of Heatwux, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2013, as filed with the Securities and Exchange Commission (the "Report"), the undersigned principal executive officer of the Company, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 8, 2013

/s/ Stephen Garland
Stephen Garland, Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of Heatwux, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2013, as filed with the Securities and Exchange Commission (the "Report"), the undersigned principal financial officer of the Company, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 8, 2013

/s/ Allen Dodge
Allen Dodge, Chief Financial Officer
(Principal Financial Officer)