

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

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

Date of Report (date of earliest event reported): April 30, 1999

ZAPATA CORPORATION
(Exact name of registrant as specified in its charter)

Delaware
(State or other
jurisdiction of)

1-4219
(Commission File No.)

C-74-1339132
(I.R.S. Employer
Identification No.)

1717 St. James Place
Suite 550
Houston, Texas 77056
(Address of principal executive office)

(713) 940-6100
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

ITEM 5. OTHER EVENTS.

Effective April 30, 1999, (the "Effective Date"), the Registrant has changed its state of incorporation from Delaware to Nevada. This change in the Registrant's state of incorporation was approved by the holders of a majority of the Registrant's outstanding stock entitled to vote thereon at the Registrant's annual meeting of stockholders on April 13, 1999. At the time of reincorporation in the State of Nevada, the Registrant merged into and is continuing its business as a Nevada corporation. The reincorporation will not result in any change in the Registrant's business, assets or liabilities. Stockholders of the Registrant are not required to undertake an exchange of the Registrant's shares. As of the Effective Date, certificates for the Registrant's shares automatically represent an equal number of shares in the successor Nevada company.

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

(c) Exhibits.

- 2.1 Agreement and Plan of Merger and Reincorporation dated as of March 10, 1999 by and between Zapata Corporation, a Delaware corporation, and Zapata Corporation, a Nevada corporation.
- 3.1 Articles of Incorporation of Zapata Corporation, a Nevada corporation, as filed with the Secretary of State of Nevada on March 10, 1999.
- 3.2 By-Laws of Zapata corporation, a Nevada corporation, as adopted on March 10, 1999.

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 hereunto duly authorized.

ZAPATA CORPORATION

By: /s/ Avram Glazer

Name: Avram Glazer

Title: President and Chief Executive Officer

Date: April 30, 1999

EXHIBIT INDEX

| Exhibit No. | Description |
|-------------|--|
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AGREEMENT AND PLAN OF MERGER AND REINCORPORATION

This AGREEMENT AND PLAN OF MERGER AND REINCORPORATION (the "Agreement") is entered into as of this 10th day of March, 1999, by and between ZAPATA CORPORATION, a Delaware corporation ("Zapata"), and ZAPATA CORPORATION, a Nevada corporation ("Zapata-Nevada").

W I T N E S S E T H:

WHEREAS, Zapata-Nevada is a corporation duly organized and existing under the laws of the State of Nevada;

WHEREAS, Zapata is a corporation duly organized and existing under the laws of the State of Delaware;

WHEREAS, on the date of this Agreement, Zapata-Nevada has authority to issue 100 shares of common stock, par value \$.001 per share (the "Zapata-Nevada Common Stock"), of which 100 shares are issued and outstanding and owned by Zapata;

WHEREAS, on the date of this Agreement, Zapata has authority to issue (a) 165,000,000 shares of common stock, par value \$.01 per share (the "Zapata Common Stock"), of which approximately 23,877,078 shares were issued and outstanding, (b) 2,000,000 shares of preferred stock, of which no shares are issued and outstanding and (c) 18,000,000 shares of preference stock, of which no shares are issued and outstanding;

WHEREAS, the respective Boards of Directors of Zapata-Nevada and Zapata have determined that, for the purpose of effecting the reincorporation of Zapata in the State of Nevada, it is advisable, to the advantage of and in the best interests of Zapata and its stockholders and Zapata-Nevada and its stockholder that Zapata merge with and into Zapata-Nevada upon the terms and subject to the conditions herein provided;

WHEREAS, the parties intend, by executing this Agreement, to adopt a plan of reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code"), and to cause the merger described herein to qualify as a reorganization under the provisions of Section 368 of the Code; and

WHEREAS, the respective Boards of Directors of Zapata-Nevada and Zapata and the stockholders of Zapata-Nevada have unanimously adopted and approved this Agreement, and the Board of Directors of Zapata has directed that this Agreement be submitted to the stockholders of Zapata for their consideration;

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Zapata and Zapata-Nevada hereby agree as follows:

1. MERGER. Subject to the approval of the stockholders of Zapata in accordance with the Delaware General Corporation Law the ("DGCL"), at such time thereafter as the parties hereto shall mutually agree, Zapata shall be merged with and into Zapata-Nevada (the "Merger"), and Zapata-Nevada shall be the surviving corporation (the "Surviving Corporation") in the Merger. The Merger shall be effective upon (a) the filing of this Agreement together with Articles of Merger (the "Articles of Merger") with the office of the Nevada Secretary of State in accordance with the provisions of Chapter 92-A of the Nevada Revised Statutes (the "NRS") and (b) the filing of a duly certified counterpart of this Agreement and a duly executed Certificate of Merger (the "Certificate of Merger") with the Delaware Secretary of State in accordance with the applicable provisions of the DGCL, the date and time of the later of such filings being hereinafter referred to as the "Effective Time." Immediately following the due approval of the Merger by the stockholders of Zapata, subject to the provisions of this Agreement, the Articles of Merger shall be duly executed by Zapata-Nevada and Zapata and thereafter delivered to the office of the Nevada Secretary of State for filing, as provided in Chapter 92-A of the NRS, and a Certificate of Merger shall be duly executed by Zapata and Zapata-Nevada and thereafter delivered to the office of the Delaware Secretary of State for filing, pursuant to Section 251 of the DGCL.

2. GOVERNING DOCUMENTS. The Articles of Incorporation of Zapata-Nevada, a copy of which is attached hereto as Exhibit A, shall be the Articles of Incorporation of the Surviving Corporation and (b) the

By-Laws of Zapata-Nevada, a copy of which is attached hereto as Exhibit B, shall be the By-Laws of the Surviving Corporation.

3. DIRECTORS AND OFFICERS. The directors (including their respective denomination as Class I, Class II or Class III directors) and officers of Zapata shall be the directors (denominated in like manner by class) and officers of the Surviving Corporation from and after the Effective Time until their respective successors are duly elected or appointed.

4. SUCCESSION. At the Effective Time, Zapata-Nevada shall succeed to Zapata in the manner of and as more fully set forth in Section 259 of the DGCL and NRS 92A.250.

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

6. STOCK OF ZAPATA. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of Zapata Common Stock outstanding immediately prior thereto shall be changed and converted into one fully paid and nonassessable share of Zapata-Nevada Common Stock.

7. OUTSTANDING STOCK OF ZAPATA-NEVADA. At the Effective Time, the 100 shares of Zapata-Nevada Common Stock presently issued and outstanding in the name of Zapata shall be canceled and retired and resume the status of authorized and unissued shares of Zapata-Nevada Common Stock, and no shares of Zapata-Nevada Common Stock or other securities of Zapata-Nevada shall be issued in respect thereof.

8. STOCK CERTIFICATES. From and after the Effective Time, all of the outstanding certificates which prior to that time represented shares of Zapata Common Stock shall be deemed for all purposes to evidence ownership and to represent the shares of Zapata-Nevada Common Stock into which the shares of Zapata Common Stock represented by such certificates have been converted as herein provided. The registered owner on the books and records of Zapata-Nevada or its transfer agent of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to Zapata-Nevada or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of Zapata-Nevada Common Stock evidenced by such outstanding certificate as above provided.

9. OPTIONS. At the Effective Time, each outstanding option or other right to purchase shares of Zapata Common Stock, including options granted and outstanding under Zapata's 1990 Stock Option Plan, Special Incentive Plan (or amended and restated) and 1996 Long-Term Incentive Plan (collectively the "Zapata Option Plans"), shall be converted into and become an option or right to purchase the same number of shares of Zapata-Nevada Common Stock at a price per share equal to the exercise price of the option or right to purchase Zapata Common Stock and upon the same terms and subject to the same conditions as set forth in the Zapata Option Plans and the agreements entered into by Zapata pertaining to such options or rights. A number of shares of Zapata-Nevada Common Stock shall be reserved for purposes of such options and rights equal to the number of shares of Zapata Common Stock so reserved immediately prior to the Effective Time. As of the Effective Time, Zapata-Nevada shall assume all obligations of Zapata under agreements pertaining to such options and rights, including the Zapata Option Plans, and the outstanding options or other rights, or portions thereof, granted pursuant thereto.

10. COVENANTS OF ZAPATA-NEVADA. Zapata-Nevada covenants and agrees that, effective not later than the Effective time, it will:

(a) qualify to do business as a foreign corporation in all states in which Zapata is so qualified and in which the failure so to qualify would have a material adverse effect on the business or financial condition

of Zapata-Nevada and its subsidiaries, taken together as a whole, and, in connection therewith, shall irrevocably appoint an agent for service of process as required under applicable provisions of state law in the states in which qualification is required hereunder; and

(b) file any and all documents with the Delaware Franchise Tax Board necessary to the assumption by Zapata-Nevada of all of the franchise tax liabilities of Zapata.

11. BOOK ENTRIES. As of the Effective Time, entries shall be made upon the books of Zapata-Nevada in accordance with the following:

(a) The assets and liabilities of Zapata shall be recorded at the amounts at which they were carried on the books of Zapata immediately prior to the Effective Time, with appropriate adjustments to reflect the retirement of the 100 shares of Zapata-Nevada Common Stock presently issued and outstanding.

(b) There shall be credited to the capital stock of Zapata-Nevada the aggregate amount of the par value of all shares of Zapata-Nevada Common Stock resulting from the conversion of the outstanding Zapata Common Stock pursuant to the Merger.

(c) There shall be credited to the capital surplus account of Zapata-Nevada the aggregate of the amounts shown in the capital stock and capital surplus accounts of Zapata immediately prior to the Effective Time, less the amount credit to the common stock account of Zapata-Nevada pursuant to Paragraph 11(b) above.

(d) There shall be credited to the retained earnings account of Zapata-Nevada an amount equal to that carried in the retained earnings account of Zapata immediately prior to the Effective Time.

12. CONDITION. It shall be a condition precedent to the consummation of the Merger and the other transactions contemplated by this Agreement that the shares of Zapata-Nevada Common Stock to be issued by Zapata-Nevada shall, upon official notice of issuance, be listed on the New York Stock Exchange as of the Effective Time.

13. AMENDMENT. At any time prior to the Effective Time, whether before or after approval and adoption of this Agreement by the stockholders of Zapata, this Agreement may be amended in any manner as may be determined in the judgment of the respective Boards of Directors of Zapata-Nevada and Zapata to be necessary, desirable or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purposes and intent of this Agreement; provided that any amendment made subsequent to the approval or adoption of this Agreement by the stockholders of Zapata-Nevada or the stockholders of Zapata shall be subject to all applicable limitations of the applicable provisions of the DGCL and the NRS.

14. ABANDONMENT. At any time before the Effective Time, this Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either Zapata or Zapata-Nevada or both, notwithstanding approval of this Agreement by the sole stockholder of Zapata-Nevada and the stockholders of Zapata.

15. COUNTERPARTS. In order to facilitate the filing and recording of this Agreement, this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

16. THIRD PARTIES. Except as provided in this Agreement, nothing herein expressed or implied is intended or shall be construed to confer upon or give any person, firm or corporation, other than the parties hereto or their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

17. GOVERNING LAW. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Nevada, without reference to conflict of laws principles.

IN WITNESS WHEREOF, this Agreement, having first been duly approved by resolutions of the respective Boards of Directors of Zapata and Zapata-Nevada, is hereby executed on behalf of each of said two corporations by their respective officers duly authorized.

ZAPATA CORPORATION,
a Delaware Corporation

By: /s/ AVRAM GLAZER

Name: Avram Glazer
Title: President and CEO

ZAPATA CORPORATION,
a Nevada Corporation

By: /s/ AVRAM GLAZER

Name: Avram Glazer
Title: President and CEO

ANNEX B

ARTICLES OF INCORPORATION
OF
ZAPATA CORPORATION

The undersigned incorporator hereby executes these Articles of Incorporation for the purpose of forming a corporation under Chapter 78 of the Nevada Revised Statutes.

ARTICLE I

NAME

The name of the Corporation is Zapata Corporation.

ARTICLE II

RESIDENT AGENT

The name and address of the Corporation's initial resident agent is John P. Fowler, Marshall Hill Cassas & de Lipkau, 333 Holcomb Ave., Suite 300, Reno, Nevada 89502. The Corporation may, from time to time, in the manner provided by law, change the resident agent and the registered office within the State of Nevada. The Corporation may also maintain an office or offices for the conduct of its business, either within or without the State of Nevada.

ARTICLE III

PURPOSE

The Corporation is organized for the purpose of engaging in any lawful activity, within or without the State of Nevada.

ARTICLE IV

AUTHORIZED CAPITAL

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 185,000,000 shares, which shall be divided into 2,000,000 shares of Preferred Stock, par value \$.01 per share ("Preferred Stock"), 18,000,000 shares of Preference Stock, par value \$.01 per share ("Preference Stock"), and 165,000,000 shares of Common Stock, par value \$.01 per share ("Common Stock"). Shares of such stock may be issued for such consideration and for such corporate purposes as the Board of Directors may from time to time determine.

The following is a statement of the designations and the powers, preferences and rights and the qualifications, limitations or restrictions, of the classes of stock of the Corporation:

SECTION 4.01 COMMON STOCK.

(a) Subject to the prior and superior rights of the Preferred Stock and Preference Stock as provided in this Article IV or in any resolution of the Board of Directors providing for the issuance of any particular series of Preferred Stock or Preference Stock as herein authorized, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors may be declared and paid on the Common Stock from time to time out of any funds legally available therefor.

(b) Each holder of Common Stock shall be entitled to one vote for each share held and, except as otherwise provided herein, in any resolution of the Board of Directors providing for the issuance of any

particular series of Preferred Stock or Preference Stock or by law, the Common Stock, the Preferred Stock and the Preference Stock having voting rights shall vote together as a class.

SECTION 4.02 PREFERRED STOCK. The Preferred Stock may be issued in one or more series, consisting of such series as may be established and designated from time to time by the Board of Directors as hereinafter provided. The Board of Directors shall have the authority to establish and fix the voting powers, full or limited, or the absence of voting powers, and the designations, powers, preferences and relative and other special rights and qualifications, limitations and restrictions of the Preferred Stock of any such new series in a resolution or resolutions adopted by the Board of Directors providing for the issuance of Preferred Stock of such series. Such resolution or resolutions shall (a) specify the series to which such Preferred Stock shall belong; (b) specify the preferences and relative, participating, optional or other special rights, if any, and qualifications, limitations or restrictions thereof, if any, with respect to any class or series; (c) specify the annual rate of dividends payable on shares of such series (which may be cumulative or noncumulative); (d) fix the preferences and the amount which the holders of shares of such series shall be entitled to be paid in the event of any liquidation, dissolution or winding up of the Corporation; (e) state at what times and under what terms and conditions the shares of such series shall be redeemable and the amount or amounts payable thereon in the event of redemption; (f) specify the voting powers, full or limited, or the absence of voting powers that the holders of shares of such series shall have; and (g) specify such other rights and provisions not inconsistent with this Article IV with respect to any class or series as may to the Board of Directors seem advisable, including, but not limited to, (i) limiting the number of shares of such series which may be issued, (ii) providing for a sinking fund for the purchase or redemption, or a purchase fund for the purchase of shares of such series and the terms and provisions governing the operation of any such fund and the status as to reissuance of shares purchased or otherwise reacquired or redeemed or retired through the operation thereof, and that so long as the Corporation is in default as to such sinking or purchase fund the Corporation shall not (with such exceptions, if any, as may be provided) pay any dividends upon or purchase or redeem shares of capital stock ranking junior to the Preferred Stock with respect to dividends or distribution of assets upon liquidation (referred to herein as "stock ranking junior to the Preferred Stock"), (iii) imposing conditions or restrictions upon the creation of indebtedness of the Corporation or upon the issue of additional Preferred Stock or other capital stock ranking on a parity therewith or prior thereto with respect to dividends or distribution of assets upon liquidation, (iv) imposing conditions or restrictions upon the payment of dividends upon, or the making of other distributions to, or the acquisition of, stock ranking junior to the Preferred Stock and (v) granting to the holders of shares of such series the right to convert or exchange such shares for shares of any other class or classes or any other series of the same or any other class or classes or any other series of stock of the Corporation or any other issuer. The shares of each class or series of Preferred Stock may vary from the shares of any other class or series thereof in any respect. The Board of Directors may increase the number of shares of the Preferred Stock designated for any existing class or series of Preferred Stock. The Board of Directors may decrease the number of shares of Preferred Stock designated for any existing class or series of Preferred Stock and the shares so subtracted shall become authorized and unissued shares of Preferred Stock.

SECTION 4.03 PREFERENCE STOCK. The Preference Stock may be issued in one or more series, consisting of such series as may be established and designated from time to time by the Board of Directors as hereinafter provided. The Board of Directors shall have the authority to establish and fix the voting powers, full or limited, or the absence of voting powers, and the designations, powers, preferences and relative and other special rights and qualifications, limitations and restrictions of the Preference Stock of any such new series in a resolution or resolutions adopted by the Board of Directors providing for the issuance of Preference Stock of such series; provided, that each series of Preference Stock shall rank junior to the Preferred Stock with respect to the payment of dividends and distributions in liquidation. Subject to such limitations, such resolution or resolutions shall (a) specify the series to which such Preference Stock shall belong; (b) specify the preferences and relative, participating, optional or other special rights, if any, and qualifications, limitations or restrictions thereof, if any, with respect to any class or series; (c) specify the annual rate of dividends payable on shares of such series (which may be cumulative or noncumulative); (d) fix the preferences and the amount which the holders of shares of such series shall be entitled to be paid in the event of any liquidation, dissolution or winding up of the Corporation; (e) state at what times and under what terms and conditions the shares of

such series shall be redeemable and the amount or amounts payable thereon in the event of redemption; (f) specify the voting powers, full or limited, or the absence of voting powers that the holders of shares of such series shall have; and (g) specify such other rights and provisions not inconsistent with this Article IV with respect to any class or series as may to the Board of Directors seem advisable, including, but not limited to, (i) limiting the number of shares of such series which may be issued, (ii) providing for a sinking fund for the purchase or redemption, or a purchase fund for the purchase of shares of such series and the terms and provisions governing the operation of any such fund and the status as to reissuance of shares purchased or otherwise reacquired or redeemed or retired through the operation thereof, and that so long as the Corporation is in default as to such sinking or purchase fund the Corporation shall not (with such exceptions, if any, as may be provided) pay any dividends upon or purchase or redeem shares of capital stock ranking junior to the Preference Stock with respect to dividends or distribution of assets upon liquidation (referred to herein as "stock ranking junior to the Preference Stock"), (iii) imposing conditions or restrictions upon the creation of indebtedness of the Corporation or upon the issue of additional Preferred Stock or other capital stock ranking on a parity therewith or prior thereto with respect to dividends or distribution of assets upon liquidation, (iv) imposing conditions or restrictions upon the payment of dividends upon, or the making of other distributions to, or the acquisition of, stock ranking junior to the Preference Stock and (v) granting to the holders of shares of such series the right to convert or exchange such shares for shares of any other class or classes or any other series of the same or any other class or classes or any other series of stock of the Corporation or any other issuer. The shares of each series of Preference Stock may vary from the shares of any other series thereof in any respect. The Board of Directors may increase the number of shares of the Preference Stock designated for any existing series of Preference Stock. The Board of Directors may decrease the number of shares of Preference Stock designated for any existing series of Preference Stock and the shares so subtracted shall become authorized and unissued shares of Preference Stock.

SECTION 4.04 LIQUIDATION OR DISSOLUTION.

(a) In the event of any liquidation or dissolution or winding-up, whether voluntary or otherwise, of the Corporation, after paying or adequately providing for all liabilities and obligations of the Corporation as required by law, the remaining assets and funds of the Corporation shall be distributed as follows:

The holders of Preferred Stock shall be entitled to be paid in full the respective amounts fixed for each such series, if any, outstanding, as provided in the resolutions of the Board of Directors authorizing issuance thereof, plus the unpaid dividends accrued and unpaid thereon to the date of payment thereof, before any distribution or payment is made to the holders of any series of Preference Stock, Common Stock or any other class of stock of the Corporation ranking junior to the Preferred Stock. If the assets distributable in such liquidation, dissolution or winding-up shall be insufficient to permit the payment to the holders of Preferred Stock as aforesaid, the said assets shall be distributed pro rata among the holders of the respective series of Preferred Stock according to the priority established for each series of Preferred Stock.

After payment in full to the holders of the Preferred Stock as aforesaid, before any distribution or payment shall be made to the holders of Common Stock or any other class of stock of the Corporation ranking junior to the Preference Stock, the holders of each series of Preference Stock shall be entitled to be paid in full the respective amount fixed for each such series, if any, outstanding, as provided in the Board of Directors resolution authorizing the issuance thereof, plus the unpaid dividends accrued and unpaid thereon to the date of payment thereof, before any distribution or payment is made to the holders of Common Stock or to the holders of any other class of stock of the Corporation ranking junior to the Preference Stock. If the assets distributable in such liquidation, dissolution or winding-up shall be insufficient to permit the payment to the holders of Preference Stock as aforesaid, the said assets shall be distributed pro rata among the holders of the respective series of Preference Stock according to the priority established for each series of Preference Stock.

After payment in full to the holders of the Preferred Stock and Preference Stock as aforesaid, the remaining assets and funds shall be divided among and paid to the holders of Common Stock pro rata in proportion to the number of shares held by each of them.

(b) The merger or consolidation of the Corporation into or with any other corporation shall not be or be deemed to be a distribution of assets or a dissolution, liquidation or winding-up for the purposes of this Section 4.04.

ARTICLE V

DIRECTORS AND INCORPORATORS

SECTION 5.01 GOVERNING BOARD OF DIRECTORS. All the corporate powers of this Corporation shall be vested in and exercised by a Board of Directors consisting of the number of directors specified in the By-Laws of the Corporation; provided that the number of directors constituting the entire Board of Directors shall not be less than three (3) directors. The governing board shall be styled "Board of Directors" and the number of directors may at any time or times be increased or decreased as provided in the By-Laws.

SECTION 5.02 INITIAL BOARD OF DIRECTORS. The names and post office addresses of the member of the first Board of Directors, which shall be three (3) in number, is as follows:

| NAME AND CLASS - - - - - | ADDRESS ----- |
|-----------------------------------|---|
| Malcolm Glazer -- Class I..... | 1482 S. Ocean Boulevard W. Palm Beach, Florida 33480 |
| Avram Glazer -- Class II..... | 18 Stoney Clover Lane Pittsford, New York 14534 |
| Leonard DiSalvo -- Class III..... | 270 Commerce Drive Rochester, New York 14623 |

These individuals shall serve as directors until the first annual meeting of stockholders or until their respective successors are elected and qualified.

SECTION 5.03 CLASSIFICATION OF DIRECTORS. The Board of Directors shall be divided into three classes as nearly equal in number as possible, with the initial term of office of Class I expiring at the annual meeting of stockholders in 2002, of Class II expiring at the annual meeting of stockholders in 2000, and of Class III expiring at the annual meeting of stockholders in 2001. At each annual meeting of stockholders, directors chosen to succeed those whose terms then expire shall be elected for a full term of office expiring at the third succeeding annual meeting of stockholders after their election. When the number of directors is increased as permitted by the By-Laws of the Corporation, and any newly created directorships are filled by the Board of Directors, there shall be no classification of such additional directors until the next annual meeting of stockholders. Subject to the foregoing, directors elected to fill a vacancy shall hold office for a term expiring at the annual meeting at which the term of the class to which they shall have been elected expires. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

SECTION 5.04 VACANCIES. Except as otherwise provided in a Certificate of Designation setting forth the rights of the holders of any class or series of Preferred Stock or Preference Stock, any vacancy on the Board of Directors that results from the death, resignation, retirement, disqualification or removal from office of any director, an increase in the number of directors or for any other reason, may be filled by a majority of the Board of Directors then in office (though less than a quorum), including the sole remaining director. Vacancies shall not be filled by a vote or written consent of the stockholders.

SECTION 5.05 CLASSIFICATION IF HOLDERS OF PREFERRED STOCK OR PREFERENCE STOCK ELECT DIRECTORS. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock or Preference Stock issued by the Corporation have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of these Articles of Incorporation or an amendment to these Articles of Incorporation applicable thereto, or the terms of a Certificate of Designation of Preferred Stock or Preference Stock, as applicable, filed with the Nevada Secretary of State applicable

thereto, and such directors so elected shall not be divided into classes pursuant to this Article V unless expressly provided by such terms.

SECTION 5.06 BALLOTS. Election of directors need not be by ballot unless the By-Laws of the Corporation so provide.

ARTICLE VI

DIRECTORS' AND OFFICERS' LIABILITY

No director or officer of the Corporation shall be personally liable to the Corporation or any of its stockholders for damages for breach of fiduciary duty as a director or officer involving any act or omission of any such director or officer. However, the foregoing provision shall not eliminate or limit the liability of a director or officer for (a) acts or omissions which involve intentional misconduct, fraud or a knowing violation of law, or (b) the payment of dividends in violation of Section 78.300 of the Nevada Revised Statutes. Any repeal or modification of this Article VI by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director or officer of the Corporation for acts or omissions prior to such repeal or modification.

ARTICLE VII

INDEMNITY

SECTION 7.01 GENERAL INDEMNIFICATION. Subject to any restrictions set forth in the By-Laws of this Corporation, every person who was or is a party, or is threatened to be made a party to or is involved in any action, suit or proceeding (each a "proceeding"), whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he or a person of whom he is the legal representative is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, or as its representative in a partnership, joint venture, trust or other enterprise (including any employee benefit plan), shall be indemnified and held harmless by the Corporation to the fullest extent legally permissible under the laws of the State of Nevada, as the same may exist or hereafter be amended from time to time, against all expenses, liability and loss (including attorney's fees, judgments, fines and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by him in connection with such proceeding if he or she met the standards of conduct which make it possible under the applicable provisions of Chapter 78 of the Nevada Revised Statutes for the Corporation to indemnify said person.

SECTION 7.02 INDEMNIFICATION IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. Subject to any restrictions set forth in the By-Laws of this Corporation, every person who was or is a party or threatened to be made a party to or in involved in any proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise (including service with respect to employee benefit plans), shall be indemnified and held harmless by the Corporation to the fullest extent legally permissible under the laws of the State of Nevada, as the same may exist or hereafter be amended from time to time, against all expenses (including attorneys' fees and amounts paid or to be paid in settlement) actually or reasonably incurred or suffered by him in connection with such proceeding if he met the standards of conduct which make it possible under the applicable provisions of Chapter 78 of the Nevada revised statutes for the Corporation to indemnify said person.

SECTION 7.03 OTHER TERMS. The right of indemnification provided for in this Article VII shall be a contract right which may be enforced in any manner desired by such person. Such right of indemnification shall not be exclusive of any other right which such directors, officers or representatives may have or hereafter acquire, and, without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any by-law, agreement, vote of stockholders, provision of law, or otherwise, as well as their rights under this Article VII.

SECTION 7.04 EXPENSES ADVANCED. Subject to any restrictions set forth in the By-Laws of this Corporation, expenses of directors and officers incurred in defending a civil or criminal action, suit or proceeding by reason of any act or omission of such director or officer acting as a director or officer shall be paid by the Corporation as they are incurred and billed (no more frequently than monthly) in advance of the final disposition of the proceeding, upon receipt of any undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the Corporation.

SECTION 7.05 BY-LAWS; INSURANCE. Without limiting the application of the foregoing, the Board of Directors may adopt By-Laws from time to time with respect to indemnification, to provide at all times the fullest indemnification permitted by the laws of the State of Nevada, to limit the right of indemnification, and may cause the Corporation to purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a director or officer of the Corporation, or served as its representative in a partnership, joint venture, trust or other enterprise (including an employee benefit plan) against any liability asserted against such person and incurred in any such capacity or arising out of such status, to the fullest extent permitted by the laws of the State of Nevada, whether or not the Corporation would have the power to indemnify such person under these Articles of Incorporation, the Corporation's By-Laws or Nevada law.

The indemnification and advancement of expenses provided in this Article shall continue for a person who has ceased to be a director, officer, employee or agent, and inures to the benefit of the heirs, executors and administrators of such a person.

ARTICLE VIII

SUPER-MAJORITY VOTE FOR CERTAIN CORPORATE ACTIONS

SECTION 8.01 APPLICABLE TRANSACTIONS AND REQUIRED VOTE. Except as set forth in Section 8.04 of this Article VIII, the affirmative vote or consent of the holders of 80% of all stock of this Corporation entitled to vote in elections of directors, considered for the purposes of this Article VIII as one class, shall be required: (a) for a merger or consolidation with or into any other corporation, or (b) for any sale or lease of all or any substantial part of the assets of this Corporation to any other corporation, person or other entity, or (c) any sale or lease to this Corporation or any subsidiary thereof of any assets (except assets having an aggregate fair market value of less than \$2,000,000) in exchange for voting securities (or securities convertible into voting securities or options, warrants, or rights to purchase voting securities or securities convertible into voting securities) of this Corporation or any subsidiary by any other corporation, person or entity, if as of the record date for the determination of stockholders entitled to notice thereof and to vote thereon or consent thereto such other corporation, person or entity which is party to such a transaction is the beneficial owner, directly or indirectly, of 5% or more of the outstanding shares of stock of this Corporation entitled to vote in elections of directors (considered for this purpose as one class). Such affirmative vote or consent shall be in addition to the vote or consent of the holders of the stock of this Corporation otherwise required by law or any agreement between this Corporation and any national securities exchange.

SECTION 8.02 DETERMINATION OF STOCK OWNERSHIP. For purposes of this Article VIII any corporation, person or other entity shall be deemed to be the beneficial owner of any shares of stock of this Corporation,

(a) which it owns directly, whether or not of record, or

(b) which it has the right to acquire pursuant to any agreement or understanding or upon exercise of conversion rights, warrants or options or otherwise, or

(c) which are beneficially owned, directly or indirectly (including shares deemed to be owned through application of clause (a) above), by any "affiliate" or "associate" as those terms are defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934 as in effect on July 1, 1970, or

(d) which are beneficially owned, directly or indirectly (including shares deemed owned through application of clause (c) above), by any other corporation, person or entity with which it or its "affiliate"

or "associate" has any agreement or arrangement or understanding for the purpose of acquiring, holding, voting or disposing of stock of this Corporation.

For the purposes of this Article VIII, the outstanding shares of any class of stock of this Corporation shall include shares deemed owned through the application of Sections 8.02(b), (c) and (d) above, but shall not include any other shares which may be issuable pursuant to any agreement or upon exercise of conversion rights, warrants, options or otherwise.

SECTION 8.03 BOARD OF DIRECTORS' AUTHORITY. The Board of Directors shall have the power and duty to determine for the purposes of this Article VIII on the basis of information known to this Corporation, whether

(a) such other corporation, person or other entity beneficially owns more than 5% of the outstanding shares of stock of this Corporation entitled to vote in elections of directors,

(b) a corporation, person, or entity is an "affiliate" or "associate" (as defined in Section 8.02(b) above) of another,

(c) the assets being acquired by this Corporation, or any subsidiary thereof, have an aggregate fair market value of less than \$2,000,000, and

(d) the memorandum of understanding referred to in Section 8.04 below is substantially consistent with the transaction covered thereby. Any such determination shall be conclusive and binding for all purposes of this Article VIII.

SECTION 8.04 EXCLUDED CORPORATION TRANSACTIONS. The provisions of this Article VIII shall not apply to,

(a) any merger or similar transaction with any corporation if the Board of Directors of this Corporation has approved a memorandum of understanding with such other corporation with respect to such transaction prior to the time that such other corporation shall have become a beneficial owner of more than 5% of the outstanding shares of stock of this Corporation entitled to vote in elections of directors; or

(b) any merger or consolidation of this Corporation with, or any sale or lease to this Corporation or any subsidiary thereof of any assets of or sale or lease by this Corporation or any subsidiary thereof of any of its assets to any corporation of which a majority of the outstanding shares of all classes of stock entitled to vote in elections of directors is owned of record or beneficially by this Corporation and its subsidiaries.

ARTICLE IX

CREDITOR COMPROMISES AND STATUTES NOT APPLICABLE

SECTION 9.01 CREDITOR COMPROMISES Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Nevada may, on the application in a summary way of this Corporation or of any creditor or stockholders thereof, or on the application of any receiver or receivers appointed for this Corporation under applicable law or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under applicable law, order a meeting of the creditors or class of creditors and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors and/or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation in all cases to the extent permitted under law.

9.02 STATUTES NOT APPLICABLE The provisions of Nevada Revised Statutes 78.411 through 78.444, inclusive, regarding combinations with interested stockholders, shall not be applicable to this Corporation.

ARTICLE X

BY-LAWS

By-Laws of the Corporation may be adopted, amended or repealed by the Board of Directors or by the affirmative vote of the holders of 80% or more of the Corporation's stock, outstanding and entitled to vote at the meeting at which any By-Law is presented for adoption, amendment or repeal (considered for this purpose as one class). Such By-Laws may contain any provision for the regulation and management of the affairs of the Corporation and the rights or powers of its stockholders, directors, officers or employees not inconsistent with statute or these Articles of Incorporation. Any By-Laws inconsistent with these Articles of Incorporation shall be null and void.

ARTICLE XI

ARTICLES OF INCORPORATION, AMENDMENT, ETC.

SECTION 11.01 GENERAL RIGHTS OF AMENDMENT. The Corporation reserves the rights to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

SECTION 11.02 REQUIRED SUPERMAJORITY VOTE. Notwithstanding any other provisions of these Articles of Incorporation, the By-Laws of this Corporation or any Certificate of Designation of Preferred Stock or Preference Stock (and in addition to any other vote that may be required), the affirmative vote of the holders of 80% of all stock of this Corporation entitled to vote in elections of directors (considered for this purpose as one class) shall be required to amend, alter, change, or repeal Section 5.01 and 5.03 and Articles VIII, X and XI of the Articles of Incorporation.

Executed this 10th day of March, 1999.

/s/ JOHN P. FOWLER

John P. Fowler
Incorporator

CERTIFICATE OF ACCEPTANCE
OF APPOINTMENT BY AGENT FOR SERVICE OF PROCESS

In accordance with NRS 78.030(1)(b), the undersigned certifies acceptance of the appointment as the agent for service of process for Zapata-Nevada Corporation, a Nevada corporation.

/s/ JOHN P. FOWLER

John P. Fowler
Marshall Hill Cassas & de Lipkau
Reno, NV 89502
333 Holcomb Ave., Suite 300

Dated: March 10th, 1999

ANNEX C

BY-LAWS
OF
ZAPATA CORPORATION
(A NEVADA CORPORATION)

ARTICLE I

MEETINGS OF STOCKHOLDERS

SECTION 1. PLACE OF MEETING. All meetings of the stockholders of the Corporation shall be held at the principal office of the corporation or at any other place or places, within or without the State of Nevada, as may from time to time be fixed by the Board of Directors, or as shall be specified or fixed in the respective notices or waivers of notice thereof.

SECTION 2. ANNUAL MEETINGS. The annual meeting of the stockholders of the Corporation for the election of directors and for the transaction of such other business as may come before the meeting shall be held on such date in each year and at such time as shall be designated by the Board of Directors and stated in the notice of the meeting.

SECTION 3. SPECIAL MEETINGS. A special meeting of the stockholders, or of any class thereof entitled to vote, for any purpose or purposes, unless otherwise prescribed by statute or by the Articles of Incorporation, may be called at any time by the Chairman of the Board of Directors or by order of the Board of Directors and shall be called by the Chairman of the Board of Directors or the Board of Directors upon the written request of stockholders holding of record at least 80% of the outstanding shares of stock of the Corporation entitled to vote at such meeting as of the date of such request. Such written request shall state the purpose or purposes for which such meeting is to be called. Business transacted at any such special meeting shall be limited to the purposes stated in the notice.

SECTION 4. NOTICE OF MEETINGS. Except as otherwise expressly required by law, notice of each meeting of stockholders, whether annual or special, shall be given at least ten (10) days before the date on which the meeting is to be held, to each stockholder of record entitled to vote thereat by delivering a typewritten or printed notice thereof to each stockholder personally, or by mailing such notice in a postage prepaid envelope directed to each stockholder at such stockholder's address as it appears on the stock book of the Corporation. Every notice of a special meeting of the stockholders, besides stating the time and place of the meeting, shall state briefly the objects or purposes thereof. Notice of any adjourned meeting of the stockholders shall not be required to be given, except where expressly required by law.

SECTION 5. RECORD DATE. The Board of Directors may fix, in advance, a date as the record date for the purpose of determining stockholders entitled to notice of, or to vote at, any meeting of stockholders, or stockholders entitled to receive payment of any dividend or the allotment of any rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall be not more than sixty (60) days, and in case of a meeting of stockholders not less than ten (10) days, prior to the date on which the particular action requiring such determination of stockholders is to be taken. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 6. LIST OF STOCKHOLDERS. It shall be the duty of the Secretary or other officer of the Corporation who shall have charge of the stock ledger, either directly or through a transfer agent appointed by the Board, to prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order. Such list shall be open to the examination of any stockholder at the place where said meeting is to be held for said ten (10) days, and shall be produced and kept at the time and place of the meeting during the whole time thereof, and subject to the inspection of any stockholder who may be present. The original or a duplicate stock ledger shall be the only

evidence as to who are the stockholders entitled to examine such list or the books of the Corporation or to vote in person or by proxy at such meeting.

SECTION 7. QUORUM. At each meeting of the stockholders, the holders of record of a majority of the issued and outstanding stock of the Corporation entitled to vote at such meeting, present in person or by proxy, shall constitute a quorum for the transaction of business, except where otherwise provided by the Corporation's Articles of Incorporation, By-Laws or by law. In the absence of a quorum, any officer entitled to preside at, or act as Secretary of such meeting, shall have the power to adjourn the meeting from time to time until a quorum shall be constituted. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

SECTION 8. VOTING AT MEETINGS. Any holder of shares of capital stock of the Corporation entitled to vote shall be entitled to vote each such share as provided in the Corporation's Articles of Incorporation or, in the case of Preferred Stock or Preference Stock, in the resolution of the Board of Directors authorizing the issuance thereof, either in person or by proxy executed in writing by him or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable and unless it is coupled with an interest sufficient in law to support an irrevocable power. Stockholders of the Corporation shall not have cumulative voting rights in the election of directors.

SECTION 9. MANNER OF CONDUCTING MEETINGS. To the extent not in conflict with the provisions of law relating thereto or these By-Laws, all stockholder meetings must be conducted pursuant to such rules as may be adopted by the Chairman presiding at the meeting.

ARTICLE II

BOARD OF DIRECTORS

SECTION 1. GENERAL POWERS. The property, business and affairs of the Corporation shall be managed by the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Articles of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

SECTION 2. NUMBER AND TERM OF OFFICE. The number of directors that shall constitute the whole Board of Directors shall be fixed by, and may be increased or decreased from time to time by, the affirmative vote of a majority of the numbers at any time constituting the Board of Directors of the Corporation; provided that at no time shall the number of directors constituting the whole Board be less than three (3) directors. Each director shall hold office for the full term of office to which he shall have been elected and until his successor shall have been duly elected and shall qualify, or until his earlier death, resignation, retirement, disqualification or removal.

SECTION 3. PLACE OF MEETINGS. The Board of Directors may hold its meetings, have one or more offices, and keep the books and records of the Corporation, at such place or places within or without the State of Nevada, as the Board may from time to time determine.

SECTION 4. FIRST MEETING. After each annual election of directors and on the same day or as soon thereafter as convenient, the Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business as may be appropriate. Notice of such meeting need not be given. Such meeting may be held at any other time or place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors or in a consent and waiver of notice thereof signed by all the directors.

SECTION 5. REGULAR MEETINGS. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

SECTION 6. SPECIAL MEETINGS. Special meetings of the Board of Directors may be held at any time upon the call of the Chairman of the Board and Chief Executive Officer, the Secretary or any two directors of the

Corporation. Notice shall be given, either personally or by mail or telegram at least twenty-four (24) hours before the meeting. Notice of the time, place and purpose of such meeting may be waived in writing before or after such meeting, and shall be equivalent to the giving of notice. Attendance of a director at such meeting shall also constitute a waiver of notice thereof, except where he attends and submits a writing to the Secretary stating that the purpose of his attendance is to object to the transaction of any business on the ground that the meeting is not lawfully called or convened.

SECTION 7. QUORUM. A majority of the directors at the time in office present at any regular or special meeting of the Board of Directors shall constitute a quorum for the transaction of business; except that in no case shall a quorum be less than one-third of the total number of directors which constitute the authorized whole Board of Directors; and, except as otherwise required by statute, by the Articles of Incorporation or by these By-Laws, the act of a majority of the directors present at any such meeting at which a quorum is present shall be the act of the Board. In the absence of a quorum, a majority of the directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given.

SECTION 8. VACANCIES AND NEWLY CREATED DIRECTORSHIPS. Any vacancy that shall occur in the Board of Directors by reason of death, resignation, retirement, disqualification or removal or any other cause whatever, and newly created directorships resulting from any increase in the authorized number of directors, may be filled by a majority of the remaining directors (though less than a quorum), including the sole remaining director, and, except as otherwise provided by the Articles of Incorporation with respect to newly created directorships filled by the Board of Directors, each director so chosen shall hold office until the annual meeting at which the term of the class to which he shall have been elected expires and until his successor shall be duly elected and shall qualify, or until his earlier death, resignation, retirement, disqualification or removal.

SECTION 9. COMMITTEES. The Board of Directors may, by resolution passed by a majority of the directors in office, designate one or more committees, each committee to consist of two or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided by the Board, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, that in the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Such committee or committee shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

SECTION 10. ACTION WITHOUT A MEETING. Unless otherwise restricted by the Articles of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if prior to such action a written consent thereto is signed by all members of the Board or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the Board or of such committee.

SECTION 11. COMPENSATION OF DIRECTORS. Directors, as such, shall not receive any stated salary for their services, but may be paid for their services such amounts as may be fixed from time to time by resolution of the Board. Expenses of attendance, if any, may be paid for attendance at each regular or special meeting of the Board. No such payments shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

SECTION 12. REQUIRED VOTE OF DIRECTORS FOR CERTAIN ACTIONS. Notwithstanding anything to the contrary in these By-Laws, the following actions shall require the vote of five (5) Directors: (a) any alteration, amendment or repeal of these By-Laws; (b) the issuance of, or the adoption of any agreement or plan for the issuance of, any stock, rights, or other securities (including, without limitation, securities convertible into or

exchangeable or exercisable for stock of the Corporation) to the stockholders or any class thereof generally, any term of which is contingent upon or effective upon the acquisition by any person of any of or all of the Corporation's stock or upon any other action by any person with respect to such stock; (c) the creation of any committee of the Board of Directors; (d) the filling of vacancies on the Board of Directors or any committee thereof created by the death, resignation or removal of Malcolm I. Glazer or Avram A. Glazer; or (e) any action to remove Malcolm I. Glazer or Avram A. Glazer from any committee of the Board of Directors.

SECTION 13. TRANSACTIONS INVOLVING INTEREST OF DIRECTORS. In the absence of fraud, no contract or other transaction of the corporation is affected or invalidated by the fact that any of the directors of the corporation are in any way interested in, or connected with, any other party to, such contract or transaction, provided that such transaction satisfies the applicable provisions of Chapter 78 of the Nevada Revised Statutes. Each and every person who becomes a director of the Corporation is hereby relieved, to the extent permitted by law, from any liability that might otherwise exist from contracting in good faith with the Corporation for the benefit of himself or herself or any person in which he or she may be in any way interested or with which he or she may be in any way connected. Any director of the Corporation may vote and act upon any matter, contract or transaction between the Corporation and any other person without regard to the fact that he or she is also a stockholder, director or officer of, or has any interest in, such other person.

ARTICLE III

OFFICERS

SECTION 1. TITLE, NUMBER AND SALARIES. The officers of the Corporation shall be elected by the Board of Directors, and shall consist of a Chairman of the Board, Chief Executive Officer, President, Vice Presidents, a Secretary, a Treasurer, and such Assistant Secretaries and Assistant Treasurers as the Board of Directors may from time to time designate, all of whom shall hold office until their successors are elected and qualified. Two or more offices, may be held by the same person, but no officer shall execute, acknowledge or verify any instrument in more than one capacity. The salaries of the officers shall be determined by the Board of Directors or committee duly designated thereby, and may be altered from time to time except as otherwise provided by contract. All officers shall be entitled to be paid or reimbursed for all cost and expenditures incurred in the Corporation's business.

SECTION 2. VACANCIES. Whenever any vacancies shall occur in any office by death, resignation, retirement, increase in the number of officers of the Corporation, or otherwise, the same shall be filled by the Board of Directors, and the officer so elected shall hold office until his successor is chosen and qualified.

SECTION 3. REMOVAL. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

SECTION 4. CHAIRMAN OF THE BOARD. The Chairman of the Board shall preside at all meeting of the stockholders and directors, shall be ex officio a member of all standing committees to which he is not otherwise appointed, shall see that all orders and resolutions of the Board are carried into effect, and, subject to the directions of the Board, shall have general and active management of the business of the Corporation and shall perform such other duties as may from time to time be assigned to him by the Board.

SECTION 5. CHIEF EXECUTIVE OFFICER AND PRESIDENT. The Chief Executive Officer and President shall be the chief administrative officer of the Corporation, and subject to the provisions of SECTION 4 of this ARTICLE III, shall perform all the duties incident to the office of Chief Executive Officer and President of a corporation and, subject to the direction of the Board, shall have general and active management of the business of the Corporation and shall perform all duties incident to the office of Chief Executive Officer and President of a corporation and such other duties as may from time to time be assigned to him by the Board. At the request of the Chairman of the Board or of the Board, or in the absence or disability of the Chairman of the Board, the Chief Executive Officer and President shall have all the powers and perform all the duties of the Chairman of the Board.

SECTION 6. VICE PRESIDENTS. In the absence or disability of the Chairman of the Board, the Chief Executive Officer, the President, the Vice Presidents, in the order of their seniority, shall perform the duties and exercise the powers of the Chairman of the Board and Chief Executive Officer, other than as otherwise provided in the first sentence of SECTION 4 of this ARTICLE III.

SECTION 7. SECRETARY. It shall be the duty of the Secretary to attend all meetings of the stockholders and Board of Directors, to record correctly the proceedings had at such meetings in a book suitable for that purpose and to perform like duties for standing committees when required. It shall also be the duty of the Secretary to attest with his signature and the seal of the Corporation all stock certificates issued by the Corporation and to keep a stock ledger in which shall be correctly recorded all transactions pertaining to the capital stock of the Corporation. He shall also attest with his signature and the seal of the Corporation all deeds, conveyances or other instruments requiring the seal of the Corporation. The person holding the office of Secretary shall also perform, under the direction and subject to the control of the Board of Directors, such other duties as may be assigned to him. The duties of the Secretary may also be performed by any Assistant Secretary.

SECTION 8. TREASURER. The Treasurer shall keep such funds of the Corporation as may be entrusted to his keeping and account for the same. He shall be prepared at all times to give information as to the condition of the Corporation and shall make a detailed annual report of the entire business and financial condition of the Corporation. The person holding the office of Treasurer shall also perform, under the direction and subject to the control of the Board of Directors, such other duties as may be assigned to him. The duties of the Treasurer may also be performed by any Assistant Treasurer.

SECTION 9. DELEGATION OF AUTHORITY. In the case of any absence of any officer of the Corporation or for any other reason that the Board may deem sufficient, the Board of Directors may delegate some or all of the powers or duties of such officer to any other officer or to any director, employee, stockholder or agent for whatever period of time seems desirable, providing that a majority of the whole Board concurs therein.

SECTION 10. TRANSACTION INVOLVING INTEREST OF OFFICER. In the absence of fraud, no contract or other transaction of the Corporation shall be affected or invalidated by the fact that any of the officers of the Corporation are in any way interested in, or connected with, any other party to such contract or transaction, or are themselves parties to such contract or transaction, provided that the transaction complies with the applicable provisions of Chapter 78 of the Nevada Revised Statutes. Each and every person who is or may become an officer of the Corporation is hereby relieved, to the extent permitted by law, when acting in good faith, from any liability that might otherwise exist from contracting with the Corporation for the benefit of such officer or any person in which he or she may be in any way interested or with which he or she may be in any way connected.

ARTICLE IV

INDEMNIFICATION AND INSURANCE

SECTION 1. GENERAL INDEMNIFICATION. Subject to the provisions of SECTION 3 of this ARTICLE IV, the Corporation shall indemnify and hold harmless, to the fullest extent permitted by the laws of the State of Nevada, as the same exist or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against all costs, charges, expenses, liabilities and losses (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred or suffered by said person in connection with such action, suit or proceeding if he or she met standards of conduct which makes it possible under the applicable provisions of Chapter 78 of the Nevada Revised Statutes for the Corporation to indemnify said person, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

SECTION 2. INDEMNIFICATION IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. Subject to the provisions of SECTION 3 of this ARTICLE IV, the Corporation shall indemnify and hold harmless, to the fullest extent permitted by the laws of the State of Nevada, as the same exist or may hereafter be amended, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees and amounts paid in settlement) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have failed to meet a standard of conduct which makes it permissible under the applicable provisions of Chapter 78 of the Nevada Revised Statutes for the Corporation to indemnify such person for the amount claimed.

SECTION 3. DETERMINATION OF STANDARD OF CONDUCT. Any indemnification under SECTIONS 1 and 2 of this ARTICLE IV (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he had met the applicable standard of conduct set forth in said SECTIONS 1 and 2 and under Nevada law. Such determination shall be made (1) by the Board of Directors, by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such quorum is not obtainable or, even if obtainable and a quorum of disinterested directors so directs, by independent legal counsel (who may be counsel to the Corporation) in a written opinion, or (3) by the stockholders. Neither the failure of the Corporation (including the Board of Directors, independent legal counsel or its stockholders) to have made a determination before the commencement of such action that indemnification of the claimant is permissible under the circumstances because he or she has met such standards of conduct, nor an actual determination by the Corporation (including the Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such standards of conduct, shall be a defense to the action or create a presumption that the claimant has failed to meet such standards of conduct. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person failed to meet the standard of care under the applicable provisions of Chapter 78 of the Nevada Revised States.

SECTION 4. SUCCESSFUL DEFENSE. If a director or officer of the Corporation has been successful on the merits or otherwise as a party to any action, suit or proceeding referred to in SECTIONS 1 and 2 of this ARTICLE IV, or with respect to any claim, issue or matter therein (to the extent that a portion of his expenses can be reasonably allocated thereto), he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

SECTION 5. EXPENSES DURING PROCEEDING. Expenses incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding, or threat thereof, may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to whom or on whose behalf any such amount is paid to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this ARTICLE IV.

SECTION 6. EXCLUSIVITY. The indemnification provided by this ARTICLE IV shall not be deemed exclusive of any other rights to which any person indemnified may be entitled under any other By-Law, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

SECTION 7. INSURANCE. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or

other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this ARTICLE V or under Nevada Law.

SECTION 8. INDEMNIFICATION AGREEMENT. The Corporation may enter into agreements with any director, officer, employee, fiduciary or agent of the Corporation providing for indemnification to the full extent permitted by Nevada law.

SECTION 9. DEFINITIONS. For the purposes of this ARTICLE IV, references to "the Corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director or officer of such a constituent corporation or is or was serving at the request of such constituent corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this ARTICLE IV with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity. For purposes of this ARTICLE IV, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who met a standard of conduct under Nevada law and acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this ARTICLE IV.

ARTICLE V

SHARES OF CAPITAL STOCK AND THEIR TRANSFER

SECTION 1. CERTIFICATES FOR STOCK. Every owner of stock of the Corporation shall be entitled to a certificate or certificates, to be in such form as the Board shall prescribe, certifying the number and class of shares of the capital stock of the Corporation owned by him. The certificates for the respective classes of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board and Chief Executive Officer and President or any Vice President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation and its seal be affixed thereto; provided, however, that, where such certificate is signed by a transfer agent or an assistant transfer agent or by a transfer clerk acting on behalf of the Corporation and a registrar, if the Board shall by Resolution so authorize, the signature of such Chairman of the Board and Chief Executive Officer and President, Vice President, Treasurer, Secretary, Assistant Treasurer or Assistant Secretary and the seal of the Corporation may be facsimile. In case any officer or officers of the Corporation who shall have signed, or whose facsimile signature or signatures shall have been used on, any such certificate or certificates shall cease to be such officer or officers, whether by reason of death, resignation, retirement or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issue and delivered as though the person or persons who signed such certificate or certificates, or whose facsimile signature or signatures shall have been affixed thereto, had not ceased to be such officer or officers. A record shall be kept by the Secretary, transfer agent or by any other officer, employee or agent designated by the Board of the name of the person, firm or corporation owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in SECTION 5 of this ARTICLE V.

SECTION 2. CLASSES AND SERIES OF CLASSES OF STOCK. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications,

limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock; provided that, in lieu of the foregoing requirements, there may be set forth on the face or back of the Certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

SECTION 3. TRANSFER OF STOCK. Transfers of shares of the capital stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation, or with a transfer agent appointed as in SECTION 4 of this ARTICLE V provided, and on surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation; provided, however, that whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact, if known to the Secretary of the Corporation, shall be so expressed in the entry of transfer.

SECTION 4. REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with the Articles of Incorporation or these By-laws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. It may appoint, or authorize any principal officer or officers to appoint, one or more Transfer Agents and one or more Registrars, and may require all certificates of stock to bear the signature or signatures of any of them.

SECTION 5. LOST, DESTROYED OR MUTILATED CERTIFICATES. In case of loss, destruction or mutilation of any certificates of stock, another certificate or certificates may be issued in place thereof upon proof of such loss, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sum as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper so to do.

SECTION 6. DIVIDENDS. Dividends upon the capital stock of the Corporation, subject to the provisions of the Articles of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Articles of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE VI

MISCELLANEOUS PROVISIONS

SECTION 1. CORPORATE SEAL. The seal of the Corporation shall be circular in form with the words "Corporate SEAL Nevada" in the center and the name of the Corporation around the margin thereof.

SECTION 2. FISCAL YEAR. The fiscal year of the Corporation shall end at the close of business on the 31st day of December in each year.

SECTION 3. ANNUAL REPORTS. The Board of Directors shall present at each annual meeting of the stockholders a full report of the business and condition of the Corporation.

SECTION 4. EXECUTION OF CONTRACTS. The Board may authorize any officer or officers, agent or agents, or attorney or attorneys, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and, unless so authorized by the Board or expressly authorized by these By-Laws, no officer, agent or employee shall have

any power or authority to bind the Corporation by any contract or other engagement or to pledge its credit or to render it liable pecuniarily for any purpose or in any amount.

SECTION 5. LOANS. No loan shall be contracted on behalf of the Corporation, and no negotiable paper shall be issued in its name, unless authorized by the Board or by a committee of the Board to whom the Board has delegated such power.

SECTION 6. CHECKS, DRAFTS, ETC. All checks, drafts, bills, notes and other negotiable instruments and orders for the payment of money issued in the name of the Corporation, shall be signed by such officer or officers, employee or employees, agent or agents, of the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

SECTION 7. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may designate, or as may be designated by any officer or officers, agent or agents, or attorney or attorneys, of the Corporation to whom power in that respect shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the Chairman of the Board and Chief Executive Officer and President, or any Vice President, or the Treasurer (or any other officer or agent or employee or attorney of the Corporation to whom such power shall be delegated by the Board) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

SECTION 8. GENERAL AND SPECIAL BANK ACCOUNTS. The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as it may designate or as may be designated by any officer or officers, agent or agents, or attorney or attorneys, of the Corporation to whom power in that respect shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these By-laws, as it may deem expedient.

SECTION 9. OFFICES. The Corporation may have an office or offices at such other place or places, either within or without the State of Nevada, as the Board of Directors may from time to time determine or as shall be necessary for the conduct of business of the Corporation.

ARTICLE VII

AMENDMENTS

All By-Laws of the Corporation shall be subject to alteration or repeal, and new By-Laws shall be adopted, either by the affirmative votes of the holders of record of 80% or more of the issued and outstanding stock of the Corporation entitled to vote in respect thereof, given at any annual or special meeting, or by the vote provided for in SECTION 12 of ARTICLE II hereof given at any regular or special meeting of the Board of Directors, provided that notice of the proposal so to alter or repeal or to make such By-Laws be included in the notice of such meeting of the stockholders or the Board, as the case may be. By-Laws, whether made or altered by the stockholders or by the Board of Directors, shall be subject to alteration or repeal by the stockholders by the vote herein above specified.

ARTICLE VIII

INTERPRETATION

Reference in these By-Laws to any provision of Chapter 78 of the Nevada Revised Statutes shall be deemed to include all amendments thereto and the effect of the construction and determination of validity thereof of the Nevada Supreme Court.