CrowdGather, Inc.
Form PRE 14A
August 15, 2008

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

Filed by the Registrant x
Filed by a Party other than the Registrant o
Check the appropriate box:

xPreliminary Proxy Statement
oDefinitive Proxy Statement Definitive
oAdditional Materials Soliciting Material under Rule 14a-12
oConfidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

CROWDGATHER, INC.
(Name of Registrant as Specified In Its Charter)
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

xNo fee required.
oFee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Proposed maximum aggregate value of transaction:

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oCheck box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Filing Party:

(5) Date Filed:

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CROWDGATHER, INC.
20300 Ventura Blvd. Suite 330
Woodland Hills, CA 91364

August ___, 2008

Dear Stockholder:

We cordially invite you to attend our 2008 annual meeting of stockholders, which will be held at 10:00 a.m. on Monday, September ___, 2008 at the [location _____], [address _____], [city _____] California [zip _____].

At this year's annual meeting, the agenda will include: (i) voting on a proposal to amend and restate the Company's articles of incorporation so as to allow the board of directors to increase the size of the board, currently limited to one member, to authorize the issuance of preferred stock and allow the board to set that class' preferences and designations, and to include provisions limiting the liability of our officers and directors; (ii) the election of directors; (iii) the ratification of the selection of our independent registered public accounting firm for fiscal 2008; (iv) ratification of the CrowdGather, Inc. 2008 Stock Option and Award Plan; and (v) the transaction of such other business as may properly come before the meeting or any adjournment thereof. Please refer to the enclosed proxy statement for detailed information on each of these proposals and other important information about CrowdGather.

We hope you will be able to attend the annual meeting, but we know that not every stockholder will be able to do so. Whether or not you plan to attend, please complete, sign and return your proxy, or vote by telephone or via the Internet according to the instructions on the proxy card, so that your shares will be voted at the annual meeting.

Sincerely,

Sanjay Sabnani
Secretary

CROWDGATHER, INC.
20300 Ventura Blvd. Suite 330
Woodland Hills, CA 91364

NOTICE OF 2008 ANNUAL MEETING OF STOCKHOLDERS
SEPTEMBER ___, 2008

Dear Stockholder:

The annual meeting of stockholders of CrowdGather, Inc. will be held at 10:00 a.m. on Monday, September ___, 2008 at the [location _____], [address _____], [city _____] California [zip _____]. The purpose of the annual meeting is to:

1. Approve the amendment and restatement of our articles of incorporation to allow the board of directors to: increase the size of the board, currently limited to one member; authorize a class of preferred stock; and include limitation of liability provisions applicable to our officers and directors.

2. Elect three directors to hold office until the next annual meeting of stockholders or until their successors are duly elected and qualified.

3. Ratify the selection of Mendoza Berger & Company, LLP as our independent registered public accounting firm for the 2008 fiscal year.

4. Ratify the CrowdGather, Inc. 2008 Stock Option and Award Plan.

5. Transact such other business as may properly come before the meeting or any adjournments thereof.

Only stockholders of record at the close of business on August ___, 2008 will be entitled to vote at the annual meeting and any and all adjourned sessions thereof. Our stock transfer books will remain open.

SANJAY SABNANI, OUR CHIEF EXECUTIVE OFFICER, AND OUR SOLE DIRECTOR, BENEFICIALLY OWNS AND HAS VOTING CONTROL OF 22,110,550 SHARES OF OUR COMMON STOCK, OR APPROXIMATELY 54.6% OF THE OUTSTANDING SHARES. THESE SHARES WILL BE VOTED IN FAVOR OF EACH OF THE PROPOSALS AND THIS VOTE WILL BE SUFFICIENT TO APPROVE ALL THE PROPOSALS ON BEHALF OF THE SHAREHOLDERS.

To ensure that your vote is recorded promptly, please vote as soon as possible. If you are a stockholder of record, please complete, sign and mail the proxy card in the enclosed postage-paid envelope. If your shares are held in “street name”, that is held for your account by a broker or other nominee, you will receive instructions from the holder of record that you must follow for your shares to be voted.

By Order of the Board of Directors,

Sanjay Sabnani
Secretary

[_____]
August ___, 2008

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CROWDGATHER, INC.
20300 Ventura Blvd. Suite 330
Woodland Hills, CA 91364

PROXY STATEMENT

Our board of directors is soliciting your proxy for the annual meeting of stockholders to be held at the [location _____], [address _____], [city _____] California [zip _____], on Monday, September ___, 2008 at 10:00 a.m. and at any and all adjourned sessions of the annual meeting.

We are mailing our annual report for the fiscal year ended April 30, 2008, to our stockholders with this notice and proxy statement (including the form of proxy) on or about August ___, 2008.

Record Date and Quorum Requirements

Only stockholders of record at the close of business on August ___, 2008 will be entitled to vote at the annual meeting. At the close of business on August ___, 2008, we had [_____] shares of common stock issued and outstanding.

A majority of the outstanding shares of common stock as of the record date must be present at the meeting in order to hold the meeting and conduct business. This is called a “quorum.” A stockholder's shares are counted as present at the meeting if the stockholder is present at the meeting and votes in person or a proxy card has been properly submitted by the stockholder or on the stockholder's behalf. Both abstentions and broker non-votes are counted as present for the purpose of determining the presence of a quorum.

SANJAY SABNANI, OUR CHIEF EXECUTIVE OFFICER, AND OUR SOLE DIRECTOR, BENEFICIALLY OWNS AND HAS VOTING CONTROL OF 22,110,550 SHARES OF OUR COMMON STOCK, OR APPROXIMATELY 54.6% OF THE OUTSTANDING SHARES. THIS TOTAL CONSTITUTES A QUORUM. THESE SHARES WILL BE VOTED IN FAVOR OF EACH OF THE PROPOSALS AND THIS VOTE WILL BE SUFFICIENT TO APPROVE THE ALL PROPOSALS ON BEHALF OF THE SHAREHOLDERS.

“Broker non-votes” are shares of common stock held by brokers or nominees over which the broker or nominee lacks discretionary power to vote and for which the broker or nominee has not received specific voting instructions from the beneficial owner.

Voting Your Shares and Votes Required

Your vote is very important. If you do not vote your shares, you will not have an impact with respect to the issues to be voted on at this annual meeting. In addition, banks and brokers cannot vote on their clients’ behalf on “non-routine” proposals without your specific voting instructions.

The holders of all outstanding shares of common stock are entitled to one vote for each share of common stock registered in their names on the books of our company at the close of business on the record date.

Approval of the proposed amendments to and restatement of our articles of incorporation will require the affirmative vote of a majority of all shares outstanding. In order to be elected as directors, each of the nominees for director must receive a plurality of the votes cast at the annual meeting. Approval of the proposed ratification of the selection of Mendoza Berger & Company, LLP as our independent registered public accounting firm for the 2008 fiscal year will require the affirmative vote of a majority of the shares of common stock present or represented by proxy at the annual meeting. Approval of the proposed ratification of the CrowdGather, Inc. 2008 Stock Option and Award Plan will

require the affirmative vote of a majority of all shares outstanding. For purposes of determining the outcome of any matter, shares represented in person or by proxy at the meeting but abstaining from voting on a particular proposal and "broker non-votes" will each be treated as not present and not entitled to vote with respect to that matter, even though the shares of common stock are considered entitled to vote for the purposes of determining a quorum and may be entitled to vote on other matters. Therefore, abstentions and broker non-votes will have the same effect as a vote against the proposed amendment of our articles of incorporation.

Submitting Your Proxy

If you complete and submit your proxy, the persons named as proxies will vote the shares represented by your proxy in accordance with your instructions. If you submit a proxy card but do not fill out the voting instructions on the proxy card, the persons named as proxies will vote the shares represented by your proxy as follows:

- FOR the amendments to and restatement of our articles of incorporation;
- FOR the election of the director nominees;
- FOR the ratification of the selection of Mendoza Berger & Company, LLP as our registered public accounting firm; and
- FOR the ratification of the CrowdGather, Inc. 2008 Stock Option and Award Plan.

To ensure that your vote is recorded promptly, please vote as soon as possible. To vote by proxy, please complete, sign and mail the proxy card in the enclosed postage-paid envelope.

Stockholders that attend the annual meeting and wish to vote in person will be given a ballot at the meeting. If your shares are held in “street name” and you want to attend the annual meeting, you must bring an account statement or letter from the brokerage firm or bank holding your shares showing that you were the beneficial owner of the shares on the record date. If you want to vote shares that are held in “street name” or are otherwise not registered in your name, you will need to obtain a “legal proxy” from the holder of record and present it at the annual meeting.

Revoking or Changing Your Proxy

You may revoke or change your proxy at any time before it is voted. For a stockholder “of record”, meaning one whose shares are registered in his or her own name, to revoke or change a proxy, the stockholder may follow one of the procedures listed below.

- submit another properly signed proxy, which bears a later date;
- deliver a written revocation to our corporate secretary; or
- attend the annual meeting or any adjourned session thereof and vote in person.

If you are a beneficial owner of our common stock, and not the stockholder of record (for example your common stock is registered in “street name” with a brokerage firm), you must follow the procedures required by the holder of record, which is usually a brokerage firm or bank, to revoke or change a proxy. You should contact the stockholder of record directly for more information on these procedures.

Other Information

We will bear the expense of soliciting proxies. Our officers and certain other employees, without additional remuneration, may solicit proxies personally or by telephone, e-mail or other means.

Our Annual Report on Form 10-KSB for the year ended April 30, 2008, which is not part of the proxy soliciting materials, is included with this Proxy Statement as Appendix A.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The table below shows the number of our shares of common stock beneficially owned as of August 14, 2008 by:

- each person or group known by us to beneficially own more than 5% of our outstanding common stock;
- each director and nominee for director;
- each executive officer named in the Summary Compensation Table under the heading “Executive Compensation” below; and
- all of our current directors and nominees and executive officers of the company as a group.

The number of shares beneficially owned by each 5% holder, director or executive officer is determined by the rules of the SEC, and the information does not necessarily indicate beneficial ownership for any other purpose. Under such rules, beneficial ownership includes any shares over which the person or entity has sole or shared voting power or investment power and also any shares that the person or entity can acquire within 60 days of August [__], 2008 through the exercise of any stock option or other right. For purposes of computing the percentage of outstanding shares of common stock held by each person or entity, any shares that the person or entity has the right to acquire within 60 days after August [__], 2008 are deemed to be outstanding with respect to such person or entity but are not deemed to be outstanding for the purpose of computing the percentage of ownership of any other person or entity. Unless otherwise indicated, each person or entity has sole investment and voting power (or shares such power with his or her spouse) over the shares set forth in the following table. The inclusion in the table below of any shares deemed beneficially owned does not constitute an admission of beneficial ownership of those shares. As of August 14, 2008, there were 40,494,818 shares of common stock issued and outstanding.

SANJAY SABNANI, OUR CHIEF EXECUTIVE OFFICER, AND OUR SOLE DIRECTOR, BENEFICIALLY OWNS AND HAS VOTING CONTROL OF 22,110,550 SHARES OF OUR COMMON STOCK, OR APPROXIMATELY 54.6% OF THE OUTSTANDING SHARES. THESE SHARES WILL BE VOTED IN FAVOR OF EACH OF THE PROPOSAL AND THIS VOTE WILL BE SUFFICIENT TO APPROVE ALL THE PROPOSALS ON BEHALF OF THE SHAREHOLDERS.

Title of Class	Name and Address Of Beneficial Owner	Amount and Nature of Beneficial Owner	Percent of Class (3)
Common Stock	Sanjay Sabnani 19069 Braemore Road Northridge, California 91326	22,110,550 shares (1) CEO, President, Secretary, CFO, Treasurer and Director	54.6%
Common Stock	Typhoon Capital Consultants, LLC (2) 19069 Braemore Road Northridge, California 91326	21,210,550 shares	52.4%
Common Stock	Vinay Holdings (4) P.O. Box 983 Victoria, Mahe, Republic of Seychelles	2,664,450 shares Beneficial Owner	6.58%
Common Stock	Gaurav Singh	200,000 shares held Vice President of	0.5%

	c/o 20300 Ventura Blvd. Suite 330 Woodland Hills, California 91364	Operations and Finance	
Common Stock	Fernando Munoz c/o 20300 Ventura Blvd. Suite 330 Woodland Hills, California 91364	No shares held Vice President for Technology	0.0%
Common Stock	Zoe Myerson c/o 20300 Ventura Blvd. Suite 330 Woodland Hills, California 91364	No shares held Vice President of World-wide Sales	0.0%

Common Stock	Jonathan R. Dariyanani c/o 20300 Ventura Blvd. Suite 330 Woodland Hills, California 91364	140,000 shares Director Nominee	0.3%
Common Stock	James A. Sacks c/o 20300 Ventura Blvd. Suite 330 Woodland Hills, California 91364	175,000 shares Director Nominee	0.4%
Common Stock	All directors and named executive officers as a group	22,625,550 shares	55.8% (6)

(1) Includes those 21,210,550 shares, which are held by Typhoon Capital Consultants, LLC, of which Sanjay Sabnani is the beneficial owner, and 900,000 shares held by Sabnani Children Income Trust, of which Sanjay Sabnani may be deemed to have beneficial ownership due to his spouse's role as sole trustee for this trust. Sabnani disclaims beneficial ownership of those 900,000 shares, except as to his pecuniary interest therein.
(2) Sanjay Sabnani holds voting and dispositive power over the shares of Typhoon Capital Consultants, LLC.
(3) Based on 40,494,818 common shares issued and outstanding as of August 14, 2008.
(4) Parshotam Shambhunath Vaswani holds voting and dispositive power over the shares of Vinay Holdings, Ltd.
(5) Includes shares held by Director Nominees
(6) Percentages may vary due to rounding

INTEREST OF CERTAIN PERSONS IN MATTERS TO BE ACTED UPON

None of the following persons has any substantial or material interest, directly or indirectly, by way of beneficial ownership of securities or otherwise, in any matter to be acted on at the annual meeting except for our current and future directors and executive officers inasmuch as they may be granted stock options or stock awards pursuant to our 2008 Stock Plan:

1. Each person who has been one of our directors or executive officers at any time since the beginning of our last fiscal year;

2. Each nominee for election as one of our directors; or

3. Any affiliate or associate of any of the foregoing persons.

PROPOSAL 1
AMENDMENT OF ARTICLES OF INCORPORATION TO AUTHORIZE A CLASS OF PREFERRED STOCK AND TO RESTATE THE ARTICLES OF INCORPORATION TO INCLUDE CERTAIN LIMITATION OF LIABILITY PROVISIONS

The Board of Directors has approved and recommends that the shareholders approve the following amendments to our Articles of Incorporation, as amended (the "Articles"). It is our intent to incorporate all of the amendments set forth in this proposal which are approved by the shareholders into our Amended and Restated Articles of Incorporation (the "Restated Articles") to be filed with the Nevada Secretary of State.

The following discussion is qualified in its entirety by the text of the proposed Restated Articles attached hereto as Appendix B. If any of the amendments proposed herein are not approved by the shareholders, prior to filing the Restated Articles with the Nevada Secretary of State, we will revise the Restated Articles to reflect the comparable provision of our current Articles of Incorporation.

On August 14, 2008, our board of directors (the "Board") authorized the amendment and restatement of our Articles to: (i) to allow the Board to increase the size of the Board in accordance with our Bylaws; (ii) an amendment to the Articles to authorize the issuance of up to 25,000,000 shares of a class of preferred stock and give the Board the authority to set the preferences and designations on that class; and (iii) include provisions limiting the liability of our officers and directors to the extent allowed by the Nevada Revised Statutes. The stockholders are being asked to approve at the Annual Meeting such amendment to, and restatement of, the Articles. As proposed to be amended and restated, the Articles will read in full as set forth in Appendix B attached hereto.

A. PURPOSE AND BACKGROUND OF ALLOWING AN INCREASE IN THE SIZE OF THE BOARD OF DIRECTORS.

Our Articles presently authorize only one director on our Board of Directors. Our Board has unanimously approved a resolution to amend and restated the Articles to authorize the Board of Directors to increase the size of the Board in accordance with our Bylaws.

The Board believes that it is in our best interest to increase the size of the Board in order to allow us to appoint or elect additional qualified directors. The Board also believes that the availability of additional directorships will provide it with the flexibility to identify and recruit key individuals whose industry knowledge and expertise will benefit the direction and vision of the CrowdGather by contributing to discussions as to whether we should make acquisitions, establish strategic relationships with other companies or enter into any other proper corporate action. Furthermore, the proposal to allow future changes of the number of authorized persons to serve as directors offers the Board greater flexibility in determining the size of the Board without further stockholder approval, within the manner set forth in our Bylaws. Upon the approval of the Restated Articles, the next agenda item for the shareholders meeting is to elect two additional directors in addition to the re-election of the current director.

The Board of Directors believes that the proposed increase in the number of directors will effectively increase the number of directors and allow for the possibility of appointment future outside independent directors, which may serve to further legitimize the actions of the Board of Directors and ensure that proposed corporate transactions are at arms-length. However, the proposed amendment to increase the size of the Board of Directors could, under certain circumstances, have an anti-takeover effect, although this is not the intention of this proposal. For example, in the event of a hostile attempt to take over control of CrowdGather, in addition to the fact that a further change to the size of the Board of Directors requires the approval of the holders of a majority of the voting capital stock, it may be easier for us to impede the attempt with a larger Board since it would require more directors to vote in favor of the take-over attempt. The Restated Articles therefore may have the effect of discouraging unsolicited takeover attempts. By potentially discouraging initiation of any such unsolicited takeover attempt, the proposed Restated Articles may limit the opportunity for our stockholders to dispose of their shares at the higher price generally available in takeover attempts or that may be available under a merger proposal. The proposed amendment may have the effect of permitting our current management, including the current sole director, Mr. Sabnani, to retain his position, and place the Board in a better position to resist changes that stockholders may wish to make if they are dissatisfied with the conduct of our business. However, the Board is not aware of any such attempt to take control of us and the Board has not presented this proposal with the intent that it be utilized as a type of anti-takeover device.

The Articles shall be restated in their entirety so that so that there appears the following text:

TENTH. Currently, there is one director. In the future, the number of directors constituting the board of directors shall be fixed by, or in the manner provided in, the bylaws of the Corporation.

Interest of Certain Persons in this provision of the Restatement

The current sole director, Mr. Sabnani, may be deemed to have a substantial interest in the Restatement because the Restatement may have the effect of preserving his position as a director on our Board of Directors because he controls sufficient votes necessary to change the controlling provisions of our Articles. ..

B. PURPOSE AND BACKGROUND OF THE AUTHORIZATION OF A CLASS OF PREFERRED STOCK

Our Articles do not presently authorize the issuance of shares other than common stock. Our Board has unanimously approved a resolution amending the Articles to authorize the issuance of up to 25,000,000 shares of preferred stock, commonly referred to as “blank check” preferred stock because the Board has discretion to designate one or more series of the preferred stock with the rights, privileges and preferences of each series to be fixed by the Board from time to time in the future.

The Board’s primary objective in establishing a class of “blank check” preferred stock is to provide maximum flexibility with respect to future financing transactions. “Blank check” preferred stock is commonly authorized by publicly traded companies and is frequently used as a preferred means of raising capital and making acquisitions. In particular, in recent years, smaller companies have been required to utilize senior classes of securities to raise capital, with the terms

of those securities being highly negotiated and tailored to meet the needs of both investors and the issuing companies. Such senior securities typically include liquidation and dividend preferences, protections, conversion privileges and other rights not found in common stock. We presently lack the authority to issue preferred stock and, accordingly, are limited to issuing common stock or debt securities to raise capital. By authorizing a class of "blank check" preferred stock, we would increase our flexibility in structuring transactions.

If the Articles are amended to authorize the issuance of "blank check" preferred stock, the Board would have discretion to establish series of preferred stock and the rights and privileges of each series so established and the holders of our common stock would have no input or right to approve the terms of any such series.

The Articles shall be amended and restated by adding Articles FOURTH, FIFTH and SIXTH so that there appears the following text:

FOURTH. The total number of shares of capital stock which this Corporation shall have authority to issue is one billion (1,000,000,000) with a par value of $.001 per share, amounting to $1,000,000. Nine hundred seventy-five million (975,000,000) of those shares are Common Stock and twenty-five million (25,000,000) of those shares are Preferred Stock. Each share of Common Stock shall entitle the holder thereof to one vote, in person or by proxy, on any matter on which action of the stockholders of this Corporation is sought. The holders of shares of Preferred Stock shall have no right to vote such shares, except as determined by the Board of Directors.

FIFTH. The Board of Directors is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in one or more series, and by filing a certificate pursuant to the applicable law of the State of Nevada, to establish from time to time the number of shares to be included in each such series, and to fix the designations, voting powers, preferences, limitations and relative rights of the shares of each such series and any qualifications, limitations or restrictions thereof.

SIXTH. Subject to the provisions of law and the rights of the holders of any class or series of stock having a preference as to dividends over the Common Stock then outstanding, dividends may be paid on the Common Stock at such times and in such amounts as the Board of Directors shall determine. Upon the dissolution, liquidation or winding up of the Corporation, after any preferential amounts to be distributed to the holders of any class or series of stock having a preference over the Common Stock then outstanding have been distributed or set apart for payment, the holders of the Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them, respectively.

C. PURPOSE OF THE AMENDMENT TO THE ARTICLES TO LIMIT THE PERSONAL LIABILITY OF OUR OFFICERS AND DIRECTORS FOR MONETARY DAMAGES FOR CERTAIN BREACHES OF THE FIDUCIARY DUTY OF CARE AS PERMITTED UNDER THE NEVADA REVISED STATUTES AND TO INDEMNIFY THE OFFICERS AND DIRECTORS TO THE FULL EXTENT PERMITTED BY THE NEVADA REVISED STATUTES

The Board of Directors has adopted a resolution to add Articles SEVENTH and EIGHTH to the Articles, or, in order to indemnify our directors, officers, employees, fiduciaries, and agents to the full extent permitted by Nevada law and to limit the personal liability of our directors for monetary damages for certain breaches of the fiduciary duty of care as permitted under the Nevada Revised Statutes. The Nevada Revised Statutes permits a Nevada corporation the power to indemnify a director, officer, employee, fiduciary, or agent of the corporation provided that (1) the person conducted himself in good faith and (2) the person was acting in his official capacity with the corporation and reasonably believed his conduct was at least not opposed to the corporation's best interests. The Nevada Revised Statutes also permits a Nevada corporation to limit or eliminate the personal monetary liability of its directors to the corporation or its shareholders by reason of their breach of the fiduciary duty of care as directors, including liability for negligence, and gross negligence, by including a provision to this effect in its Articles.

The Articles shall be amended and restated by adding Articles SEVENTH and EIGHTH so that there appears the following text:

SEVENTH. Except as otherwise provided in Nevada Revised Statutes 35.230, 90.660, 91.250, 452.200, 452.270, 668.045 and 694A.030, no director or officer of this Corporation shall be individually liable to the Corporation or its

stockholders or creditors for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven that: (a) his act or failure to act constituted a breach of his fiduciary duties as a director or officer; and (b) his breach of those duties involved intentional misconduct, fraud or a knowing violation of law. If the Nevada General Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Nevada General Corporation Law. Any repeal or modification of this Article Seventh by the stockholders of the Corporation shall be prospective only and shall not adversely affect any limitation of the personal liability of a director of the Corporation existing at the time of such repeal or modification.

EIGHTH. The Corporation shall indemnify any person who was or is threatened to be made a party to a proceeding (as hereinafter defined) by reason of the fact that he or she (i) is or was a director or officer of the Corporation or (ii) is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, to the fullest extent permitted under the Nevada General Corporation Law, as the same exists or may hereafter be amended; provided, however, that except as provided in this Article Eighth with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the board of directors of the Corporation.

Such rights shall be a contract right and as such shall run to the benefit of any director or officer who is elected and accepts the position of director or officer of the Corporation or elects to continue to serve as a director or officer of the Corporation while this Article Eighth is in effect. Any repeal or amendment of this Article Eighth shall be prospective only and shall not limit the rights of any such director or officer or the obligations of the Corporation with respect to any claim arising from or related to the services of such director or officer in any of the foregoing capacities prior to any such repeal or amendment to this Article Eighth. Such right shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the Nevada General Corporation Law.

If a claim for indemnification hereunder is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall also be entitled to be paid the expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the Nevada General Corporation Law, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the board of directors or any committee thereof, independent legal counsel, or stockholders) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Corporation (including the board of directors or any committee thereof, independent legal counsel, or stockholders) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification by the Corporation is not permissible.

In the event of the death of any person having rights of indemnification under the foregoing provisions, such right shall inure to the benefit of his or her heirs, executors, administrators, and personal representatives. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution of stockholders or directors, agreement, or otherwise.

The Corporation may additionally indemnify any employee or agent of the Corporation to the fullest extent permitted by law.

As used herein, the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

Purpose and Background of these Sections in the Restatement to Include Liability and Indemnity Provisions

In recent years, litigation seeking to impose liability on directors and officers of publicly-held corporations for violations of the duty of care has become commonplace. To avoid liability, the director is required to show that he conducted himself in strict compliance with the duty of care as set forth in the business judgment rule. In practice, the application of this duty varies widely among the courts, leaving directors with little guidance and certainty as

to what constitutes adequate care under a given set of circumstances. Compounding this uncertainty, in several decisions, courts imposed a clairvoyant duty upon directors, despite the fact that the actions of the directors in exercising reasonable care are supposed to be judged as of the time and under the circumstances existing at the time the decision was made.

This type of litigation is expensive to defend, with costs frequently amounting to hundreds of thousands, and sometimes millions of dollars. In many cases, costs of defense exceed the means of individual defendants, even if ultimately they are vindicated on the issue of individual liability or wrongdoing. In addition, in view of the costs and uncertainties of litigation, it is often prudent to settle such claims. While settlements frequently are for only a fraction of the amount claimed, the settlement amount may well exceed the financial resources of individual defendants. In summary, without the benefit of protective measures such as indemnification and limitation of liability as permitted under the Nevada Revised Statutes, exposure to the costs and risks of claims of personal liability for corporate directors may exceed any benefit to them of serving as a director of a public corporation.

The risks of personal liability for directors has traditionally been mitigated through directors' and officers' liability insurance ("D&O Insurance"). Changes in the market for D&O Insurance during recent years have resulted in meaningful coverage becoming unavailable for directors and officers of many corporations. Insurance carriers have in certain cases declined to renew existing directors' and officers' liability policies, or have increased premiums, thereby making the cost of obtaining such insurance prohibitive.

Moreover, policies often exclude coverage for areas where the service of qualified independent directors is most needed. For example, many policies do not cover liabilities or expenses arising from directors' and officers' activities in response to attempted takeovers of a corporation.

In response to the above developments regarding litigation against directors and the general unavailability of meaningful D&O Insurance, the Nevada legislature adopted certain provisions of Nevada Revised Statutes which permit a corporation to limit or eliminate the personal monetary liability of a director for certain breaches of the duty of care. Effectively, the limitation acts as a substitute for, or a supplement to, D&O Insurance coverage.

In the opinion of the Board of Directors, inclusion of a provision for limitation of liability and continuation of our policy of entering into indemnification agreements with our directors will best position us to attract and retain qualified candidates to serve as our directors. Although we have not experienced difficulty finding qualified candidates to serve on our Board of Directors to date, we believe that we may experience difficulty in the future if protective measures are not taken.

This provision will prevent us and our shareholders, but not third parties, from bringing actions for monetary damages based upon a director's negligent or grossly negligent business decisions, including those related to attempts to change